

Congress of the United States
House of Representatives
Washington, D. C.

June 29, 1945

Mr. L. F. Roberts
Attorney at Law
Pawhuska, Oklahoma

Dear Mr. Roberts:

Confirming my telegram of this morning in reply to yours which I have just received, I am enclosing copy of wire I sent you.

There is absolutely nothing in the bill which suggests that, in the performance of his duties, the attorney to be selected by the Osage Council and approved by the Commissioner of Indian Affairs, shall not represent individuals in private and personal matters.

The bill as reported by the conferees and as approved yesterday by the House, merely makes provision for the employment of an Osage Tribal Attorney at a salary of \$4500 per year, and is absolutely silent as to his duties.

While the Osage delegation was here, I plainly and emphatically told them that I thought that, insofar as they might expect such an attorney to represent any individual in private and personal matters, they were laboring under a misapprehension. I offered several illustrations to explain my point. I gave as one illustration, the determination of heirship, and others such as partition actions, etc. I thought I made it plain to them that in many instances of which they are well aware, there are conflicting interests of individual Osage Indians, either one of which would have as much right to be represented by the Osage Tribal Counsel as any other party in interest; and that in such cases, they must count upon the employment of their own separate and individual counsel. I think they understood this situation. After my discussion of the subject with them I feel sure they understood it, although formerly they seemed to be confused.

As I understand it, the whole intention here was that the Osage Council felt that they were entitled to have a Tribal Attorney to represent the interests of the Tribe and of the Osages generally, which in many instances, conflict with the interests of the Government, or the Department of Indian Affairs, the Commissioner of Indian Affairs and his representative in the Osage Indian Agency, Mr. Fulton. The present agency counsel, as I understand, or his successor, would be expected to represent the interests of the government as the trustee or guardian, or

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designation may be used to express the fiduciary relationship which the Government occupies with reference to the Osage Indians, without regard to the rights of individual Indians or the Tribe as a separate entity. Then the attorney to be employed by the Tribal Council, to receive the salary of \$4500 per year as provided in the current appropriation bill, shall represent the Tribe considered as an entity, and perhaps there may be instances where the interest of an individual Indian is identical with the interest of all of the Osage Indians; in all such cases such Tribal Counsel shall function.

This is somewhat analagous, as I see it, to the situation where the Tribal Counsel is in the position of one who might be representing a voluntary association, incorporated or unincorporated, and whose duties are to represent that entity, and occasionally individuals whose interests are in common with all others of the association. But no one can say that his employment involved the duty to represent each member of the Association or each stockholder of the corporation in his individual private and personal affairs. Personally, I can see no reason for any serious confusion on this subject.

This matter was presented to the Commissioner of Indian Affairs, Mr. William Brophy, and he was in hearty accord with the ideas I have expressed in this letter, and I was convinced that he thought the employment of the Tribal Counsel was only fair and proper, especially since the salary of such attorney is to be paid out of tribal funds, whereas the agency attorney is to be compensated out of the Treasury of the United States.

The action of the conferrees, with the applicable amendments of the House, have not been printed except in the Congressional Record of June 28, 1945, and may be seen at page 6997 of that issue. For your information, I quote the following language from the bill, which is the only language in the bill that pertains to the question we are discussing:

"Support of Osage agencies and pay of tribal officers, Oklahoma (tribe funds): For the support of the Osage Agency and for necessary expenses in connection with oil and gas production on the Osage Reservation, Oklahoma, including pay of the Superintendent of the Agency and of necessary employees, and pay of tribal officers, including the employment of a tribal attorney at the rate of \$4500 per annum to be appointed with the approval of the Osage Tribal Council under a contract to be entered into by said Tribal Attorney and the Osage Tribal Council, which contract shall be approved by the Secretary of the Interior."

Representative Jed Johnson moved the adoption of this language as an amendment to the bill, and I obtained leave to interrogate him and ask him on the floor of the House, as Chairman of the Sub-Committee on Appropriations in Charge of the Interior Appropriations Bill, the following question:

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"I am anxious to know if I understand correctly that the amendment the Chairman has just offered results in one thing; and that is there will be an attorney representing the Government the same as in the past, and an attorney to be employed and paid for out of the Osage tribal funds resulting from a contract by the Osage Tribal Council, to be approved by the Secretary of the Interior or the Commissioner of Indian Affairs."

Representative Johnson replied: "I will say to the gentleman that that is exactly what this amendment provides. He understands the situation correctly."

I thought you would be interested in knowing the exact language and exactly what took place, to enable you to judge for yourself whether or not my conclusions are correct. You also will see from this information I have furnished you that I was on the job and trying to see that there was no serious blunder made and that everybody's rights were adequately protected. I know that there may be some criticism from those who have not thought the situation through thoroughly; but I am convinced that the bill now provides that which is proper and best for all, and accords with the best thinking that has been expressed to me on this subject.

I trust that this information fully answers your inquiry, and that if it does not, or if there is anything further you would like to know or any further assistance I can render you or any other person down there interested in this matter, that you will feel free to call upon me and I shall be delighted to serve you.

With all good wishes, I am

Sincerely yours,

George B. Schwabe, M.C.

P.S. I suggest that you call this letter to the attention of some of the other members of the Bar, and as many of them as you care to, as several have written me on this same subject.

G.B.S.

GS:LN

1 enclosure

CC: "ABE" COLL