

April 14, 1937

Hon. Charles West
Acting Secretary of the Interior
Washington, D. C.

in re: Osage Civilization
Bill, S. 670; H.R. 3611

Dear Sir:

On my own initiative, upon seeing your report to Hon. Will Rogers, Chairman of the House Committee on Indian Affairs, I requested Mr. Rogers not to file a report on the Bill, in the hope that the following suggestions, looking to a correction of your report of April 12, 1937, might appeal to you.

(1) Attorneys' Fees: This feature, discussed in your letter from line 16, page 4 to line 23, page 5, is simply confusing, and makes the issue appear to be, in a large measure, a matter of attorneys' fees, when that is secondary. Enemies of the bill could make the charge that this was a fight over attorneys' fees.

Since the Senate passed the bill without reference to the proposed amendment, and the House Committee reported the Senate Bill and refused to accept the suggested amendment, I see no good purpose in presenting it in your letter; but, on the contrary, it gives us more to meet on the floor of the House.

I respectfully suggest that the letter be corrected to eliminate all of that material.

(2) The quotation from the Attorney General's letter at the bottom of page 5, and the answer to it on page 6, in my judgment, should be eliminated because it is poor legislative strategy to suggest, even for the sake of argument, that some official authority thinks there is a set-off of \$535,000.

I hope the letter will be revised to end at the period preceding the words "with the Budget" at line 30 of page 5.

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I appeal to you to make this change. The Bill has passed the Senate three times, and the material I have asked to be deleted serves no good purpose, but confuses the issue and detracts from the main feature of the Bill.

Respectfully yours,

WED:JS

Wesley E. Disney.

Memorandum Re: Stormont Statement

Osage Civilization Fund

An examination of the Stormont Statement reveals

1. That the Court of Claims found against the Government as to all its asserted offsets except items total \$21,513.42. (This latter item is now barred by the express provision of Section 2, Deficiency Appropriation Act of 1935, 49 Stat. 571, 586, as Mr. Stormont admitted at a personal conference with him. This Act establishes the policy of the United States not to assert as offsets against the Indians any appropriations for their benefit prior to the date of the Treaty under which they assert their claims against the United States).

2. Items numbered 1, 2, 3, 4, and 5 by the Court of Claims all relate to moneys expended prior to the date of the Treaty of 1865 under which the Osages assert their claims against the United States. This was found by the Court of Claims on the report of the Comptroller General. Consequently, all these items, amounting to \$73,613.11 are barred. This amount includes the \$21,513.42 above cited.

3. Items numbered 8 and 9 by the Court of Claims, as set out in the findings of Fact, based on the report of the Comptroller General, relate to moneys expended for the education of individual Osage children in Indian schools at distant points. These expenditures amount to \$198,459.34.

These items are not proper offsets for three reasons

(a) They are individual and not tribal matters.

(b) They are barred by the said Act of 1935. This Act, which establishes the policy of Congress, expressly provides as follows:

"The Court of Claims is hereby directed to consider and to offset against any amount found due the said tribe or band, all sums expended gratuitously by the United States for the benefit of such tribe or band."

There is no recognition of offsets for moneys expended for any purpose except for the benefit of the tribe or band. While individual education may so benefit, yet the Court of Claims disposes of that contention by its opinion in another case, as now cited.

(c) The Court of Claims, more than 2½ years after the opinion in the Osage case, namely, on December 1, 1930, handed down an opinion as to the Ft. Berthold Indians (71 Ct. Cl. 308), where similar offset for individual education were asserted by the Government, as follows:

"Congress appropriated from the Treasury in accord with a governmental policy to extend the privileges of education to Indian children for the express intent of eventually changing the hereditary habits and customs of the tribes. The motive involved was more directly beneficial, from the governmental standpoint, to the Government than to the tribe. Of course, educational facilities were of prime necessity and imperative, and eventually resulted in benefit to the tribe, but the immediate beneficial results were individual and not tribal."

In short, for several years the Court of Claims consistently denied offsets for such individual educational costs, and in 1935 the Congress established the policy, by the Act cited, to confine offsets to tribal or band matters.

4. The only remaining item is that numbered 6 by the Court of Claims, amounting to \$278,130.95, covering a period, as found by the Court on data submitted by the Comptroller General, from April 8, 1810, to June 30, 1922. It is apparent that a portion of such expenditures were prior to the Treaty of 1855 and that that portion is barred as an offset under the Act of 1935, above cited. The Court of Claims, as to this item, however, added: "They are not satisfactorily established and would in any event be rejected."

In short, considerably less than the \$278,130.95 could possibly at this time be established as proper offsets, and unless the Court of Claims should reverse its opinion in this respect, all the balance of that item "would in any event be rejected."

Why should the item in question be now waived? The answer is apparent. First, the Court of Claims found that it had not been properly established, and the only ground for questioning that conclusion is the opinion of the attorney who tried the case for the government. Second, the Osages, under the provisions of the enabling act by which they asserted their rights in the Court of Claims (Act Feb. 6, 1921, 41 Stat. 1097) is entitled to interest at the rate of 5% of any sums found due. Assuming that the entire \$278,130.95 should be deducted from the \$776,742.03, the balance would amount to \$498,611.08, and interest on this sum from the date of the establishment of the Civilization Fund in the Treasury, namely, 1873, would amount to more than 300% ~~and~~ or about \$1,250,000.00. Under the pending measure, the Osages accept the \$776,742.03 in full payment, including interest. The net result is that the United States waives the contention of the attorney, accepts the findings of the Court of Claims as to such offset, and pays the Osages less than one-half of the sum morally due them by the United States to make them whole.

Proposed Amendment

The Comptroller General, in a letter to Congressman Cochran, under date of July 27, 1937, suggests an amendment to the pending measure to authorize his office to determine the proper offsets under the said Section 2 of the Act of 1935, above cited. This amendment does not properly protect the Osages as to expenditures for individual education and makes no provision for interest. If such an amendment is desirable, it is suggested that it be slightly changed, so as to read:

" Provided, that the Comptroller General of the United States is hereby authorized and directed to ascertain the aggregate amount of gratuities theretofore paid to the Osage Indian tribe or any band thereof of the character provided for set-off by section 2 of the Second Deficiency Appropriation Act for 1935, 49 Stat. 596, and the amount so ascertained shall be deducted from the amount otherwise for crediting under this section. "

It would be fairer to the Osage Indians to add another proviso directing the Comptroller General to calculate and add interest, and such a provision can be prepared if required.

F. M. Goodwin

The Court of Claims made a specific finding of fact with respect to the offsets claimed by the United States, the said finding of fact being No. "XI," as follows:

1. By Article 5 of the Treaty of November 10, 1808, 7 Stat. 107, the United States in consideration of the cession of lands therein made agreed to deliver annually to the Osage Indians at Fire Prairie or at St. Louis, merchandise valued at \$1500.00. By Article 7 of the Treaty of June 2, 1825, proclaimed December 20, 1825 (7 Stat. 240), the Osage Nation released the United States from the obligation to deliver merchandise at Fire Prairie. The United States continued to pay to the Osage Nation yearly for thirteen years thereafter the annuity of \$1500.00 or a total of \$19,500.00.

2. By Article 5 of the Treaty of June 2, 1825, the United States agreed to pay to the Delawares \$1000 in full satisfaction of their claims and demands against the Osages. The amount paid by the United States under this article of the treaty was \$1150.00, and excess of \$150.00.

3. By Article 4 of the Treaty of November 10, 1808, article 2 of the Treaty of September 25, 1818 (7 Stat. 183), and article 9 of the treaty of June 25, 1818, the United States agreed to pay for property stolen or destroyed by the Osages, provided the sums paid by the United States did not exceed, respectively the sums of \$5,000, \$4,000, and \$5,000. Under these treaty stipulations the United States actually paid a total of \$15,963.42, an excess over the amounts stipulated of \$1,963.42.

4. By Article 3 of the treaty of June 2, 1825, it was provided that whenever the annuity stipulated " or any part thereof, shall be paid in merchandise, the same is to be delivered to them at the first cost of the goods at St. Louis, free of transportation. " During the period that this treaty was in effect, to wit, from January 1, 1826, to December 31, 1839, the United States expended in charges for " express and transportation " of annuity goods the sum of \$14,398.22. The excess cost of transporting these goods, or any part of them, ~~the~~ to the Osage nation, over the cost of delivering them at St. Louis, is not proved.

5. By article 2d of the treaty of January 11, 1839 (7 Stat. 576), the United States agreed to pay the Osages an annuity of \$20,000 for 20 years, \$12,000 in money and \$8,000 in goods, stocks, provisions or money, as the President might direct, a total obligation of \$400,000. The United States actually paid the Osages as in fulfillment of this obligation \$239,935.63 in cash and \$198,665.84 in goods, a total of \$437,601.47. It does not appear that the United States was not otherwise obligated, by treaty or other agreement, to pay the excess \$37,601.47.

6. From April 28, 1810, to June 30, 1922, the United States, although under no treaty obligations to do so, expended the following amounts for the purposes indicated. That the Osage Tribe received benefit from these expenditures and to what extent, does not satisfactorily appear:

Presents -----	\$16,002.67
Provisions -----	20,316.55
Medical and hospital supplies, etc. -----	1,596.59
Burial of Indians -----	115.00
Delegations to Washington and elsewhere ---	6,626.93

Pay of Indian Agents and subagents -----	\$55,312.10
Pay of Interpreters -----	28,325.13
Pay of Miscellaneous agency employes -----	3,517.54
Agency buildings and repairs -----	11,191.44
Miscellaneous agency expenses -----	11,702.18
Education -----	48,845.73
Pay of Indian Police -----	18,682.64
Pay of farmers -----	4,286.32
Agricultural aid -----	1,913.71
Livestock -----	1,819.20
Feed for livestock -----	114.58
Fuel -----	40.00
Advertising, insurance and transportation -----	42,692.64
Losses reimbursed under act March 3, 1877, (19 Stat. 292) and act March 3, 1885 (23 State 464 -----	5,000.00
Total -----	\$278,130.95

8. During the period from November 1, 1879, to September 1, 1918, the United States supported, maintained and operated a non-reservation school at Carlisle, Pennsylvania. During the period named the United States supported and educated Osage children therein at a cost of \$76,139.45.

9. The United States supports, maintains and operates non-reservation schools at Chilocco, Oklahoma, at Geneo, Nebraska, and at Lawrence, Kansas. Up to and including June 25, 1925, the United States educated and supported Osage Indian children therein at a total cost of \$112,312.89.

*See Report
p. 10*

The forgoing items constitute the offsets claimed by the United States and are the items to which reference is made in reports from the Comptroller General and the Attorney General. The act under which such items should now be considered, relating to offsets, is ~~the~~ Section 2, of the Deficiency Act of August 12, 1935 (49 Stat. 590), which provides:

" In all suits pending in the Court of Claims by an Indian tribe or band which has not been tried or submitted, and in any suit hereinafter filed in the Court of Claims by any such tribe or bands, the Court of Claims is hereby directed to consider and to offset against any sum found due the said tribe or band all sums gratuitously expended by the United States for the benefit of the said tribe or band, ***** provided, that expenditures made prior to the treaty or agreement or executive order under which the claim arises shall not be an offset against the claim or claims asserted. "

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The right of the Osages to assert a claim for interest on the balance found due them by the Comptroller General is based on the theory that the said Indians have been long deprived of the use of the sum due them and that 4% per annum is reasonable compensation to allow to make them whole. This is fully supported by the opinion of the ~~Supreme~~ Supreme Court of the United States in the Shoshone Indian case, 299 U. S. 476, wherein that court, after fixing a price for the land appropriated at the time of the appropriation, said: