



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON

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Honorable Will Rogers, Chairman,
Committee on Indian Affairs,
House of Representatives.

My dear Mr. Chairman:

Referring to your letters of February 17 and 23, 1939, requesting reports on H. R. 4080 and H. R. 1958, 76th Congress, both bills authorizing an appropriation for payment to the Osage Tribe of Indians on account of their lands sold by the United States, I have to advise as follows:

Pursuant to article I of the Treaty of September 29, 1865, the Osage Indians granted and sold to the United States a tract of land 30 by 50 miles, comprising 871,791.11 acres, for a consideration of \$300,000, which sum, by the terms of the treaty, was to be "placed to the credit of said tribe of Indians in the treasury of the United States, and interest thereon at the rate of five per centum per annum shall be paid to said tribes semi-annually, in money, clothing, provisions, or such articles of utility as the Secretary of the Interior may from time to time direct." Article I of the treaty further provided that:

"* * * after reimbursing the United States the cost of said survey and sale, and the said sum of three hundred thousand dollars placed to the credit of said Indians, the remaining proceeds of sales shall be placed in the treasury of the United States to the credit of the 'civilization fund,' to be used, under the direction of the Secretary of the Interior, for the education and civilization of Indian tribes residing within the limits of the United States."

Pursuant to the above quoted terms of the treaty, the proceeds of the sale of the involved land, after reimbursement to the United States of the said sum of \$300,000 and the expense of survey and sale, were placed to the credit of the "Civilization Fund" during the period from January 22, 1873, to January 29, 1901, in the aggregate amount of \$776,931.58. The records of this office show that of the said sum so credited, \$189.55 was disbursed for the benefit of the Osage Tribe of Indians, and the remainder of said sum, with the exception of \$248.78 covered into the surplus fund of the Treasury pursuant to the act of March 3, 1911, 36 Stat. 1062, was disbursed for the benefit of various other Indian tribes. Following the creation of the "Civilization Fund" in 1873, the Osage Indians protested the application of the funds therein set aside to the use and benefit of other tribes of Indians.

The act of February 6, 1921, provided for submission to the Court of Claims of the claim of the Osage Tribe of Indians against the United States for moneys alleged to be due by reason of the sale of these Osage lands, and the act also contained a gratuity offsetting provision. On May 28, 1928, 66 Ct. Cls. 64, the court rendered judgment in favor of the defendant, stating:

"We conclude that the Osage Tribe of Indians, under the language and meaning of said treaty, have not established a claim or right in the fund or moneys arising from the sale of the Osage lands under said treaty, and that the United States has not wrongfully appropriated any part or parcel of the lands or the funds of said Osage Tribe of Indians under said treaty."

and that:

"* * * Gratuities can not be recovered in this court, and could only be considered here in connection with the special provisions of the enabling act as set-offs in case of an allowance of plaintiff's claim."

Prior to July 1, 1922, the United States disbursed for the direct benefit of the Osage Indians, funds amounting to \$313,370.12, and for the benefit of the Osage Indians jointly with other Indians, funds amounting to \$104,454.34, all such expenditures being of a character heretofore considered by the court as gratuities,

While section 1 of H. R. 4080 would authorize an appropriation in the same amount of principal as H. R. 1958, it further proposes to authorize the payment of interest on the net amounts received from the sale of the lands in question, as provided by section 2 thereof, which proceeds were credited to the "Civilization Fund" and used for the benefit of Indians other than the Osage Tribe, as found in the court's opinion of May 28, 1928, 66 Ct. Cls. 64. The provision in said section 2 for the payment of interest on the net amounts received from the sale of lands in question will be difficult of practical application. For example, a tract of land is sold and the then net amount of such sale is covered in, then later certain aggregate expenses of sale, etc., are charged, and this aggregate amount will have to be prorated against particular tracts sold as of the date of each sale. If it were only the computation of interest on each tract from the date the net amount for that tract was covered in, unaffected by any subsequent application of expenses reimbursed, the matter would be

relatively simple. But however that may be, possibly a satisfactory accounting of the interest could be made. In this connection see page 9 of the report of the Secretary of the Interior, dated May 21, 1934, contained in Senate Report No. 74 on Bill S. 670, 75th Congress, 1st Session, wherein the following was stated with respect to a matter similar to the one here under consideration.

"The original bill provides 5-percent interest from date of deposit of the land-sale money in the Treasury of the United States. It is customary to allow interest in such cases only from the date the fund is credited to the tribe on the books of the Treasury, after the appropriation has been made; and the usual rate of interest is 4 per cent."

This would provide a far more simple method of calculating the interest. If this plan is not followed, then it might appear desirable to add a proviso at the end of section 2 of H. R. 4080, in substance as follows:

Provided that no interest shall be computed and allowed on any sales until the aggregate amount thereof equals the total amount of all authorized reimbursements to the United States.

Either plan would greatly simplify the reporting and probably the Indians would not object to either expedient if their claim for the interest were favorably considered.

In said bill H. R. 4080 there is incorporated a gratuity offsetting provision, limiting the gratuities to be set off to those set out by the Court of Claims in its opinion of May 28, 1928. It is believed that the provision, so limited, is not sufficient properly to protect the interests of the United States for the reasons that (1) there was no definite determination by the court in said case of the Government's contentions with respect to the set-offs deemed by it to be proper;

(2) had the Osage Indians recovered an amount which would have warranted the offsetting of gratuities and if some of the gratuities deemed proper for offset had been denied by the court, the Government could have appealed the case with respect thereto; and (3) the Court of Claims in a number of subsequent cases has treated as proper gratuities for offset, items of the very nature which in its decision in the Osage case it had stated were improper for offset.

It is presumed that since these two bills have the same author H. R. 4080 was intended as a substitute for H. R. 1958, but in any event it is believed that either of said bills, if enacted into law, should contain a provision authorizing the offsets contemplated by section 2 of the act of August 12, 1935, 49 Stat. 586, 596, of any gratuity paid to or on behalf of these Indians.

Aside from the foregoing suggestions this office has no recommendation to make with respect to said bills.

Sincerely yours,

(Signed) Fred H. Brown

Comptroller General
of the United States.