

COMPTROLLER GENERAL OF THE UNITED STATES  
Washington

A-69375

January 30, 1936

Honorable John J. Cochran, Chairman,  
Committee on Expenditures in the Executive Departments,  
House of Representatives.

My dear Mr. Chairman:

Further reference is made to your letter of December 24, 1935, acknowledged December 26, requesting information relative to S. 2375, 74th Congress, entitled "AN ACT Authorizing an appropriation for payment to the Osage Tribe of Indians on account of their lands sold by the United States."

Section 1 and 2 of the bill are as follows:

"That there is hereby authorized to be appropriated the sum of \$776,742.03, being the net amount received by the United States from the sale of land of the Osage Tribe of Indians in the State of Kansas under article I of the treaty of September 29, 1865 (14 Stat. L. 687), credited to the 'Civilization Fund' on the books of the Treasury of the United States and used for the benefit of Indian tribes other than the Osage, said Osage Tribe of Indians referred to herein now residing in the State of Oklahoma, as found by the Court of Claims in the opinion of May 28, 1928 (66 Ct. Cl. 64) in a case known as B-38 entitled 'Osage Nation of Indians against United States of America' instituted under Act of February 6, 1921 (41 Stat. L. 1097).

"Sec. 2. Said amount, when appropriated, shall be placed in the Treasury of the United States to the credit of the Osage Tribe of Indians and distributed in accordance with the rules and regulations governing payment of moneys accruing to members of the Osage Tribe of Indians."



An identical bill, H.R. 6682, was favorably reported to the House of Representatives by the Committee on Indian Affairs April 19, 1935.

Pursuant to article 1 of a treaty dated September 29, 1865, 14 Stat. 687, 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 1 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."

In accordance with the terms of the treaty, the said sum of \$300,000 with other moneys aggregating \$8,304,729.44, was set up on the books of the United States Treasury to the credit of the said Indians in the "Osage Fund." Of that fund, totaling \$8,604,729.44, the United States disbursed \$4,714,592.07 for the benefit of the Osage Tribe of Indians, \$10,051.31 was repaid to purchasers of land, and \$3,880,086.06 was a balance to the credit of the said fund as of



June 30, 1922, the date of the closing of the accounting by this office in connection with suit brought by the Osage Tribe in the Court of Claims under the provisions of the act of February 6, 1921, 41 Stat. 1097, hereinafter referred to.

Interest on the said \$300,000 at five per cent per annum, in the amount of \$270,000, was appropriated during the period from 1867 to 1884, and, with other moneys, was set up on the books of the United States Treasury under the heading "Fulfilling Treaties with Osages." Of this fund, \$442,867.17 had been disbursed for the benefit of the Osage Indians prior to July 1, 1922.

Likewise pursuant to the above quoted terms of the treaty, the proceeds of the sale of the involved land by the United States, 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 a "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, the remainder of the 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, being disbursed for the benefit of various other Indian tribes.



Following the actual creation of the "Civilization Fund" in 1873, the Osage Indians began to protest against the interpretation of the treaty which held that the fund was available for the benefit of other tribes of Indians and to insist that they had never so understood or intended. By act of February 6, 1921, 41 Stat. 1097, it was provided that the claim of the Osage Tribe of Indians against the United States for moneys due, arising out of the sale of Osage lands under the said treaty, should be submitted to the Court of Claims for determination; also that the court should have jurisdiction to hear and determine any set-off or counterclaim, including gratuities, which the United States might present against the Osage Tribe of Indians. On May 28, 1928 (66 Ct. Cls. 64), the Court of Claims rendered its decision denying recovery by the plaintiff on the ground that the treaty was a part of the supreme law of the land and could neither be reformed nor treated as inoperative by the courts. The court said also:

"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."

The court also denied recovery by the United States on the set-offs and counterclaims on the ground that the jurisdictional act-



" \* \* \* did not contemplate that the court should consider or make allowance for counterclaims where the conclusion of the court was against the claim of the Osage Tribe of Indians, and therefore, as the conclusion is against the claim, no further consideration should be given to the counterclaims."

The purpose of the bill S. 2375 is to authorize an appropriation to pay the Osage Tribe of Indians, without interest, that part of the proceeds of sale of the involved land not already expended for their benefit, recovery of such proceeds having been denied by the Court of Claims, as above stated.

Adverting to the specific question submitted by you as to whether any Government money has ever been spent on the Osage Indians, you are advised that prior to July 1, 1922, the United States disbursed for the direct benefit of the Osage Indians funds amounting to \$313,370.12 of a character heretofore considered as gratuities by the Court of Claims in the determination of suits brought under various jurisdictional acts authorizing the court to entertain claims of Indians and in such connection to consider gratuities received by the Indians from the Government and make equitable adjustment accordingly, and for the benefit of the Osage Indians jointly with other Indians funds of such character amounting to \$104,454.34. No accounting has been made covering such disbursements subsequent to June 30, 1922. It may be added that during the period from January 1, 1811, to June 30, 1922, the United States disbursed for the benefit of the Osage Tribe of Indians, including the amounts above mentioned, in excess of \$22,000,000 from various appropriations made in fulfillment of treaty obligations and from



funds and interest on funds belonging to the Osage Tribe.

It is noted that the bill does not provide for set-off of gratuities against the amount proposed to be appropriated, and it is suggested, if the bill is to be favorably considered for enactment, that it be amended by adding to section 2 of the bill the following proviso:

"Provided, That the Comptroller General of the United States is hereby authorized and directed to ascertain the aggregate amount of the gratuities theretofore paid to such Indians 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 require approximately six months for this office to ascertain accurately the amount of such gratuities.

Sincerely yours,

(Signed) J. R. McCarl

Comptroller General  
of the United States.