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*Pawnee  
Indians*

February 24, 1930.

My dear Mr. O'Conner:

Receipt is acknowledged of your letter of February 11, 1930, requesting information as to the merits of certain claims suggested in Office letter of February 4, 1930, addressed to Messrs. Theodore Eagle Chief and George H. Roberts, Pawnee Indians of Oklahoma.

The first claim mentioned refers to a deficiency in the area of the Pawnee Indian Reservation in Nebraska, which was granted to these Indians by the treaty of September 24, 1857 (11 Stat. L., 729). This treaty provided that the Pawnees should have a reservation 30 miles long and 15 miles wide. After the survey was made the east and west line was found to be  $29\frac{1}{2}$  miles in length, which resulted in a deficiency of 4,800 acres of land. A definite statement by the Commissioner of Indian Affairs is found in the report of the Commissioner for 1874, page 36. An effort was made at that time to obtain an appropriation to pay the Pawnees for the 4,800 acres, but such appropriation does not appear to have ever been made. At that time it was proposed to pay the Pawnee Indians \$1.25 per acre for the difference between the reservation as granted and as surveyed. This would result in a total amount of \$6,000, which it does not appear has ever been paid to the tribe.

You further request that we ascertain whether or not the railway companies mentioned in Office letter of February 4 as having obtained rights of way over the Pawnee Reservation have paid for the same and whether or not the tribe received the money. You also desire a statement as to the amount thereof.

The records show that a right of way was granted across the Pawnee School and Agency lands for the Eastern Oklahoma Railway Company. The map showing the railway location was approved by this Department on January 27, 1900, as follows:

Approved only so far as the line of road represented hereon passes through Indian lands, subject to all the requirements, limitations and provisions contained in the act of Congress approved March 2, 1899 (30 Stats., 990), and subject also to all valid existing rights.

An appraisalment of damages was made by S. L. Taggart, Special Indian Agent, who submitted a schedule which was approved by this Department March 26, 1900. However, no damage award was carried by the



schedule for lines across the Pawnee Agency and School Reserve, but in the remarks column opposite thereto the following notation appears:

"Public lands of U. S. See letter."

The letter referred to is undoubtedly one dated March 14, 1900, from the Special Agent submitting the schedule of damages. This letter contained the statement that no damages had been included in the schedule as it was presumed the Acts of Congress granting right of way through public lands of the United States applied without compensation. It was further stated that should this prove not to be the construction of the law, such sums as may be required would be paid, " \* \* \* which should not exceed the amount of \$50.00 per mile, and that the land traversed and taken was of no greater value and the damages practically nothing." The Pawnee tribe, had an award been made in its favor, would have received approximately \$20.00.

The Arkansas Valley and Western Railroad Company is shown by the records here to have filed map of railroad location across the Pawnee School and Agency Reserves February 7, 1903, pursuant to the provisions of the act of February 28, 1902 (32 Stat. L., 43). In connection with maps filed under the general provisions of this act this Department, in a letter of September 26, 1902, addressed to the Commissioner of Indian Affairs, held that such maps "do not require and are not subject to the approval of this Department" and that the act "gives much affirmative evidence of an intention to take the matter of the particular rights of way therein provided for out of the control of the Secretary of the Interior, except where otherwise specially provided, and to place it within local judicial control, as is usual with respect to rights of way over the property of white men."

It is not disclosed by the records here whether the Arkansas Valley and Western Railroad Company ever perfected title to right of way shown on map filed February 7, 1903, by making settlement with the Indian owners in interest or securing a court decree in condemnation proceedings; but in any event under the ruling made in the case of the Eastern Oklahoma Railway Company, the Pawnee tribe would not have been considered as being entitled to damages on account of the crossing of the School and Agency reserves.

According to the map filed February 7, 1903, the Arkansas Valley and Western Railroad extends across the School and Agency reserves for a distance of 6,294 feet, and at the rate of \$50.00 per mile, suggested in the case of the Eastern Oklahoma Railway, the Pawnee Tribe could have reasonably expected to receive compensation in the approximate sum of \$59.50.



Therefore, the claims of the Pawnee tribe appear to amount to approximately \$6,079.50.

A copy of this letter is enclosed.

Sincerely yours,

(Sgd) J. Henry Scattergood.

Assistant Commissioner.

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Hon. Charles O'Connor,

House of Representatives.

Approved February 26, 1930.

(Sgd) Jos. M. Dixon

First Assistant Secretary.