

C O P Y

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5470-30
F G T

February 4, 1930

Messrs-

Theodore Eagle Chief, and
George H. Roberts,
501 McReynolds Apartment,
18th & G Streets, N. W.,
Washington, D. C.

Gentlemen:

Receipt is acknowledged of your letter of January 24, 1930, in which you have expressed a desire to have a bill introduced to authorize the Pawnee Tribe of Indians from Oklahoma to present their claims to the United States Court of Claims.

In your letter you have furnished a statement of the claims which the Pawnee Tribe of Indians are asserting against the United States.

One is that the reservation as surveyed was but $29\frac{1}{2}$ miles long instead of 30 miles as reserved. It appears that the area excluded by such survey, if the facts are as stated, could be easily determined and an appropriation asked in settlement of this claim without referring it to the United States Court of Claims.

Another claim they have is for fair and just payment for all lands and territories ceded to the United States in three separate and distinct treaties. The United States and the Pawnee Tribe entered into contracts when negotiating the treaties mentioned by you, and it is assumed that the United States paid the Pawnee Tribe for all lands ceded at the prices agreed upon in the treaties. If so, the Pawnees would have no legal claim against the United States by reasons of the fact that the lands may have been worth more than the contract price. The courts have held that they are not empowered to go beyond the terms of a treaty and read into such treaty something that was not agreed upon.

The claim of the tribe for reconveyance of the 88.43 acres, patented to the town of Pawnee, Oklahoma, cannot be considered by this Office. Should the Pawnees decide that the conveyance was illegal, they have ample authority by and with the consent of this

Department and for proper cause to institute suit in the United States District Court of Oklahoma for cancellation of the patent issued by the General Land Office. However, upon investigation should it be found that the \$110.55 paid by the town of Pawnee for this land was not paid to the Pawnees, authority could be requested from Congress to reimburse the tribe for the amount received.

The same is true in connection with the claim of the Pawnees for Lots 2 and 3 of Sec. 32, Twp. 22 North, Rng. 5 East, containing 25.54 acres. This land was patented and it would be necessary to institute a suit in the United States District Court to recover title thereto.

The claim of the Pawnees for sections 16 and 36 in each township of the cession of territory by the Agreement of November 23, 1892, is without merit for the reason that these sections passed with the remainder of the cession and the consideration covered these sections the same as any other sections in the ceded lands.

Another claim is for payment of damages for the rights of way of the Eastern Oklahoma Railway Company and the Arkansas Valley & Western Railroad Company under the Act of February 28, 1902 (32 Stat. L., 43), through the school and agency reserve. Should it be found that the Pawnee Tribe did not receive the money paid as damages for these rights of way, the matter could be referred to Congress with the request that money be appropriated to pay such claims.

The claim for reimbursement for the counsel fees paid to Attorneys Kappler and Merillat of Washington, D. C., in the surplus land case is not meritorious for the reason that the Pawnees agreed under contract approved by this Department to pay the fees of these attorneys out of the amount of any judgment recovered, and this matter would receive scant consideration if referred to the United States Courts.

In view of the status of the claims of the Pawnee Indians, it appears that the questions are not such as can be readily presented to the court for consideration. The claims of these Indians could be readily determined and summarized and Congress asked to make an appropriation to cover all claims that were asserted by their letter of January 24, 1930, which as indicated above are meritorious.

Sincerely yours,

(Sgd). C. J. Rhoads

Commissioner.