

THE SECRETARY OF THE INTERIOR
WASHINGTON

MAY 25 1932

Hon. Edgar Howard,
Chairman, Committee on Indian Affairs,
House of Representatives.

*Write
Lyman
Marble*

My dear Mr. Chairman:

In response to your request of April 27, 1932, for a report on H. R. 9753, a bill to confer jurisdiction on the Court of Claims to hear and determine certain claims of the Pawnee Indians against the United States, and for other purposes, I transmit herewith a memorandum on the subject that has been submitted by the Commissioner of Indian Affairs. If amended as suggested by the Commissioner, enactment of the bill is recommended. In this connection, we are advised by the Director of the Bureau of the Budget that if thus amended, it will not be in conflict with the financial program of the President.

Very truly yours,

(Sgd.) RAY LYMAN WILBUR

Secretary.

Inclosure 8539.

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22382-32UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF INDIAN AFFAIRS
WASHINGTON

MAY 11 1932

MEMORANDUM FOR THE SECRETARY.

Reference is made to the request of April 27, 1932 of the House Committee on Indian Affairs for report on H. R. 9753 which would confer jurisdiction on the Court of Claims to hear and determine certain claims of the Pawnee Indians against the United States.

It appears that the Pawnee tribe has been asserting a claim against the United States for a shortage in area of the reservation as surveyed. A survey was made in 1873 which showed the dimensions of the reserve as 15 miles wide and $29\frac{1}{2}$ miles long, whereas the length should have been 30 miles. This created a difference of 4,800 acres (see Report Commissioner of Indian Affairs for 1874, page 36).

Another claim which they desire to have determined is for fair and just payment for all lands and territory ceded to the United States in three separate and distinct treaties. It appears, however, from our records that the United States has paid the Pawnee tribe for all lands ceded at the prices agreed upon in the treaty. The Pawnees apparently claim that the land should have brought more than the price agreed upon in the treaty. The same question has been decided heretofore by the United States Court of Claims in the case *Otoe and Missouri Indians v. United States* (52 Ct. Cls. 424) and it was held in effect that such court is not empowered to go beyond the terms of a treaty and read into such treaty something that was not agreed upon. The tribe also claims that 88.43 acres which were patented to the town of Pawnee, Oklahoma, should not have been conveyed. This land was conveyed to the town of Pawnee under the provisions of the Act of March 1, 1907 (34 Stat. 1015-1044) at \$1.25 an acre. The total amount was \$110.55. It appears that the purchase price has been paid to the tribe. They also have claims for other small tracts of land amounting to approximately $25\frac{1}{2}$ acres.

They also assert a claim for sections 16 and 36 in each township of the cession of territory passed by an agreement in 1892. These sections were ceded to the United States along with other land in the cession and were thereafter conveyed to the State for school purposes.

These Indians are also asserting a claim for payment of damages for rights of way of the Eastern Oklahoma and the Arkansas Valley & Western Railway Companies through the school and agency reserve.

One claim is for reimbursement for counsel fees paid to Attorneys Kappler and Merillat of Washington, D. C., in the surplus land case,

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although the Indians agreed in a contract approved by this Department to pay the fee of these attorneys out of any judgment recovered.

All the above claims of these Indians have been carefully considered in this Office, and we have arrived at the conclusion that the only merit contained in any of them is for the shortage in the area of the reservation of 4,800 acres at \$1.25 per acre, which it was proposed at one time to pay these Indians. This would result in a total amount of \$6,000 which together with the amount of \$79.50 for the rights of way of the railroads mentioned above through the school reserve makes a total of \$6,079.50, which is undoubtedly due the Pawnee tribe. Therefore, it is not believed to be necessary to refer these claims to the United States Court of Claims, and it is suggested that H. R. 9753 be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

That there is hereby authorized to be appropriated out of any money in the Treasury of the United States not otherwise appropriated the sum of \$6,079.50 to settle outstanding claims of the Pawnee Tribe of Indians against the United States, for deficiency of 4,800 acres in the area of the Pawnee Indian Reservation in Nebraska granted by the Treaty of September 24, 1857 (11 Stat. 729), at \$1.25 an acre; and for failure to award damages to the Pawnee Tribe for two separate railroad rights of way across the Pawnee Indian Reservation in Oklahoma.

It will also be necessary to further amend the bill by changing the title thereof to read:

A B I L L

For the relief of the Pawnee Tribe of Indians of Oklahoma, and
for other purposes.

If amended as above, it is recommended that H. R. 9753 be enacted.

C. J. RHOADS

Commissioner.