INTERIOR BOARD OF INDIAN APPEALS

Seneca-Cayuga Tribe of Oklahoma v. Deputy Assistant Secretary - Indian Affairs (Operations)

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United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

SENECA-CAYUGA TRIBE OF OKLAHOMA

v.

DEPUTY ASSISTANT SECRETARY--INDIAN AFFAIRS

IBIA 82-7-A Decided September 2, 1982

Appeal from decision of the Deputy Assistant Secretary--Indian Affairs restoring 189 acres of former trust lands to the Wyandotte Tribe.

Affirmed.

1. Indian Lands: Ceded Lands: Restoration

   The Seneca-Cayuga Tribe ceded lands to the United States by treaty which provided for creation of a reservation for Wyandotte Tribe. Where the Wyandotte Tribe later ceded the lands to the United States for use as school lands, the subsequent restoration of those lands by the United States to the Wyandotte Tribe, under 40 U.S.C. § 483(a)(2), was held proper.

APPEARANCES: Glenn M. Feldman, Esq., for appellant.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

On June 8, 1981, appellee Deputy Assistant Secretary--Indian Affairs Roy H. Sampsel approved a decision by the Muskogee Area Director, Bureau of Indian Affairs (Area Director, Bureau), to restore to tribal ownership 189 acres of land which had been used for the Seneca Indian Boarding School operated by the Bureau within the former Wyandotte Reservation in Oklahoma. The Seneca school was closed on June 15, 1980, and the lands used for the school, including the school buildings, were declared excess to needs of the Bureau. Earlier, on November 29, 1979, the Wyandotte Tribe of Oklahoma had applied to the Bureau for return of the lands, formerly held in trust for the tribe, to tribal ownership pursuant to provision of the Act of January 2, 1975 (1975 Act), 88 Stat. 1954, 40 U.S.C. § 483(a)(2) (1976).

On May 15, 1980, the chief of the appellant Seneca-Cayuga Tribe disputed the Wyandotte claim, asserted that appellant had a prior claim to obtain return of the ceded school lands, and claimed the right to obtain the return of the school lands under the 1975 Act. On June 27, 1980, the Area Director gave notice that pursuant to the 1975 Act, the lands had been returned to the Wyandotte Tribe. The Area Director's decision was timely appealed to appellee who affirmed the Area Director in an opinion based upon a legal analysis of the 1975 Act and prior Departmental decisions which thus generally summarized the case presented on appeal:

> The Seneca Indian School was established in 1868 within the boundaries of the former Wyandotte Reservation. The school was initially placed on a tract reserved for school purposes, which was later enlarged by property purchased from individual landowners. Sometime before creation and allotment of the

> Wyandotte Reservation, the school's site was also within the former Seneca Reservation. The Seneca Tribe states that the school's location within the prior established Seneca Reservation, Treaty of February 28, 1831 (7 Stat. 348), and the Reservation of the Seneca-Shawnee Mixed Band, Treaty of December 29, 1832 (7 Stat. 411), operates to create a superior claim to the property in the Seneca Tribe, due to that group having an interest in the site first-in-time. However, under Article I of the Treaty of February 23, 1867 (15 Stat. 513), the Seneca and other interested tribes relinquished and ceded their then existing interests in the site of the Seneca School to the United States. By virtue of Article 13 of the Treaty, these tribes' interests were then reconveyed to the Wyandotte Tribe, thus establishing the Wyandotte Tribe as the last and only beneficial owner of the former school lands.

(Deputy Assistant Secretary Roy H. Sampsel's Decision dated Jan. 8, 1981). To determine the validity of the decision to return to the Wyandotte Tribe the former trust lands it is necessary to consider the history of the land ownership of the school tract.

By Article 2 of the Treaty of February 28, 1831 (7 Stat. 348), with the Seneca, the Federal Government established a reservation in Indian territory for the Seneca Indians. It is within this reservation area that the Seneca School lands are located. In that same year, a reservation was established for the Seneca-Shawnee Mixed Band which was contiguous to the previously established Seneca Reservation. This reservation, of approximately 60,000 acres, was established by Article 2 of the Treaty of July 20, 1831 (7 Stat. 351).

By the end of 1832, the Senecas and the Seneca-Shawnee Mixed Band had decided to confederate as the United Tribe of Seneca and Shawnee Indians. By Articles 1 and 2 of the Treaty of December 29, 1832 (7 Stat. 411), with the Seneca and Shawnee, these tribes ceded back to the United States Government

all of the Seneca-Shawnee Mixed Band Reservation and all Seneca Reservation lands lying west of the Neosho River. In return, the tribes were granted 60,000 acres of land to the north of what remained of the Seneca Reservation. While the two groups were to occupy the lands in common, the treaty required two letters patent to issue: the north half of the reservation to the former Seneca-Shawnee Mixed Band and the south half to the Senecas, which later became the Seneca-Cayuga Tribe of Oklahoma. Located within this southern half of the Seneca Reservation are the former Seneca School lands.

By Article 13 of the Treaty of February 23, 1867, with the Seneca, Mixed Seneca and Shawnee, Quapaw, and others (15 Stat. 513, 516), 20,000 acres of land ceded by the Seneca-Cayuga Tribe to the United States by the treaty, including the Seneca School site, were conveyed to establish a reservation for the Wyandotte Tribe. The Seneca Indian School was established in 1868 by a Quaker mission. One hundred and sixty acres of Wyandotte land were withheld from allotment and reserved for school purposes. The Wyandotte Tribe was paid $10,000 for this 160-acre tract under the Act of June 21, 1934 (48 Stat. 1184). Additional purchases of private lands for use for school purposes, and subsequent dispositions of excess lands, have occurred during the intervening years.

The property transferred to the Wyandotte Tribe under the 1975 Act consists of the remaining Seneca School lands, approximately 189 acres. Although the property conveyed in trust was all Seneca School land at the time the school closed, and was all former trust land, not all of the lands had been acquired by the Federal Government at the same time or in the same manner. Schedule A attached to this decision is a map of the 189-acre tract

which indicates the manner of acquisition for the various identifiable parts of the tract. Of the total 189 acres, only that portion designated as "A," or approximately 89 acres, remains from the original 160-acre parcel withheld from allotment by the Wyandottes and subsequently purchased by the United States in 1934. The remaining 71 acres of the original 160-acre tract, designated parcel "E," were declared excess and conveyed as part of a 114-acre parcel to the Inter-Tribal Council, Inc., which includes both the Wyandotte and Seneca-Cayuga Tribes. 1/

The remainder of the 189-acre tract to be transferred, approximately 100 acres, was acquired by purchase from private landowners during the 1940's. Parcel "B," approximately 43 acres, was acquired by purchase in 1946. Parcel "C," approximately 40 acres, was acquired by purchase in 1940. Parcel "D," approximately 17 acres, was also acquired by the United States as part of a purchase in 1940. Thus, the 189-acre tract is divisible into two distinct parts: an 89-acre tract (upon which the school buildings are situated) which was purchased by the United States from the Wyandotte Tribe in 1934 and a 100-acre tract purchased from private owners during the 1940's.

Appellant contends that, in view of the ownership history of the school lands, appellee erred when he found the Wyandotte Tribe eligible to receive the school land under the provisions of the 1975 Act. Appellant contends that only the Seneca-Cayuga Tribe meets the statutory transfer criteria of the 1975 Act as to the entire 189-acre tract. Appellant also argues that,

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1/ The land was acquired by the Act of Jan. 2, 1975, 88 Stat. 1920, in trust for the Seneca-Cayuga Tribe, Quapaw Tribe, Eastern Shawnee Tribe, Miami Tribe, Peoria Tribe, Ottawa Tribe, Wyandotte Tribe, and Modoc Tribe, all of Oklahoma.

although both the Wyandotte and Seneca-Cayuga Tribes meet the transfer criteria of the 1975 Act in the case of the 89-acre tract, the claim of the Seneca-Cayuga Tribe to the 89-acre parcel is superior to that of the Wyandotte Tribe.

The 1975 Act amends the Federal Property and Administrative Services Act of 1949, Act of June 30, 1949, 63 Stat. 377, 378, 40 U.S.C. §§ 471-544 (1976). The purpose of the 1975 amendment was to provide a means by which excess real property held by the United States could be transferred without compensation to the Secretary of the Interior to be held in trust for Indian tribes within whose reservation excess Federal property was located. Because of the unique situation in Oklahoma, with regard to Indian reservations, a separate provision was included to permit transfers to Oklahoma tribes. This provision, under which the transfer to the Wyandotte Tribe was made in this case, recites:

> Provided, That such transfers of real property within the State of Oklahoma shall be made to the Secretary of the Interior to be held in trust for Oklahoma Indian tribes recognized by the Secretary of the Interior when such real property (1) is located within boundaries of former reservations in Oklahoma as defined by the Secretary of the Interior and when such real property was held in trust by the United States for an Indian tribe at the time of acquisition by the United States, or (2) is contiguous to real property presently held in trust by the United States for an Oklahoma Indian tribe and was at any time held in trust by the United States for an Indian tribe.

40 U.S.C. § 483(a)(2). Examination of the legislative history of the 1975 Act reveals that the provision of the statute to be applied by the Department in this case was added by the Senate committee to which the legislation,

originating in the House as H.R. 8958, had been referred. The Senate report, S. Rep. No. 93-1324, 93d Cong., 2d Sess. 1, 2 (1974), explains the amendment:

> The Committee amendment to H.R. 8958 adds a provision that will extend the same disposal authority for excess land in Oklahoma that is provided by the bill for the rest of the United States. This provision is necessitated by the fact that there are no reservations in Oklahoma. [2/] Without the proviso added by this amendment the authority granted by H.R. 8958 would have no applicability to Oklahoma. The amendment provides for transfers of excess public land to Oklahoma tribes if such land is located within the boundaries of former reservations in Oklahoma as defined by the Secretary of the Interior if such land was held in trust by the United States for a recognized Indian tribe at the time of its acquisition, or if the land is contiguous to land held in trust for an Oklahoma tribe and at any time in its history was held in trust by the United States for an Indian tribe.

The meaning of the classification of land to "excess" is explained at H.R. Rep. No. 93-1339, 93d Cong., 2d Sess. 2-4 (1974):

> Surplus real property, in contrast to excess real property, is Federal property which, after being screened by every Federal agency, has been found to be without further need by any Federal agency. Its disposal thereafter may be by one of several routes, including donation to a State or local public agency for health, education, or conservation purposes, or sale to a State or local public body, generally for a continued public use. Property acquired in neither of the above ways may be purchased by other sources through competitive or negotiated sale.
>
> Such property can represent fairly large acreage and can be located in widely distributed parts of the United States and territories, generally without any relationship to the location of an Indian reservation.
>
> * * * Under existing law, government-owned land within an Indian reservation may become excess to the needs of the Federal agency using such land. The property is reported excess to the General Services Administration, which, in turn, "screens" the property through other agencies of the Federal government to see

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2/ But see Cheyenne-Arapaho Tribes v. Oklahoma, 618 F.2d 665 (10th Cir. 1980).

> if they have a need for it. If not, the property becomes surplus and can be sold to non-Federal users.
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> Under present law, the Indian tribe within whose reservation the property is located has no preferential rights in obtaining the property. If the Indian tribe wishes to obtain the land, a request must be processed by the Department of the Interior, as trustee for the tribe. Interior has discretion to make a request for the land. GSA, in turn, weighs the request of Interior against those of other Federal agencies. If it determines that Interior's priority is greatest, it will transfer the property to Interior if OMB agrees. If, however, GSA decides upon a different priority, or if Interior does not make a request in behalf of the Indian tribe, or if OMB does not approve the transfer, the tribe will not obtain the land or facilities. Such a case was, in fact, testified to at the Subcommittee hearings wherein a tribe requested the use of excess Federal property situated within its reservation to support job training and health programs, but was turned down by GSA because OMB objected.

In earlier debate, the general purpose and anticipated effect of the legislation are described by the proponents of the bill in the House at 120 Cong. Rec. H10710, H10711 (daily ed. Nov. 18, 1974):

> Mr. JAMES V. STANTON. Mr. Speaker, this bill provides that when Federal Government property located within the boundaries of an Indian reservation is no longer needed by the Federal Agency using it, the property would pass to the Department of the Interior to hold in trust for the benefit ofthe Indian tribe on the reservation.
>
> Under present law, an Indian tribe has no preferential rights to excess or surplus property located within the boundaries of its reservation. Instead, when Federal property becomes excess or surplus, it may be passed on to third parties who may use the property for purposes inconsistent with the activities of the Indian tribe.
>
> In most cases, these properties were originally taken from the reservation by the Federal Government for defense uses, for fire protection facilities, or for use by the Bureau of Indian Affairs. The tribes never intended that the land be passed on to other uses at the time the Department of Defense, the Department of Agriculture, or the Bureau of Indian Affairs no longer maintained them for their original purposes. It is only fair that once the use to which they were originally dedicated is

fulfilled and the properties abandoned, that they then pass back to the Indian tribe to again become a part of the tribal reservation lands.

The amount of property expected to be covered by this legislation is not significant in terms of acreage, but it is significant in terms of what it means to the Indian tribes whose reservations would be affected by the intrusion of unrelated activities.

Mr. Speaker, the original legislation that was introduced was much more extensive and would have authorized the conveyance of surplus Government properties located outside Indian reservations to Indian tribes. The Government Operations Committee amended the bill to delete that provision because we were concerned about extending special treatment to any particular group of people. The committee amended the bill to cover only lands located within the boundaries of the reservations.

This bill, as amended, passed the Government Operations Committee unanimously. It will not result in any additional cost to the United States. In fact, the properties affected will remain in Federal Government ownership. They will simply be dedicated to the uses for which they were originally intended when they were incorporated into the Indian reservations many years ago.

* * * * * *

Mr. MEEDS. Mr. Speaker, I would like to express my appreciation to Mr. Holifield, chairman of the Government Operations Committee, and to Mr. Brooks, chairman of the Government Activities Subcommittee, for their consideration in bringing my bill to the floor for action.

The bill, as reported by the committee, provides that the Administrator of the General Services Administration shall transfer Federal lands which are within an Indian reservation and which have been declared excess to the needs of the administering agencies to the Secretary of the Interior to be held in trust for the particular Indian tribes involved. As amended by the committee, the bill provides that such transfers shall be without compensation.

Most of the lands which would be involved in such transfers are lands which have either been reserved or acquired by the Federal Government for use by the Bureau of Indian Affairs or the Indian Health Service in carrying out programs for the benefit of the Indians. The tracts are generally small in size and would be of benefit only to the Indian tribe.

In many cases, particularly with respect to Indian tribes with a small or nonexistent land base, these lands are needed

> for industrial development purposes, for housing projects, for tribal administrative purposes, or for land consolidation. Without this legislation, transfer of such lands must be accomplished by special legislation in every case.
>
> In addition, this bill, if enacted, would relieve the Interior and Insular Affairs Committee from the time-consuming burden of routinely considering and passing the many land transfer bills which are presented to us each Congress. Conferring this rather narrow authority on the Secretary of the Interior and the Administrator will free up more of the time of the committee and my subcommittee on Indian Affairs to address the more substantive problems of Indians and Indian tribes.

The ultimate effect of the statute is summarized at S. Rep. No. 93-1324, 93d Cong., 2d Sess. 2 (1974): "H.R. 8958 makes it mandatory that GSA convey excess land located within a reservation to the Secretary of the Interior to be held in trust for such use as the Indian tribe located on the reservation believes best." The effect of the provision of the 1975 Act dealing with Oklahoma Indian lands therefore is to extend the provisions of the Act to Oklahoma and to make mandatory the conveyance of excess lands of the character of the Seneca School land to an eligible tribe which has applied for return of former trust lands.

[1] In his June 8, 1981, decision appellee relies upon prior Departmental authority concerning the application of similar legislation to those instances where there has been conflict over which of several tribes is the proper recipient of former trust lands about to be restored to tribal jurisdiction. Thus, in an analogous situation, section 3 of the Indian Reorganization Act of June 18, 1934, 48 Stat. 984, 25 U.S.C. § 463(a) (1976), a statute which provides for the restoration to tribal ownership of remaining surplus lands of any Indian reservation, was construed by the Solicitor of

the Department in Opinion M-29616 reported at I Op. Sol. 806 (1938). In this reported 1938 case considered by Solicitor Margold, he held that where a tribe ceded a portion of its reservation to the United States for the benefit of another tribe, it could not later claim to be entitled to restoration of the lands which had subsequently been taken by the United States. 3/ According to the analysis by the Solicitor, a cession by one tribe to the United States for the benefit of another tribe bars a later claim for restoration of the lands to the ceding tribe, absent consent of the tribe to which the land was ceded. Appellee correctly applied the Solicitor's reasoning to this appeal. Although restoration is here sought under a different authority, as between the two tribes, the Wyandotte has a superior claim to the former school lands by virtue of the cession of the land to the United States for use as an Indian reservation by the Wyandotte Tribe. 4/

To avoid this result, appellant seeks to distinguish two types of property within the 189-acre tract: The 89-acre portion shown at A is conceded to be within the original reservation ceded by the Seneca to the Wyandotte Tribe; and the 100-acre portion shown at B, C, and D, acquired by purchase by the United States from private owners is claimed to be transferable only to appellant, however, because the land, though also former reservation land, was not held in trust for an Indian tribe at the time it was acquired by the United States.

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3/ Accord United States v. Choctaw Nation, 179 U.S. 494 (1900) ; see also Federal Indian Law 715 (1958).

4/ See Cohen, Handbook of Federal Indian Law (1942) at page 335 for the proposition that the last beneficial owner of ceded lands should be entitled to the proceeds therefrom.

This approach ignores the language of the 1975 Act which (as appellant points out) is divisible into two distinct provisions governing restoration: The first provision permits restoration to a tribe if the land is within the boundaries of a former reservation, provided the land was held in trust for an Indian tribe at the time it was taken by the United States; alternatively the second provision permits restoration provided the land to be restored is located contiguous to present trust property held for a tribe and is former trust property. In this case, the 100-acre tract fits into the second statutory category while the 89-acre tract fits into both categories. The entire 189-acre tract is therefore properly transferable under the 1975 Act. The fact that the entire 189 acres was not acquired simultaneously by the United States in a single transaction does not either logically or legally affect the resulting decision as to which tribe should receive the land. 5/ As between the two tribes, the Wyandotte Tribe has priority for purposes of transfer by virtue of the cession to it for use as a reservation of the former Seneca-Cayuga Reservation. The land, which was formerly Wyandotte Reservation trust land, is a contiguous unit, which adjoins lands held in trust for the Wyandotte Tribe. Thus, the land is located within the former Wyandotte Reservation, in the statutory meaning of that phrase. Since the Wyandotte Tribe is the tribe within whose former reservation the lands are found, and since it was the last beneficial owner of the lands, it has the first claim to the property under the 1975 Act.

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5/ Appellant has suggested that a compromise solution is offered by transferring one tract to appellant and the other to the Wyandotte Tribe. The difficulty with this solution is that, although the two tracts have a slightly different chain of title, both tracts are properly transferable under the 1975 Act to the Wyandotte Tribe. While the Wyandotte Tribe could waive its prior claim in favor of the Seneca-Cayuga Tribe, it has not done so.

Pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Deputy Assistant Secretary--Indian Affairs transferring 189 acres of former school lands to the Wyandotte Tribe is affirmed.

This decision is final for the Department.

//original signed
Franklin D. Arness
Administrative Judge

We concur:

//original signed
Wm. Philip Horton
Chief Administrative Judge

//original signed
Jerry Muskrat
Administrative Judge