

BEFORE THE INDIAN CLAIMS COMMISSION

THE SIOUX TRIBE OF INDIANS OF THE)	
STANDING ROCK RESERVATION,)	
SOUTH DAKOTA,)	
)	
Plaintiff,)	
)	
v.)	Docket No. 119
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: December 11, 1975

Appearances:

Marvin J. Sonosky, Attorney for the Plaintiff.

Richard L. Beal, with whom was Assistant Attorney General Wallace Johnson, Attorneys for the Defendant.

OPINION OF THE COMMISSION

Vance, Commissioner, delivered the opinion of the Commission.

We have before us in this accounting action defendant's motion for rehearing, dated July 30, 1974. Defendant's motion is directed toward our determination of July 11, 1974, 34 Ind. Cl. Comm. 241, that certain expenditures made by defendant for education of Indians were improperly charged against tribal funds, and should be disallowed.

The General Accounting Office Report filed in this docket was dated April 26, 1957. Plaintiff objected to the expenditures in question by its exceptions 12 and 20. The Commission's ruling in favor of plaintiff as to these expenditures was based on determinations of the Court of

Claims involving an accounting of Sioux funds through June 30, 1925. Sioux Tribe of Indians v. United States, 105 Ct. Cl. 658, 64 F. Supp. 303, remanded, 329 U.S. 684 (1946), judgment reentered, 112 Ct. Cl. 39 (1948), cert. denied, 337 U.S. 908 (1949); and Sioux Tribe of Indians v. United States, 105 Ct. Cl. 725, 64 F. Supp. 312, remanded, 329 U.S. 685 (1946), judgment reentered, 112 Ct. Cl. 50 (1948), cert. denied, 337 U.S. 908 (1949). (The cases reported at 105 Ct. Cl. 658 and 112 Ct. Cl. 39 concern an accounting of the consideration stipulated in the agreement of 1889, 25 Stat. 888, and will be referred to respectively hereinafter as Sioux I and Sioux III. The cases reported at 105 Ct. Cl. 725 and 112 Ct. Cl. 50 concern a general accounting, and will be referred to respectively as Sioux II and Sioux IV.) The accounting in this docket covers the period from July 1, 1925.

In particular, in our decision, we relied on Sioux II, supra, pp. 800-05. Both parties, in their arguments on this issue, focus on the following sentence from p. 802:

However, we need not further discuss the accounting report for we are of the opinion, from the evidence of record and the way in which Congress has treated these educational expenditures, that all the agency and educational items and amounts involved in this claim were for obligations of defendant.

Plaintiff's opposition to defendant's motion, filed August 5, 1974, argued that this passage establishes that educational expenditures from tribal funds were not allowable.

Defendant argues in its brief, filed January 20, 1975, that the foregoing paragraph must be read in context, i.e., as part of a discussion

concerned with "agency and educational expenditures," not educational expenditures per se.

The court's discussion is of various expenses carried in the accounting report under the dual heading "agency and educational expenses" in two lists, as follows:

Provisions	Refrigerators
Feed for livestock	Fuel
Fuel	Transportation, etc. of supplies
Traveling expenses of employees	Feed for livestock
Building materials	Heaters, water-tank
Repairs to agency and school buildings	Agricultural implements
Gasoline and Kerosene	Seeds for planting
Seeds for planting	Pay of superintendent
Automotive maintenance and repairs	

The total amount involved was \$37,085.15. The court noted that there was no indication of ". . . what portion of each of the amounts shown under each item was disbursed for agency expense and what portion was disbursed for educational expense and, also, [no indication of] the nature of the 'educational purposes.'" Id. at 800.

The court went on to say, in the portion of Sioux II, supra, at 802, which contained the aforementioned passage cited by the parties, the following:

. . . The totals of the listed items shown by the records to have been for agency purposes should have been set up in the report under that classification and the totals of the various disbursements shown by the records to have been items of the same character but for elementary or industrial education should have been set up under that classification so that the court might decide whether, under the agreements and undertakings of the parties, the amounts under those classifications were, in whole or in part, legal charges against the trust funds or for obligations of the defendant. The primary duty to so classify and report as to the nature and the amount of disbursements rested on defendant.

Since the Government obligated itself in the treaty and the agreements of 1868, 1877, and 1889 to provide agencies, aid and assistance, schools, and instruction, the burden is on defendant to show what portion, if any, of such expenses has not been assumed by it and should be charged to the Indians. The Government cannot escape its primary obligations by including, among improper charges against the Indians, expenditures which it now says, without proof, may have been to some unknown and unascertainable extent proper charges against the Indians. The defendant is the trustee; it kept and has all the records and evidence, and it has the burden of making a proper accounting. However, we need not further discuss the accounting report for we are of opinion, from the evidence of record and the way in which Congress has treated these educational expenses, that all the agency and educational items and amounts involved in this claim were for obligations of defendant. 1/

Defendant concedes that the last sentence adds a note of ambiguity as to educational expenses, but argues that if the passage is taken as a whole, it is clear that the basis of the court's conclusion was defendant's failure to classify expenditures properly. Defendant continues that the statement that all educational expenditures were improper was dictum, since it was not in issue. Defendant argues that support for this view is found in the failure of plaintiff in Sioux II to take exception to \$1.5 million of educational expenditures from tribal funds, and the court's conclusion that these expenditures were proper.

Plaintiff's brief of February 20, 1975, in response to defendant, does not respond to defendant's analysis. Rather, plaintiff raises the point that the question of educational expenditures in the Docket 119

1/ The treaty and agreements referred to by the Court are as follows: The treaty of April 29, 1868, 15 Stat. 635; the act of February 28, 1877, 19 Stat. 254; and, the agreement of March 2, 1889, 25 Stat. 888.

accounting is also raised in Docket 74-B, where the issue is the consideration received by the Sioux for the taking of the Black Hills pursuant to the 1877 act. See Sioux Nation v. United States, 33 Ind. Cl. Comm. 151 (1974), aff'd in part, rev'd in part, App. No. 16-74 Ct. Cl., June 25, 1975. Plaintiff asks that a decision on the question be delayed pending resolution of the issue in Docket 74-B.


We have reviewed the Sioux decisions of the Court of Claims in light of the various contentions of the parties.

We are in agreement with defendant that the court's ruling in Sioux II is limited in its application to undifferentiated agency and educational expenses. Although the educational provisions of the 1868 and 1889 treaties, and the 1877 act, are cited and discussed in the Sioux opinions, there is nowhere a resolution of the question of the legal effect of the promise of educational assistance in the '77 act.^{2/}

That issue has not been briefed in this case. As the issue is involved in Docket 74-B, and as Docket 74-B is concerned specifically with the 1877 act, we will defer consideration of the issue in Docket 119 pending a determination of the matter in Docket 74-B. We will therefore modify our 1974 order as to exceptions 12 and 20 accordingly.

^{2/} The '68 treaty provided for educational assistance for 20 years; the '77 act promised educational assistance "as provided for by the treaty of 1868," without specifying the duration of the commitment; the '89 treaty continued the '68 agreement educational assistance commitment for 20 additional years from 1890. See Sioux I, supra, 692-703.)


The same issue is raised in Dockets 115-118, involving Sioux tribes of other reservations. The parties in those dockets have agreed to accept the determination in Docket 119 as to this issue. Appropriate orders will therefore be issued in those dockets as well.


John T. Vance, Commissioner

We concur:


Jerome K. Kuykendall, Chairman


Richard W. Yarborough, Commissioner


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner