

BEFORE THE INDIAN CLAIMS COMMISSION

THE SEMINOLE NATION,)	
)	
Plaintiff,)	
)	
v.)	Docket No. 247
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

ORDER RESCINDING PRIOR ORDER
AND FOR OTHER PURPOSES

WHEREAS THE COMMISSION, on January 28, 1976, after consideration of plaintiff's motion of February 14, 1975, requesting the Commission to determine the dates as of which the station reservations involved herein should be valued, and the measure of damages to be awarded herein, defendant's response to said motion, filed April 22, 1975, plaintiff's reply, filed May 12, 1975, and the oral argument on said motion held before the Commission on January 9, 1976, entered an order determining the valuation date and for other purposes (37 Ind. Cl. Comm. 203) in which order the Commission defined the issues raised by plaintiff's said motion to be: (1) the meaning of the term "municipality" as used in section 14 of the Act of April 26, 1906, 34 Stat. 137, 142, for the purpose of identifying those station reservations title to which, pursuant to said act, vested in municipalities rather than adjoining allottees; (2) the date as of which each such station reservation is to be valued; and (3) the measure of damages; and

WHEREAS the defendant, on February 20, 1976, filed a motion for rehearing and clarification of said order, and the plaintiff, on February 26, 1976, filed objections to said motion; and further,

WHEREAS the Commission, upon consideration of defendant's motion for rehearing and clarification has concluded that its order of January 28, 1976, should be clarified in certain respects in order to provide the parties and their counsel with the fullest possible guidance in connection with their preparations for the valuation phase of proceedings hereunder, and that this purpose can best be accomplished by rescission of the Commission's order of January 28, 1976, and restatement and amplification of the Commission's conclusions with respect to the issues, described above, presented by the plaintiff's above-described motion of February 14, 1975;

IT IS THEREFORE ORDERED that the Commission's above-described order of January 28, 1976, be, and the same hereby is, rescinded in its entirety.

FURTHER, the conclusions of the Commission with respect to the issues raised by plaintiff's said motion of February 14, 1975, are that:

1. The term "municipality" as used in section 14 of the Act of April 26, 1906, supra, means, for purposes of identifying the station reservations to be valued herein, a town or city incorporated or attempted to be incorporated before November 16, 1907, in the Indian Territory under the organic law of Arkansas which was validated as an existing town or city upon statehood by Article XVIII, § 2, and Schedule § 10, of the Constitution of the State of Oklahoma, and a town or city incorporated or attempted in good faith to be incorporated between November 16, 1907, and June 30, 1909, under Article XVIII, § 1, of the Constitution of the State of Oklahoma and the laws enacted pursuant thereto, which during said period of time exercised authority as a municipal corporation. See Town of Maysville, Oklahoma v. Magnolia Petroleum Co., 272 F. 2d 806 (10 Cir. 1959).

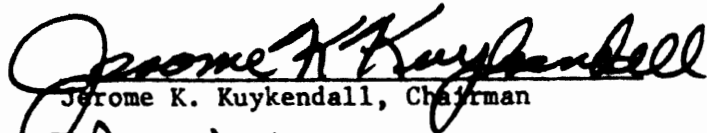
2. The fair market value of the station reservation lands, of the plaintiff's interests in said station reservation lands, and of any encumbrances upon said lands in the form of easements for right-of-way purposes, shall be determined as of June 30, 1909, with respect to each station reservation which on said date was situated within a municipality as defined above. June 30, 1909, was the date on which title to each said station reservation vested in a municipality. See Commission Exhibit No. 1, infra. As part of the Commission's decisions in the valuation phase of this docket, there shall be determined the effect, if any, upon the fair market value of the plaintiff's interests in the station reservation lands of any then-existing encumbrances upon said lands in the form of easements for right-of-way purposes. It will be appropriate for the parties to put in issue at the valuation trial all such matters which they believe affect the fair market value, on June 30, 1909, of the plaintiff's interests in the station reservation lands.

3. The determination of the quantum of damages, if any, beyond fair market value of the plaintiff's interests in the station reservation lands as of June 30, 1909, necessary to provide ". . . an appropriate and equitable measure of redress under clause 5" (see Seminole Nation v. United States, 203 Ct. Cl. 637, 654 n. 11 (1974)), shall be made by the Commission as part of its decisions in the valuation phase of this docket.

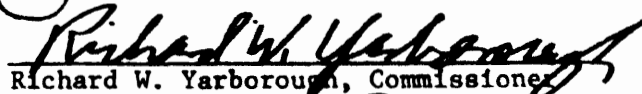
IT IS FURTHER ORDERED that this case proceed to determinations with respect to each station reservation which had been owned by plaintiff and which on June 30, 1909, was situated within a municipality as defined supra, of the fair market value on said date of the station reservation lands, the fair market value on said date of the plaintiff's interests in said lands, and the fair market value on said date of any encumbrances upon said lands in the form of easements for right-of-way purposes, and

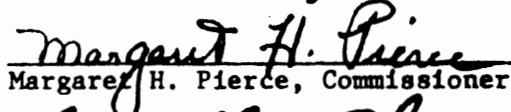
IT IS FINALLY ORDERED that the attached communication, dated February 27, 1909, consisting of two pages and addressed to the Secretary of the Interior from the Acting Commissioner of Indian Affairs, which communication was filed on February 14, 1975, as plaintiff's proposed Exhibit No. 32 in Commission Docket 277, Creek Nation v. United States, involving identical issues of law, be, and the same hereby is, admitted into evidence in this docket as Commission Exhibit No. 1.

Dated at Washington, D. C., this 17th day of March 1976.


Jerome K. Kuykendall, Chairman


John T. Vance, Commissioner


Richard W. Yarborough, Commissioner


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner

i. Hill
[Signature]

ORDER IN REPLY TO THE FOLLOWING:

2-4069

DEPARTMENT OF THE INTERIOR,

Land
16002-1909
B B ::

OFFICE OF INDIAN AFFAIRS,

WASHINGTON. *Feb 27 1909*

Extension of time in
which to acquire title
to railroad lands.

COMMISSION EXHIBIT NO. 1.....
INDIAN CLAIMS COMMISSION DKT. NO. 247

The Honorable

The Secretary of the Interior.

Sir:

I have the honor to transmit herewith telegram dated February 26, 1909, from W. F. Evans, of St. Louis, Missouri, General Solicitor of the St. Louis and San Francisco Railroad Company, referred to this Office for appropriate action by Messrs. Britton & Gray, local attorneys of the company. The telegram reads as follows:

Can you not prevail upon Secretary Interior to extend time for applications to purchase under Section fourteen act April 26, 1906, from March 1st to June 30th. No form of deed yet adopted. Important that we know character of deed before deciding upon advisability of making applications to purchase.

The records of the Office show that the Department on October 29, 1908, in connection with the application of the Midland Valley Railroad Company to acquire title to the lands occupied by it for railway purposes under the provisions of Section 14 of the Act of April 26, 1906 (34 Stat. L., 137), extended the time from November 1, 1908, to March 1, 1909, as the day prior to which any railway company may acquire title to lands occupied by it for railway purposes.

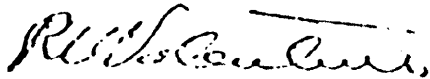
[Signature]

I-16002-2.

In connection with the application herewith there appears to be ample authority in Section 14 of the Act of April 26, 1906, for the Department to extend the time in which railway companies may make applications to procure the benefits of the act in question, and the Office knows of no reason why the application for an extension of time should not be granted. In paragraph 8 of the Regulations, promulgated under Section 14 of the Act of April 26, 1906, it is prescribed that they may be waived or amended as the circumstances surrounding each case may warrant.

The Office, therefore, recommends that the time within which railway companies may make applications to procure the benefits of Section 14 of the act referred to, be extended to June 30, 1909, and that the Office be authorized to notify the Commissioner to the Five Civilized Tribes accordingly, and that he be instructed to advise the railway companies operating lines in that part of Oklahoma which was formerly Indian Territory of the action of the Department in this matter.

Very respectfully,


Acting Commissioner.

AC-27.

FEB 27 1909

Approved:


Assistant Secretary.