

CLAIM OF CAPTAIN & CO.

L E T T E R

FROM

THE SECRETARY OF THE TREASURY,

TRANSMITTING

Letter from the Secretary of the Interior, with inclosures, relative to the claim of Captain & Co. for supplies furnished Osage Indians in Kansas in 1871-'72, \$1,416.10.

JANUARY 12, 1885.—Referred to the Committee on Appropriations and ordered to be printed.

TREASURY DEPARTMENT,
January 10, 1885.

SIR: I have the honor to forward herewith, for the consideration of Congress, a communication from the Secretary of the Interior, together with inclosures, relating to the claim of Captain & Co., for supplies furnished to Osage Indians in Kansas in 1871 and 1872, amounting to \$1,416.10.

Very respectfully,

H. McCULLOCH,
Secretary.

Hon. JOHN G. CARLISLE,
Speaker of the House of Representatives.

DEPARTMENT OF THE INTERIOR,
Washington, December 19, 1884.

SIR: I have the honor to transmit herewith copy of letter of 17th instant, with inclosures noted therein, from the Commissioner of Indian Affairs, relating to a claim in the sum of \$1,416.10, in favor of Messrs. Captain & Co., for supplies furnished to Osage Indians in Kansas in 1871 and 1872, with the request that the subject may be presented to Congress for the necessary authority for the settlement of the claim as per item embodied in the letter of the Commissioner.

Very respectfully,

M. L. JOSLYN,
Acting Secretary.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, December 17, 1884.

SIR: I have to advise you that in the fall of 1871 and spring of 1872, the firm of Captain & Co., traders at the Osage Agency, Kansas, furnished to a large number of families belonging to the Osage Nation supplies to the value of \$1,416.10, which amount has not been paid to this date.

The claim, in May, 1883, was examined and allowed by this office for the sum claimed, and referred to the accounting officers of the Treasury for settlement, to be paid from a fund to the credit of the nation on the books of the Treasury. The honorable Second Comptroller of the Treasury, for reasons set forth in the accompanying correspondence, refused to certify the balance due Captain & Co. without authority of Congress, and recommended that the matter be referred for the action of that body.

The claim has been carefully examined by this office, and allowed as a charge against their "interest fund" in the Treasury, for the reason that the Osage Indians in council assembled assumed the debt as a national liability.

I therefore recommend that the Committees on Appropriations of the House and Senate, respectively, be requested to insert the following paragraph in the bill providing for appropriations for the Indian service for the fiscal year 1886:

The Secretary of the Treasury is hereby authorized and directed to pay to Captain & Co., the sum of \$1,416.10, amount due for supplies furnished Osage Indians in 1871-1872, out of the fund to the credit of said Indians on the books of the Treasury, entitled "Interest on Osage fund."

Very respectfully,

H. PRICE,
Commissioner.

The Hon. SECRETARY OF THE INTERIOR.

SECOND COMPTROLLER'S OFFICE,
November 8, 1883.

Respectfully returned to the honorable the Commissioner of Indian Affairs. The within claim of Captain & Co., for supplies furnished to Osage Indians, was presented as a claim within the act of August 7, 1882, which authorizes the auditing of unpaid claims heretofore filed "for services rendered and supplies furnished under directions of the Indian Bureau or any of its agents," where the services and supplies are found to have actually been applied to the benefit of the Indians.

On the examination of the evidence herewith transmitted it appeared that the Indian agent advised and requested Captain & Co. to furnish the goods to the Indians, and promised to do all in his power to have the Government pay for them. But I did not think this office was authorized to allow the claim, because the evidence does not show that the Indian Bureau or any agent ordered the supplies or directed the claimants to furnish them, and for that reason the above act does not authorize the accounting officers to officially recommend a balance to Congress for appropriation.

In my opinion, the claim cannot lawfully be paid until payment shall

be sanctioned by Congress. It is the desire of the claimant that you examine the claim, and, in transmitting your estimates of deficiencies, that you will make such recommendations to Congress in regard to it as you find its merits deserve.

W. W. UPTON,
Comptroller.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, November 26, 1883.

SIR: I am in receipt of the indorsement made by you on my letter to you of the 2d instant, requesting the return of the claim in favor of Captain & Co. for balance due for sundry supplies furnished Osage Indians, amounting to \$1,416.10.

You say that this claim was presented "as a claim within the act of August 7, 1882, which authorizes the auditing of unpaid claims heretofore filed for services rendered and supplies furnished under directions of the Indian Bureau or any of its officers," &c., but that upon examination of the evidence transmitted it does not appear that the supplies were furnished by such directions, and for that reason the above act does not authorize the accounting officers to officially recommend a balance to Congress for appropriation.

You add that in your opinion the claim cannot be paid until payment is sanctioned by Congress, and that it is the desire of claimant that in transmitting to Congress my deficiency estimate I will make such recommendation in regard to it as I find its merits deserve.

In reply, I would say that the claim was carefully examined by me last April, and allowed and forwarded to the Second Auditor of the Treasury, *not under act of Congress of August 7, 1882*, as you state, but as any other claim against the Government for the payment of which funds are on the books applicable. With the claim was forwarded a paper, signed by the chiefs and headmen of the Osage Nation, acknowledging the debt as a just one, and asking it to be paid; also a certificate from the United States interpreter that the parties signing the paper knew its contents. L. J. Miles, United States Indian agent at Osage Agency, also certifies that this claim has been considered by the chiefs and headmen, and also by the elective council, and that they recognize the same as being a just claim, and ask it be paid from their tribal funds.

Under these circumstances, I cannot report the claim to Congress as a deficiency, as the Osage Nation has, under the direction of this office, entire control of the manner of expending their funds, and there are on the books of this office over \$400,000 due the nation as interest on their invested fund, applicable to the payment of this claim.

The papers are therefore returned to you for such action as you may desire to take, and I hope, in view of the above statement, that you will reconsider your former decision and allow the claim.

Very respectfully,

H. PRICE,
Commissioner.

The SECOND COMPTROLLER,
United States Treasury.

TREASURY DEPARTMENT,
SECOND COMPTROLLER'S OFFICE,
Washington, D. C., December 14, 1883.

SIR: I have the honor to acknowledge the receipt of your letter of November 26, 1883, relative to the claim of Captain & Co., for supplies furnished Osage Indians, in which you say you cannot report the claim as a deficiency.

In reply I wish to explain that I do not understand it as the desire of the claimant that you report the claim "as a deficiency," but he hoped that at the time of transmitting a report on that subject you would make such recommendation on this claim as its merits deserve. I also hoped you would adopt that course, especially as you had previously approved the claim, not only as equitable, but as one that ought to be paid "as a claim against the Government."

In place of recommending the claim to Congress, you advise a reconsideration of the claim by this office. You say the Osage Nation has, under the direction of your office, "entire control of the manner of expending their funds," and have \$400,000 applicable to the payment of this claim.

If this were in all respects correct, it would be immaterial what action the accounting officers take, and would be sufficient that the Osage Nation decides to have it paid.

If there was money in the treasury of the Osage Nation which it could and would apply to this purpose, there would be no further question about the claim; but it is not proposed to have it paid from money in the Osage treasury, and the Osage Nation has no power or authority to direct the claim to be paid out of the \$400,000 above mentioned while it remains a trust fund.

It is entirely certain that the supplies referred to were not furnished to the United States nor to the Osage Nation as a nation; they were furnished to particular families of Indians, on the claimant's account and at his risk, and the agent did not direct or order the claimant to furnish them.

He promised to do all he could to aid the claimant, but the circumstances of the promise put it beyond question that the agent did not assume to order or direct the claimant to furnish the goods.

I do not know upon what principle it can be argued that this is a lawful claim against the United States, or one that can now be audited as lawfully payable out of the Indian trust funds.

In my opinion it cannot be so audited unless Congress shall first sanction its payment. It is not the province of the accounting officers to make recommendations of appropriation or payment except by certifying such balances as they find to be actually and legally due, while there is nothing inconsistent in your recommending the payment of any claim that you deem equitable. On this ground I take the liberty of again returning the papers, that you may make the recommendation desired by the claimant, if you think such recommendation ought to be made.

Very respectfully,

W. W. UPTON,
Comptroller.

HON. H. PRICE,
Commissioner of Indian Affairs.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, December 26, 1883.

SIR: I have the honor to acknowledge the receipt of your letter of the 14th instant, again returning to me claim in favor of Captain & Co. for balance due for sundry supplies furnished Osage Indians, amounting to \$1,416.10. You state that you do not understand it to be the desire of the claimants that I report the claim as a deficiency, but that they hoped that at the time of transmitting a report on the subject I would make such recommendations on this claim as its merits deserve, but that in place of recommending the claim to Congress, I advise a reconsideration of the claim by you, &c. I again return the claim to you, and would respectfully state, that I know of no law which authorizes me to report claims to Congress, especially such as have been disallowed by you. Section 464 of the Revised Statutes provides that all claims and accounts, after receiving administrative action by me, shall be forwarded to the accounting officers of the Treasury for settlement. This has been done in this case, and the difference sheet made in your office and filed with the claim states that the claim is *disallowed*, and under these circumstances I cannot report it to Congress. In my letter of the 26th ultimo I asked for a reconsideration of the case by you, because in the indorsement on my letter of the 2d ultimo you claimed that it was submitted under act of August 7, 1882, and such was not the case.

You also state in your letter of the 14th instant that my statement that the Osage Nation has, under the direction of this office, entire control of its funds, and has \$400,000 applicable to the payment of this claim on the books of this office, is not correct in all respects, and you add that the Osage Nation has no power or authority to direct the claim to be paid out of the \$400,000 above mentioned while it remains a trust fund; that the supplies referred to were not furnished to the United States, nor to the Osage Nation as a nation; that they were furnished to particular families of Indians on the claimants' account and at their risk, and that the agent did not direct and order the claimants to furnish them; and that you do not know upon what principle it can be argued that this is a lawful claim against the United States or one that can now be audited as lawfully payable out of the Indian trust funds.

In reply I would say that my former statement that there are on the books of this office \$400,000 of *interest on trust funds*, not *trust funds* as you say, the expenditure of which the Osage Nation, under the direction of this office, has entire control, is correct, except in so far that I should have said under the direction of the Department. The Osage Nation, as represented by its council, each year reports to this office, through the Indian agent, what amount of their interest money they desire expended, and for what purpose, and in every instance their wishes are complied with.

Last January, at a meeting of the council, it was decided that no more supplies, except for the old and helpless and for the schools, be purchased, and that \$120,000 of their interest money be paid to them in cash.

A copy of the proceedings was forwarded to this office and their wishes carried out.

In this case, while it is true that the supplies were not furnished to the Osages as a nation, but to individual members, yet the chief and headmen of the nation, as well as elective council, as certified to by the agent, assumed the debt, and the act was approved by the governor,

and, in my opinion, this made the debt a debt of the nation, payable out of their funds, and one which ought to be paid without action of Congress.

But as you seem to be of a different opinion, I see no other way for claimants to obtain what is justly due them but to apply to Congress, and when a bill for their relief is referred to me by the committee for recommendation, I shall take pleasure in recommending the payment of this claim, as I have done heretofore.

Very respectfully,

H. PRICE,
Commissioner.

Hon. W. W. UPTON,
Second Comptroller, United States Treasury.

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