

IN THE SENATE OF THE UNITED STATES.

L E T T E R

FROM

THE SECRETARY OF THE INTERIOR,

RELATIVE TO

The employment of attorneys to look after the interests of the Indians in claims against them.

MARCH 28, 1892.—Referred to the Committee on Appropriations and ordered to be printed.

DEPARTMENT OF THE INTERIOR,
Washington, March 25, 1892.

SIR: I have the honor to transmit herewith, with request for favorable consideration, copy of a communication of 22d instant from the Commissioner of Indian Affairs relative to the employment of special attorney and assistants to look after the interests of the Indians in claims for depredations against them.

The Commissioner states that there is a balance of about \$22,000 on the books of his office from the appropriation made by Congress for "investigating Indian depredation claims," part of which is used and required under the last section of the act of March 3, 1891, for the completion of such business as was pending at that date in his office, for making transfers and records of the same, keeping custody of the papers, etc., and inasmuch as this sum is more than is required for these purposes he recommends that an amendment be made to the sundry civil bill authorizing the Department to expend a sum not exceeding \$10,000 of the above balance in the employment of an attorney and such assistants as may be needed in preparing defenses in behalf of the Indians whose funds are sought to be charged for depredations.

I have the honor to be, very respectfully,

JOHN W. NOBLE,
Secretary.

The PRESIDENT OF THE SENATE.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, March 22, 1892.

SIR: I have had occasion several times, both orally and in official correspondence, to invite your attention to the matter of claims for

depredateions alleged to have been committed by Indians. The law placing this whole subject in the hands of the Court of Claims provides that the Indians may be represented by counsel, but does not make any provision for the payment of such attorneys.

I am very strongly impressed with the necessity that the Indians should have the best possible counsel, in order that injustice may not be done them, and I have been at a loss to know by what method the counsel could be procured or authorized.

So far as I now see, the two principal ways of doing it are, first, to allow each band or tribe of Indians to enter into contract with an attorney and have that contract approved by this office. This, however, is open to very serious objections, among which may be stated that there is no money set apart for the payment of such attorneys; it would throw upon the office the necessity of deciding as to the respective merits of different attorneys who desire to do the work; it would probably result in the authorization of a large number of attorneys, and inasmuch as the claims already aggregate more than \$20,000,000, the ultimate attorney fees on the most moderate basis of percentage would amount to an enormous sum, which must be paid eventually by the Indians or by the Government of the United States.

I have been rather appalled by these considerations, and have been very slow to approve any contract between any tribe and an attorney, or to give encouragement to this method.

Another plan which seems to me more desirable is the amendment of the law authorizing the employment of an able attorney with possibly one assistant, at such salary as may seem best, and they should give their whole time to the one purpose of defending the Indians against these various claims. This method would simplify the work, would render it, I think, more effective than the other, and would, of course, entail an expense quite insignificant as compared with the possible cost of the employment of attorneys by contract.

Since March 3, 1885, and up to and including the Indian appropriation bill for the current fiscal year, Congress has made an annual appropriation of \$20,000 for the investigation of Indian depredation claims under directions of the Department and this office. These appropriations have been used in taking testimony for and against the claims, and while it is true that the special agents appointed to investigate the claims were instructed to bear in mind that they were the agents of the United States for the investigation of these claims, and not the attorneys for the claimants, yet, in all the investigations had under the act of March 3, 1885, the Indians charged had no opportunity to defend themselves or to furnish evidence that the special tribe charged was not the tribe committing the depredations, etc. It seems to me just and proper, in view of that fact, that some steps be taken to enable this office to protect the interests of the Indians and of their funds, which are sought to be used in payment of these claims.

I therefore take the liberty to invite your attention to the fact that there is a balance of about \$22,000 on the books of this office from the appropriation made by Congress for "Investigating Indian depredation claims," part of which is used and required under the last section of the act of March 3, 1891, for the completion of such business as was pending at that date in the Depredation Division of this office, for making transfers and records of the same, and keeping custody of the papers, etc., as stated in said act, and inasmuch as the above-mentioned sum of \$22,000 is more than is required for these purposes, I respectfully recommend that an amendment be submitted to Congress, to be attached

to the sundry civil bill, authorizing the Department to expend a sum not exceeding \$10,000 from the above balance of \$22,000 in the employment of an attorney and such assistants as may be needed, and in paying the necessary expenses in preparing defenses in behalf of the Indians whose funds are sought to be charged for depredations. I have the honor to inclose such an item and respectfully ask, if it meets with your approval, that a copy of this letter and item be forwarded to the Speaker of the House of Representatives and to the President of the Senate for appropriate action.

I also inclose copy of a statement submitted to me which sets forth, in substance, the condition of things, and the necessity of employing special counsel for the defense of the Indians and the practical inability of the Attorney-General and his assistants to do what is requisite in the premises.

If any other plan has suggested itself to your mind which seems to you preferable to the one here proposed I should be, of course, only too willing to waive my own suggestion in favor of yours, my only purpose being to secure by some means a simple, effective, and inexpensive defense of the Indians in this important matter.

Very respectfully, your obedient servant,

T. J. MORGAN,
Commissioner.

The SECRETARY OF THE INTERIOE.

STATEMENT.

By the act of Congress approved March 3, 1891, jurisdiction of claims arising from Indian depredations was conferred upon the Court of Claims with authority to inquire into and finally adjudicate upon all matters growing out of them. The judgment to be rendered binds the Government and also the tribe of Indians committing the wrong, when they can be identified, and is payable primarily out of the Treasury of the United States, but ultimately the amount comes out of funds going to the Indians, if they have any, and if not it remains a charge against them to be deducted from money hereafter becoming due the tribe. Section four requires the Attorney-General to appear and defend both for the Government and the Indians in the suit, provided the Indians may themselves appear and defend by their own attorney, employed with the approval of the Commissioner of Indian Affairs.

The act is very broad and far reaching in its effects, closing all inquiry in the future as to the existence, justice, and legality of the claim, not only as between the Government and the claimant, but also as between the Government and the Indians. It is manifest that a conflict of interests will in some cases exist between the Indians and the Government, rendering it impossible for the Government counsel to properly act for both parties.

The situation of the Attorney-General, in case he appears and defends for both, is so incongruous that the Assistant Attorney-General in charge of this class of litigation is averse to making the attempt. He has accordingly made a motion that the court require notice be given the tribes and bands of Indians implicated of the pendency of the several claims, to the end that they may appear and defend by counsel of their own selection. The court have not yet decided the motion, and the brief of the Government counsel not being in print we are unable to furnish it. We might also add that no funds have been provided by the Government for making a defense on behalf of the Indians.

That a defense and a vigorous one should be made in a large majority of these cases needs no evidence to prove.

In nearly all, the amounts claimed are excessive by reason of largely inflated values placed upon the property destroyed, while in some the claims have no legitimate foundation at all. We are able to state, upon the authority of an Army officer upon the ground at the time of the late trouble at the Pine Ridge Agency and in a position to know the facts, that several claims have been made growing out of that disturbance, which have no foundation in fact or law. It is safe to say that a proper investigation conducted by counsel acting specially for the Indians will develop a

similar state of things existing elsewhere. It can not be expected the Indians will quietly submit to having their funds taken from them to pay such claims, or that they will acquiesce in the justice or even binding force of a judgment in any case producing such a result, unless and until their rights have been looked after by someone in whom they have confidence.

Item to be inserted in the Sundry Civil Bill.

That the Secretary of the Interior be, and is hereby, authorized to expend not exceeding the sum of ten thousand dollars from the balance on hand of the appropriation made by act of Congress of March third, eighteen hundred and ninety-one (Stat. twenty-six, page one thousand and nine), for the investigation of Indian depredation claims, in the employment of an attorney and such assistants as may be needed, and in paying the necessary expenses in preparing defenses in behalf of Indians whose funds are sought to be charged for depredations.

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