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INDIAN OFFICE

FILES

CAUTION!

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By order of

E. B. MERITT,
Asst. Commissioner.

157/600001824
NEW YORK
File No. 260

London, Canada,

February 26, 1924.

Messrs. Fisk & Whitney,

Attorneys at Law.

Dear Sirs:-

I am informed you are associated with a Mr. Everett in forwarding a claim of the Six Nations Indians to certain lands in New York State. Efforts have been made among the Oneida Indians, near this City, to enlist their financial support for the claim, and a number of them have instructed me to make independent inquiries on their behalf, and advise them accordingly, as to whether as a result of these, I would counsel them to go and the matter.

My information is that this claim is based on the judgment in favour of certain individuals of the Oneida Tribe, reported in 256 Federal Reporter, and on appeal, in 265 Federal Reporter, and from my reading of these judgments, I gather that before any action for the purpose of voiding the present titles to these lands claimed by these Indians can be brought, the consent of the United States must be obtained to the action, or probably, the same taken in the name of the United States. Under the circumstances of the original treaties by which the Indians surrendered title to their lands for a consideration or considerations, which seemed to them adequate at the time, subsequently moved away from the lands, and have remained out ever since, I would have regarded it as extremely unlikely the United States would lend its aid to the ousting of the present holders of the lands, but it may be so. In the meantime I do not know and cannot advise.

The purpose of this communication therefore, is to ask you whether I am right or not, in holding the view any proceedings for the purposes of having it declared the Six Nations are still the proper holders of the lands in question, must be taken in the name of the United States, or with their consent and approval; and, second, whether the United States have agreed to bring action, or given its consent to an action, for the purposes mentioned.

As the participation of the Oneidas of the Thames in these proceedings, will largely depend on the nature of the report on the subject, I make to them, I would be glad if you would advise me in reply, as fully and speedily, as circumstances may permit.

Faithfully yours,

" A. G. Chisholm "

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MAR 14 1924

Mr. A. C. Chisholm, X. C.,
 Barrister, etc.,
 Canadian Bank of Commerce Chambers,
 607, Dundas and Richmond Sts.,
 London, Canada.

My dear Mr. Chisholm:

Receipt is acknowledged of your letter of February 26, 1924, making inquiry concerning the claim of the Six Nations of Indians to lands in the State of New York, and also with respect to moneys being solicited from the Oneidas of Canada to aid in prosecuting the claim.

A number of inquiries have recently been received by this Department concerning the activities of certain persons among the Six Nations residing in Wisconsin, and such Indians have been advised against contributing any money either collectively or individually toward the prosecution of the alleged claim against New York.

The alleged claim referred to above is perhaps based on certain transactions between the New York State officials and the tribal authorities of the Six Nations whereby the Indians have endeavored to transfer title to certain of their lands to the State of New York. In the case of the United States v. Jordan et al. (205 Fed. Rep., 165) the United States Circuit Court intimated in its decision of March 3, 1920, that the Oneida Indians of New York could not make a valid transfer of title to their lands in New York without the consent of the Federal Government. However, Congress could, at any time, should such action be deemed necessary to remove cloud from any titles, ratify any and all transaction between the Indians and the State officials.

This Office has no knowledge of any steps having been taken by the Government for the purpose of contesting or voiding the present titles to the lands in controversy.

So far as this Office is aware, there is but little, if any, merit in the legal claim of the Six Nations against the State of New York for lands heretofore conveyed for valuable considerations to that State by the Oneida tribe. Of course there might be a moral or equitable claim which the State, itself, might recognize and make settlement for, but this Office has no knowledge of any meritorious

claims, either legal or equitable, of the character indicated. It is added, in this connection, that should a just claim exist and recovery later on be had, all members of the tribe would, it is believed, be entitled to share therein regardless of whether they subscribed to any fund being raised for the purpose of prosecuting the claim.

Very truly yours,

(Signed) E. B. Merrill

Assistant Commissioner.

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INDIAN OFFICE

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By order of

E. B. MERITT,
Asst. Commissioner.

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NEW YORK
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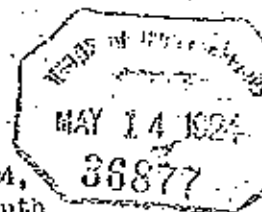
DEPARTMENT OF THE INTERIOR

OFFICE OF INDIAN AFFAIRS

WASHINGTON

27974

MAR 25 1924



My dear Mr. Hickey:

Receipt is acknowledged of your letter of March 24, 1924, transmitting a communication from Mr. John W. Peashway of South Bond, Indiana, with respect to the policy practiced by the United States in dealing with the Six Nations of Indians of New York.

It is noted that the digest of certain decisions transmitted by Mr. Peashway relate to specific cases settled many years ago, since which time there have been numerous court cases relating to the New York Indians. A recent one - United States v. Boylan et al., (269 Fed. Rep., 165) - was rendered March 3, 1920, in the United States Circuit Court, Second Circuit, in which the court intimated that the Oneida tribe of Indians could not transfer or sell their land to the State of New York without the approval of the Federal Government.

As to the policy of the Federal Government in dealing with the New York Indians, it may be said that ever since early days the State of New York has exercised considerable jurisdiction over the Indians within her borders, has constructed and maintained highways through the Indian reservations there, has provided separate schools for education of Indian children, and to a limited extent at least, has enforced sanitation and other health methods for the betterment of these people. Minor police supervision has also been exercised; and administrative officers of the Federal Government have never seriously questioned the right of the State so to do. Administrative officers, of course, are guided by legislation of Congress. In the absence of legislation this Department has not and could not well assume active jurisdiction or control over the affairs of the New York Indians, though technically a superior sovereignty and jurisdiction might rest in the Federal Government.

The letter of your correspondent dated March 21, 1924, with accompanying inclosures, is herewith returned, and a carbon copy of this answer is inclosed for your convenience.

Cordially yours,

Dear Mr. Peashway:
This letter is self-explanatory. A. J. Hickey, MC Commissioner.

Hon. Andrew J. Hickey,

House of Representatives.