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INDIAN OFFICE

FILES

CAUTION!

Positively no papers to be added to or taken from this file, except by an employee of the Mails and Files Division.

See 2691-1929

3691-1934
NEW YORK
File No. 310



Office of the Attorney General
Washington, D.C.

DEPARTMENT OF THE INTERIOR
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July 21, 1934

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Rec- 54135-83
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JUL 24 1934
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GENERAL

Honorable Harold L. Ickes,
Secretary of the Interior,
Washington, D. C.

Dear Mr. Secretary:

For your information there is enclosed herewith a copy of a memorandum prepared by C. C. Daniels, Special Assistant to the Attorney General, having reference to a brief of the United States Attorney prepared in the year 1930 relating to the right of the City of Syracuse to purchase or condemn lands on Indian Reservations in the State of New York.

*Return
to
Mr. Daniels*

Respectfully,

Wm. C. Clegg
Attorney General.

Room 409 - 1st Building
33 West 52nd Street
New York City

July 26th, 1934

NEW YORK TRIBUNE

HERMAN C. DANIELS
Special Assistant to
The Attorney General



Relating to

MEMORANDUM OF UNITED STATES ATTORNEY OF MICHIGAN
RELATIVE TO THE RIGHT OF THE CITY OF STROUSE TO
PRECLUDE THE CONDEMNATION OF THE FEDERAL RESERVA-
TION.

The memorandum herein enclosed is dated July 15th 1930 and was forwarded to me on July 15th, 1930.

The case may be taken as "the last word" in defense of the position that the jurisdiction of the State of New York over the New York Indians is superior to the jurisdiction of the Federal Government and that when the Federal Statutes and the State Statutes conflict, that the State statutes control and the Federal Statutes must give way.

The memorandum discusses the State Statutes and examines their constitutionality and validity in all respects and appears to insist that whatever provisions are specified in the State Statutes are law and must be accepted as such—regardless of the provisions of the Constitution of the United States or the Federal Statutes.

The memorandum says:-

"Fundamentally, this whole question hinges upon the power of the State of New York to deal with the Indians Indians by a series of treaties and laws extending back to Colonial times."

"Assuming without conceding, that the State of New York may here deal with the situation, to the disregard of the authority of the United States, by virtue of its own law, any business done in the Onondaga Reservation."

* * * * *

"There is no doubt that the State of New York for generations has assumed that within their fit to control within the present of the of community that the Indians Indians have in their reservation."

* * * * *

"The Indian law of the State of New York constitutes one title to the Consolidated Laws of New York,

and contains many provisions clearly indicative of such purpose."

"This memorandum is confined to an examination of substantive law."

A copy of said memorandum is hereto attached for the files of the Department of Justice.

Various Sections of New York State "Indian Law" are discussed, and decisions purporting to sustain the position taken in the memorandum are cited or quoted--most of them being decisions of the New York State Courts. One of the cases cited is *Jackson v. Bell Telephone Co.*, 109 A.D. 511, affirmed, 186 N.Y. 493, wherein it was held that this law (sec. 49 of the Indian Law relating to the erection of poles etc. on the Federal Reservations) "does not contravene the Federal Statutes and is constitutional."

The memorandum admits that Section 19 of the Railroad Law giving the right to contract with Indian owners for railroad right of way over Reservations (which requires such contract to be ratified by the County Court) to have been declared "void because of compliance with the Federal Statutes as to supplying Indian lands is essential". *Suzelo v. P. Co. v. Lavey*, 75 N.Y. 395, affirmed, 149 N.Y. 575.

The memorandum cites *George v. Pierce*, 23 How.

125, as holding that

"The law of the Mortgage Reservation is in the State of New York, in which the State has exclusive jurisdiction."

The opinion of Chief Justice Taney in *Monica*

Norton v. Christie, 125 N.Y. 122, is cited for the position that

"The colonies succeeded to the title of the Crown to all the ungranted land within their respective bounds, with the exclusive right to extinguish by purchase the Indian title and to regulate dealings with Indian ground. He quotes *Barrett v. Willard*, 32 Boston 523 in support of such doctrine."

The memorandum then states the conclusion presented:

"We conclude on this point that the State of New York maintains the principle that the mortgage law of the Mortgage Reservation is in the State and is subject to its power of eminent domain."

* * * * *

"We, therefore, disagree with so much of the opinion of Mr. Brand" (Fraser report, p. 5075) "as declared that there is no State law which sanctions the taking of these lands by condemnation, and which further declares that the laws of the State of New York do not recognize such a method of extinguishing the rights and titles of the Indians."

* * * * *

(The portion of the Brand brief referred to—
p. 5077 Fraser report—is as follows:—
"Neither the laws of the United States nor the laws of the State of New York recognize such a mode of extinguishing the rights and titles of the Indians in their lands and reservations")

The memorandum says:

19

"Conforming now to the Federal decisions, we find that in this District and District the Federal courts are in accord with the contention of the State."

Effort is then made to show that Judge Fay's opinion in *U. S. v. Boylan*, 255 Fed. 488, affirmed 245 Fed 135, has been misunderstood, and that what he held was

"That the conveyance was in violation of the laws of the State of New York, and that, hence the sale was void under the laws of the State"

Part of Judge Fay's opinion is quoted, which seems to answer the contention of the memorandum:

"The transfer of the allotment to aliens is not simply a violation of the proprietary rights of the Indians, it violates the governmental policy of the United States."

The memorandum quotes another section that seems to answer its contention that the State is supreme in dealing with the affairs of the New York Indians:

"In people ex rel; *Castek v. Daly*, 212 N.Y. 153, the Court of Appeals of the State of New York upheld the Federal Statute, giving the United States exclusive jurisdiction of certain classes of crimes committed by Indians on their reservations.

At the conclusion of the opinion the court said:

"Even if we assume that in the absence of Federal legislation, the State has the sole police power to legislate for the Indians within its borders, there seems to be no escape from the conclusion that when Congress does not the power of the State must yield to the paramount authority of the Federal Government."

"In *U. S. v. Boylan*, supra, Judge Fay expressly held that in any event the United States " " " has such an interest as to make it to maintain the action in

benefit of the Indian, and supports this opinion with a wealth of authority cited at page 402 of the opinion."

* * * * *

"The Circuit Court of Appeals upheld this conclusion, and the Court therefore concluded that the United States may, if it chooses, intervene in any proceeding to acquire easements over the Caddo Reservation for the purpose of seeing that justice is done to the Indian."

The memorandum refers to the case of *Loose for the St. Regis Tribe of Indians v. St. Lawrence River Power Co.* particularly to the fact that Hon. Charles S. Hughes, now Chief Justice of the Supreme Court, appeared for the defendant, in which counsel for plaintiff endeavored in vain to have the United States substituted as a party defendant.

The case was dismissed for that the United States was not a party defendant—the Indians not having the right to sue because they were the wards of the United States.

She then Attorney General did not direct the District Attorney to intervene.

The enactment of the Wheeler-Howard law removes any question of the claim by New York State of the failure of the Federal Government to exercise jurisdiction over the New York Indians and their reservations.

The act covers the Indians of the United States save those specifically excepted by the terms thereof, and the New York Indians are not excepted and are therefore subject to the provision of the act.

The act gives the various tribes of the New York Indians the right to incorporate under the terms of the act; to borrow money from the revolving fund set up; to apply to the appropriation for the purchase of lands for the various tribes, and requires them to meet the obligations; submit to the control and direction and share in the benefits set forth in the act.

In this connection reference is made to memoranda on the New York Indians memoranda prepared and filed by me with the Department of Justice, to wit:

Memorandum dated May 15, 1934. "Alignment in severalty and the New policy of the Indian Bureau for conserving Indian blood and womanhood and preserving tribal relations."

Memorandum "Series of letters between the Federal Government and the State of New York with particular reference to the claim of the State as presented in the Smith Bill."

Memorandum, dated June 12, 1934. "Consultation requesting special study and report on the legal rights of the New York Indians."

Memorandum, dated June 27, 1934. "Indian Law" of the State of New York: Conflict between the Federal and State Governments; Appeal to the Governor for cooperation recommended."

Respectfully submitted,

G. O. DANIEL
Special Assistant to
The Attorney General

files

OFFICE OF INDIAN AFFAIRS
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FINAL REPORT OF HENRY ROE CLOUD
SUPERINTENDENT OF WASKELL INSTITUTE
LAWRENCE KANSAS
ON THE
ECONOMIC SITUATION OF THE SIX NATIONS
OF NEW YORK, WITH PARTICULAR REFERENCE
TO THE WEBSTER-HOWARD ACT.

Buffalo New York
October 18th, 1934

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SEE PRELIMINARY REPORT ON
LEGAL RIGHTS, SELF-GOVERNMENT OF NEW
YORK INDIANS
and
STATISTICAL DATA ON ALL GOV. RESERVATION.

*See
with
other
files*

Confus to

Exhibit C

UNDER NEW YORK STATE DEPARTMENT OF SOCIAL WELFARE

\$ 92,951.08	Outdoor relief and Medical care
15,699.97	Agents - Annuities, etc.
84,250.00	Personal services
57,000.00	Operation } Thomas Indian School
<hr/>	
\$249,901.05	

POPULATION

Allogany Reservation	972	30,469 acres
Cattaraugus Reservation	1600	21,680 "
Oncida Reservation	104	400 "
Onondaga Reservation	611	7,300 "
St. Regis Reservation	1,155	14,030 "
Shinnecock Reservation	160	160 "
Tonawanda Reservation	433	7,548 "
Tuscarora Reservation	403	5,229 "
	<hr/>	
	5438	87,836 acres
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I T E M I Z E D

July 1, 1932 to June 30, 1933

<u>TYPE OF RELIEF</u>	<u>NUMBER</u>	<u>AMOUNT EXPENDED</u>
<u>INDOOR</u>		
Hospitals, Institutions, Boarding Homes	445	\$ 55,437.75
<u>OUTDOOR</u>		
In homes	817 families (1764 persons)	55,783.51
		<hr/>
		\$ 112,221.26
Work Relief on Reservations - June 1933 to Nov. 1933		95,890.40
		<hr/>
		\$ 208,111.66
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301 South 17th St.
Philadelphia, Pa.

Copy

December 11, 1934



Chief Henry Dextator
R. F. D. No. 1
Onsida, Wis.

Dear Chief Dextator:

File 2/19/35

This is in reply to your letter of November 7th with which you sent me a copy of your letter of November 5th addressed to Hon. Harold L. Ickes, Secretary of the Interior.

I have read your letter to the Secretary of the Interior carefully. I wish that I might be of help to you. In this letter you refer to a number of early treaties which the tribe made with the Federal government indicating that you should still be in possession of the tribal land. However, in looking over past records I find that in a number of treaties with the State of New York your tribe sold or traded to the State of New York all of your land within the State boundaries except about 550 acres which was divided up among a few of the members of the tribe who remained there.

In the report of the Commissioner of Indian Affairs for 1887 on page 226 as a part of the report of Thomas Jennings, U. S. Indian Agent, concerning your tribe, I find the statement "recently by an almost unanimous vote they have decided to alienate their lands in severalty, and become citizens, for which they are well prepared."

At the October term, 1902, of the Supreme Court a decision was rendered in the Lone Wolf Case (Lone Wolf v. Hitchcock, 187 U. S. 563, 565) holding that Congress has the right to abrogate the provisions of an Indian Treaty, if consistent with perfect good faith toward the Indians.

I am copying a quotation from this decision which is given in the book "The Office of Indian Affairs," by Laurence P. Schmeckebier, page 65:

"The power exists to abrogate the provisions of an Indian treaty, though presumably such power will be exercised only when circumstances arise which will not only justify the Government in disregarding the stipulations of the treaty, but may demand, in the interest of the country and the Indians themselves, that it

should do so. When, therefore, treaties were entered into between the United States and a tribe of Indians it was never doubted that the United States exercised its power to abrogate existing treaties, and that in a contingency such power might be availed of from considerations of governmental policy, particularly if consistent with perfect good faith towards the Indians. . . .

We must presume that Congress acted in perfect good faith in the dealings with the Indians of which complaint is made, and that the legislative branch of the Government exercised its best judgment in the premises. In any event, as Congress possessed full power in the matter, the judiciary cannot question or inquire into the motives which prompted the enactment of this legislation. If injury was occasioned, which we do not wish to be understood as implying, by the use made by Congress of its power, relief must be sought by an appeal to that body for redress and not to courts."

It seems to me that the best chance for your tribe to get land to live on and use for agricultural purposes is through the provisions of the Indian Reorganization Act passed by the last session of Congress, a copy of which is enclosed. My suggestion would be that you appeal to the Commissioner of Indian Affairs for assistance under the provisions of that Act.

If other questions come to your mind and there are other ways in which we can be of assistance to you we shall be very glad to have you write to us further.

Very sincerely yours,

Associate Secretary.

enc.

Carbon copy to the Commissioner
of Indian Affairs.

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INDIAN OFFICE

FILES

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Positively no papers to be added to or taken from this file, except by an employee of the Mails and Files Division.

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