

IBIA says no to second poll

6/25/79

Policy Department

By DOUG CANNON  
Dispatch Staff Writer  
The federal Bureau of Indian Affairs will not repeat a poll of the New York Oneida Indians to determine what form of government the Oneidas will support, according to an Interior Department attorney.

The poll the bureau conducted in May failed because fewer than 30 percent — the minimum set by the BIA — participated.

The purpose of the survey was to resolve the more than three-year-old leadership dispute within the New York Oneidas which has led to the formation of three factions. None are recognized by the federal government as representing all of the New York Oneidas.

Because there is no unified government, negotiations on the Oneidas land claims have been delayed and progress on the claims in the courts has also been slowed.

Scott Keep, an attorney in the solicitor general's office in the Interior Department, said Friday that the Assistant Secretary for Indian Affairs Forrest Gerard has said there will not be another poll of the New York Oneidas.

But, Keep said he did not know what action will be taken to settle the problem.

Downward,  
Please copy  
and pass on

to Attey and Paul S.

# INDIAN LAW RESOURCE CENTER

1101 VERMONT AVENUE, N.W., WASHINGTON, D.C. 20005 • (202) 347-7520

June 29, 1979

Howard Cannon  
Coordinator  
Oneida Litigation Committee  
Oneida Nation of Wisconsin  
54155

Re: Dismissal of Docket 301

Dear Howard:

This is in response to your request for our opinion regarding possible dismissal of the case Oneida Nation v. United States, also known as Docket 301, now pending in the United States Court of Claims. The following should be taken into consideration as you weigh the advantages and disadvantages of dismissal of this case:

1. The Indian Claims Commission Act was passed to put and end to Indian claims against the United States forever. Therefore, the act itself requires that all claims existing before August 13, 1946 must be brought before the cut-off date or be lost.

2. Voluntary dismissal of Docket 301 would effectively bar any Oneida claims against the United States arising out of the treaties or any other event prior to 1946 unless Congress were to pass a new special jurisdictional act to permit such suits. As Mr. Chapman correctly points out in his letter to you of May 22, 1979, such legislation is somewhat of a long shot, especially if Oneida Nation v. Oneida County, et al. has an unfavorable result.

3. Findings of fact and legal conclusions in Docket 301, such as the finding of United States liability, while they could be used in the other Oneida cases, would lack the binding authority of a decided case. The I.C.C. rulings would continue to be persuasive as to the facts and legal conclusions found and made by the Commission.

4. If Docket 301 is not postponed and proceeds to judgment by the Court of Claims there is a substantial legal risk that any right to recover land would be impaired, made more difficult or lost entirely. There is no clear legal

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authority which specifies what legal effect a judgment in an Indian Claims Commission case may have on suits for return of land.

The letter we recently received from the Interior Department along with the recent decision of the Court of Claims in the Temoak Band case strongly indicate the danger of proceeding with a money claim when there is also a prospect for seeking return of land.

5. All Oneida parties are not before the court in Docket 301. In fact, only the Wisconsin Oneidas are represented there. By the law itself the Canadian Oneidas are excluded, and unless Mr. Chapman's contract with the New York Oneidas has been approved, he cannot properly represent them either.

It is good that you are anticipating the possibility of dismissal of Docket 301 should such drastic action become necessary. However, we are substantially in agreement with your attorneys, Larry Aschenbrenner and Arlinda Locklear, that seeking a postponement would be the best course of action at this time.

If we may be of further assistance, please do not hesitate to write or call us.

Sincerely,



Robert T. Coulter  
Executive Director

cc: Purcell Powless  
Larry Aschenbrenner  
Ray Halbritter