

4-20-1838

## School lands -- Indian reservations -- Ohio

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SCHOOL LANDS—INDIAN RESERVATIONS—OHIO.

[To accompany bill H. R. No. 754.]

APRIL 20, 1838.

Mr. LINCOLN, from the Committee on the Public Lands, submitted the following

REPORT :

*The Committee on the Public Lands, instructed by a resolution of the House of Representatives of the 2d of January last, "to inquire into the expediency of reporting a bill providing for the selection of other school lands for the townships lying within the Indian reservations in the State of Ohio, (hereinafter mentioned,) latterly purchased of the Indians by the United States; the sections 16 in those reservations having been decided not to be appropriated for the support of schools. The reservations to be included in the provisions of the bill are as follows, viz: the Ottawa reservation, on Blanchard's creek; Ocquanoxa's village; the Lewistown reservation; the Wapaukonetta reservation; the Hog-creek reservation; the Big-spring reservation, (Wyandots; ) the Seneca reservation, on Sandusky river; the Ottawa reservation, on the Maumee river, near lake Erie;" having had the instructions under consideration, report a bill on the subject :*

The occasion for legislating in the matter of said resolution will be best understood from various communications from the Commissioner of the General Land Office, and the opinion of the Attorney General of the United States, which have been submitted to the committee, and are herewith presented. The committee ask that they may be received as parts of this report, and recommend that they be printed for the information of the House.

GENERAL LAND OFFICE, *December 19, 1837.*

SIR: I have the honor to acknowledge the receipt of your letter of the 15th instant, respecting the 16th sections in certain Indian reserves in the State of Ohio.

The land officers at Bucyrus and Lima, within whose districts these reserves are situated, were advised, on the 27th of April last, that, in accordance with a recent decision of the Attorney General of the United States, the sixteenth sections therein are *not* to be considered as appropriated for the support of schools, but will have to be sold for the benefit of the Indians; and that the inhabitants of the townships will have to make application to Congress for other school lands in lieu thereof. These sections, never having been offered at public sale, are not now subject to private entry.

The reserves referred to in these instructions are as follows, to wit:

The Ottawa reserve, on Blanchard's creek, and Ocquanoxa's village; the Lewistown reservation; Wapaukonetta and Hog-creek reservations; Big-spring reserve, (Wyandots;) the Seneca reserve, on Sandusky river; and the Ottawa reserve on the Maumee river, near lake Erie.

The sixteenth sections, within the limits of that portion of the great Wyandot reservation ceded by the treaty of the 23d of April, 1836, were embraced in the President's proclamation of the 12th of December of that year, for the sale of those lands at Marion, and are the only sections of that number in any of the lands ceded for the benefit of Indians in Ohio which have been proclaimed for sale.

I have the honor to be, sir, your obedient servant,  
JAS. WHITCOMB, *Commissioner.*

The Hon. P. G. GOODE,  
*House of Representatives.*

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GENERAL LAND OFFICE, *March 1, 1838.*

SIR: In reply to your letter of the 24th ultimo, I have the honor to enclose a copy of the opinion of the Attorney General of the United States, deciding that the sixteenth sections within the limits of the reserves in the State of Ohio, stipulated by treaty to be sold for the benefit of the Indians, are not to be considered as appropriated for school purposes; with a copy of the instructions to the land officers, notifying them of said decision; and to state that none of those sections have been proclaimed for sale or brought into market, with the exception of two fractional sections, within the limits of that part of the Wyandot reserve ceded by the treaty of the 23d of October, 1836.

I have the honor to be, with great respect, your obedient servant,  
JAS. WHITCOMB, *Commissioner.*

The Hon. P. G. GOODE,  
*House of Representatives.*

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GENERAL LAND OFFICE, *April 27, 1837.*

GENTLEMEN: I have to state for your information, that the Attorney General of the United States has decided that where former Indian reservations in your district have been ceded to the United States with a view to their being sold for the benefit of the Indians, sections numbered 16, in such cessions, are not to be considered as appropriated for schools, but will have to be sold as the other ceded lands; and the inhabitants of the townships will have to make application to Congress for the appropriation of other lands for school purposes in lieu thereof.

The sections which have been withheld from sale, under the supposition that they were appropriated for schools, will, therefore, be proclaimed for sale whenever the President shall direct.

I am, &c.

JAS. WHITCOMB, *Commissioner.*

The REGISTER and RECEIVER, *Limá, Ohio*; and  
The REGISTER and RECEIVER, *Bucyrus, Ohio.*

ATTORNEY GENERAL'S OFFICE, *April 15, 1837.*

SIR: In your letter of the 5th instant, you ask my opinion on the following question proposed by the Commissioner of Indian Affairs:

"Does the first proposition, in the 7th section of the act of April 30, 1802, 'to enable the people of the eastern division of the Northwestern Territory to form a constitution and State Government,' vest in a township a title to the sixteenth section for school purposes, superior to that of a reservee under a treaty by which the Indian title to the land was extinguished?"

I have the honor to inform you, in reply, that, according to the opinion given by me on the 31st of March, 1836, in the case of the Choctaw treaty, (to which I beg leave to refer,) the above question must be answered in the *negative*.

I am, sir, very respectfully, your obedient servant,

B. F. BUTLER.

HON. J. R. POINSETT, *Secretary of War.*

ATTORNEY GENERAL'S OFFICE, *March 31, 1836.*

SIR: In your letter of the 15th instant you ask my opinion on the question "whether, under the provisions of the acts of Congress providing for the admission of Alabama and Mississippi into the Union, respecting the grant of the sixteenth section in each township for the use of schools, reservations for claimants under either of the articles of the Choctaw treaty of 1830 can be located on that section?"

The sixth section of the act to enable the people of the Alabama Territory to form a State constitution, &c., approved March 2, 1819, offered, among other things, to the convention about to be held, the following proposition, viz: "that the section numbered sixteen in every township, and, where such section has been sold, granted, or disposed of, other lands equivalent thereto and most contiguous to the same, shall be granted to the inhabitants of such townships for the use of schools."

This proposition having been accepted by the convention, became, and is, obligatory on the United States; that is to say, the faith of the nation is pledged to execute it literally, provided the Government of the United States possess or can acquire the ability to do so.

But the words do not amount to a present grant; on the contrary, the engagement is executory, and no particular time is specified for its fulfilment. Reason and good faith, however, require that it be executed from time to time, as fast as the United States shall be able to designate the sections, and to convey a good title therein; but if, for any cause, the United States should be incapable of a literal execution, or should refuse to execute, the inhabitants of Alabama would have no other means of obtaining compensation or redress, than such as might be found in an appeal to Congress.

In regard to that part of the territory of Alabama which in 1819 was occupied by the Choctaws, it is also to be observed, that the United States were incapable of making any grant thereof, except subject to the Indian right of occupancy. As to the Choctaw country, the proposition above quoted must, therefore, be regarded as subject to the implied condition that the United States should be able so to extinguish the Indian title as to enable them to execute the engagement according to its terms.

The provisions of the Choctaw treaty, which secure to persons of that tribe certain reservations of land, were indispensable parts of the means to which the United States were obliged to resort to extinguish the Indian title; and as no exception was contained in that treaty, of the sixteenth section, nor any allusion made to the compact with Alabama, it would be unjust towards the Indians, and an infraction of the treaty, to prevent them from locating on those lands. As between the Indians and the United States, the treaty itself is the only measure of their respective rights; and no restriction not found in that instrument can be imposed on the right of locating the reservations secured by it.

Even, therefore, had the engagement of the United States been positive to grant to the State of Alabama the sixteenth section, I should hold, in the case which has actually occurred, that the claimants under the treaty could not be affected by it.

But the agreement is not exclusively confined to that section. It contemplates the contingency of that section's being otherwise disposed of, and makes provision for such an event. So far as that part of the territory which was occupied in 1819 by the Choctaw Indians is concerned, I think the words "and where such section has been *sold, granted, or disposed of*," must be considered as applicable to the state of things which should exist when the Indian title should come to be extinguished; and then the sixteenth section, if claimed by an Indian reservee under the Choctaw treaty, will have been "*disposed of*," within the meaning of the original proposition; and, in that case, it is expressly provided that *other* equivalent and contiguous lands are to be granted.

I do not find any special provision relative to the sixteenth section in the acts concerning the State of Mississippi.

I have the honor to be, very respectfully, your obedient servant,

B. F. BUTLER.

The Hon. LEWIS CASS,  
*Secretary of War.*

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*Indian reserves in the State of Ohio, the sixteenth sections within the limits of which the Attorney General has decided are not to be considered as school lands, and must be sold for the benefit of the Indians.*

Ottawa reserves, ceded by the treaty of 30th August, 1831: on the Maumee river and Ocquanoxa's village.

Senecas and Shawnees, ceded by the treaty of 20th July, 1831: Lewistown reserve.

Shawnees, ceded by treaty of 8th August, 1831: Wapaukonetta and Hog creek.

Wyandots, ceded by treaty of 19th January, 1832: Big-spring reservation.

Senecas, ceded by treaty of 28th February, 1831: on the Sandusky river.

Wyandots, a part of their large reserve, ceded by treaty concluded on the 23d April, 1836.