

1-23-1889

Letter from the Secretary of the Interior,
transmitting papers relative to an appropriation for
the benefit of the Cherokee freedmen

Follow this and additional works at: <https://digitalcommons.law.ou.edu/indianserialset>



Part of the [Indian and Aboriginal Law Commons](#)

Recommended Citation

S. Exec. Doc. No. 83, 50th Cong., 2nd Sess. (1889)

This Senate Executive Document is brought to you for free and open access by University of Oklahoma College of Law Digital Commons. It has been accepted for inclusion in American Indian and Alaskan Native Documents in the Congressional Serial Set: 1817-1899 by an authorized administrator of University of Oklahoma College of Law Digital Commons. For more information, please contact darinfox@ou.edu.

L E T T E R
FROM
THE SECRETARY OF THE INTERIOR,

TRANSMITTING

Papers relative to an appropriation for the benefit of the Cherokee freedmen.

JANUARY 23, 1889.—Referred to the Committee on Indian Affairs and ordered to be printed.

DEPARTMENT OF THE INTERIOR,
Washington, January 21, 1889.

SIR: I have the honor to transmit herewith copy of a communication of the 9th instant from the Commissioner of Indian Affairs, together with the accompanying papers and the draft of a joint resolution providing as to the manner for ascertaining who are entitled to share in the appropriation of \$75,000 made by the act of October 19, 1888, entitled "An act to secure to the Cherokee freedmen and others their proportion of certain proceeds of lands under act of March 3, 1883" (25 Stats., 608).

The matter is presented for the favorable consideration and action of Congress.

Very respectfully,

WM. F. VILAS,
Secretary.

To the PRESIDENT PRO TEMPORE OF THE SENATE.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, January 9, 1889.

SIR: By your authority, dated November 15, 1888, H. Heth, special agent, was, on November 21, 1888 (L. 28325, 27660, 26880 A. D. 1888), directed to go, and did go, to the Indian Territory—

To act in conjunction with a person to be appointed by the Cherokee authorities to determine who are entitled to share in the appropriation of \$75,000, made by the act of October 19, 1888, entitled "An act to secure to the Cherokee freedmen and others their proportion of certain proceeds of lands, under act of March third, eighteen hundred and eighty-three." (See copy of act enclosed.)

On December 17 his report of his action under this authority, dated December 13, was received at this office, and is herewith respectfully submitted.

In making this transmission I deem it my duty to comment upon and make certain recommendations in reference to the subject-matter of the special agent's report.

It will be observed that the act of October 19, 1888, above mentioned, provides that the sum of \$75,000, or so much thereof as may be necessary, shall be, by the Secretary of the Interior, distributed per capita, as follows:

First. Among such freedmen and their descendants as are mentioned in the ninth article of the treaty of July nineteenth, eighteen hundred and sixty-six, between the United States and the Cherokee Nation of Indians.

Second. Among the Delaware tribe of Indians incorporated into the Cherokee Nation by the terms of a certain agreement entered into between said Cherokee Nation and Delaware Indians, under the provisions of the fifteenth article of the aforesaid treaty, on the eighth day of April, eighteen hundred and eighty-seven.

Third. Among the Shawnee tribe of Indians, incorporated into the Cherokee Nation by the terms of a certain agreement entered into between the Cherokee Nation and Shawnee Indians, under the provisions of the aforesaid article and treaty, on the seventh day of July, eighteen hundred and sixty-nine.

The distribution thus directed must be made in such manner and in such amount or amounts as will equalize the per capita payment, which was made to the Cherokees by blood, in accordance with the act of the Cherokee legislature of May 19, 1883, and which action of that legislature was the reason for the above-mentioned act of Congress of October 19, 1888.

The Secretary of the Interior can easily ascertain the names of the Delaware and Shawnee Indians who are entitled to a share per capita of the \$75,000 appropriated by the act of October 19, 1888; but it will be a difficult duty to ascertain, in a satisfactory manner, the names of the Cherokee freedmen and their descendants who are entitled to a share of the sum above named.

It was believed that under the existing conditions this could be done in only one of two ways, viz: By authorizing (1) an Indian inspector to act by himself; or (2) a special agent of this Bureau to act in conjunction with an authorized representation of the Cherokee Nation in determining who of the negroes of the Cherokee Nation are freedmen or the descendants of freedmen.

The last suggested way has been tried and, as appears from the report of Special Agent Heth, has failed. The Government must therefore either (1) authorize an Indian inspector to determine, under rules to be prescribed by the Secretary, who are Cherokee freedmen and the descendants of such freedmen, and to make a list of the names thereof, upon which list the per capita payment required by the act of October 19, 1888, may be made; or (2) under action to be taken by Congress, authorize a commission, to be composed wholly of citizens of the United States or in part of citizens of the Cherokee Nation, to determine claims to freedmanship, and who are the descendants of freedmen.

It is not deemed advisable at this time to recommend the appointment of a commission, but rather that another attempt be made to settle the matter by the detail of an Indian inspector for that purpose. I have therefore prepared, and submit herewith, a draft of joint resolution authorizing the detail of an inspector, and the necessary clerical assistance to aid him in the performance of his duties, and making the necessary appropriation out of the aforesaid \$75,000 to pay the expenses incident thereto; also authorizing the Secretary of the Interior to pay out of said sum, for such legal services rendered or expense incurred in be-

half of the beneficiaries under the said act, such an amount as he may find to be just and equitable, with the recommendation that the matter be transmitted to Congress with request for early and favorable action.

Very respectfully, your obedient servant,

JNO. H. OBERLY,
Commissioner.

The SECRETARY OF THE INTERIOR.

MUSCOGEE, IND. T., *December 13, 1888.*

SIR: Referring to yours of November 21, 1888 (L. 28325, 27660, 26880, 18-8), directing me to proceed to the Indian Territory, "to act in conjunction with a person to be appointed by the Cherokee authorities, to determine who are entitled to share in the appropriation of \$75,000, made by the act of October 19, 1888, entitled 'An act to secure to the Cherokee freedmen and others their proportion of certain proceeds of lands, under act of March 3, 1883.'" I have the honor to report as follows:

I arrived at Muscogee, Union Agency, November 27. The Cherokee council was then in session at Tahlequah, and Agent R. L. Owen, with whom I was directed to confer, was there on official business. I proceeded at once to Tahlequah, reaching there on the evening of the 27th of November, and the same evening had a conference with Agent Owen and the principal chief of the Cherokee Nation.

The following day, November 28, I addressed a note to the principal chief, Hon. Joel B. Mayes, copy marked A, herewith inclosed. On November 30 I received the inclosed communication from the principal chief, and at once, accompanied by Agent Owen, met the joint committee referred to in inclosed paper, marked B.

Your communication of November 10, 1888 (L. 26880-27660, 1888), addressed to the honorable Secretary of the Interior, the Secretary's reply thereto, dated Washington, November 15, 1888; also yours to me of November 21, 1888 (4.28325-27660-26880, 1888) were read to the joint committee and fully explained to said committee by Agent Owen and myself. I am satisfied, as Agent Owen is, that the joint committee fully understood the purport and intent of these communications.

From the remarks made by one of the joint committee at the interview referred to, I was not unprepared to receive to-day the inclosed document, senate bill No. 40 (Cherokee senate), entitled "An act to create a joint commission to determine claims to citizenship of freedmen, under the ninth article of the treaty of 1866, between the United States and the Cherokee Nation, and also of certain Delaware and Shawnee Indians."

By reference to the eighteenth section of this act, you will see that the Cherokee council enters "the dissent and protest of the Cherokee Nation against the right and power of Congress to make such appropriation, or disposal, or incumbrance of the funds, or upon the lands of the Cherokee Nation without their consent and action."

You will further see that the national council had failed at present to appoint a person to act with me in the duty assigned me. Should the Department concur in the action of the Cherokee national council, as taken and expressed in senate bill No. 40, approved December 8, 1888, this business must be deferred until the national council again meets, or until November, 1889. The national council has adjourned. Its session is limited by law to thirty days, which has now expired. My opinion is that the national council desires to gain time in order to contest the legality of the act of Congress approved October 19, 1888, entitled, an "Act to secure to the Cherokee freedmen and others their proportion of certain proceeds of lands under the act of March third, eighteen hundred and eighty-three." (Public—No. 325).

Should the Department decide that I shall act alone in this matter, I will suggest, in order to save time, that I be authorized:

- (1) To publish in two or more of the newspapers published in the Cherokee Nation when and where freedmen can meet me.
- (2) That I be authorized, at the proper time, to employ a clerk, who shall be a stenographer and type-writer, and you to fix the compensation of same.
- (3) Authority to rent an office at such place in the Cherokee Nation as it may be necessary for me to hold the required investigations.
- (4) Authority to summons witnesses, if necessary, and you to fix the compensation of same.

I inclose copy of Cherokee senate bill No. 40, marked C.

Very respectfully,

H. HETH,
Special Agent.

Hon. COMMISSIONER OF INDIAN AFFAIRS,
Washington, D. C.

[PUBLIC—No. 328.]

AN ACT to secure to the Cherokee freedmen and others their proportion of certain proceeds of lands, under the act of March third, eighteen hundred and eighty-three.

Whereas it is provided in the ninth article of the treaty of July nineteenth, eighteen hundred and sixty-six, between the United States and the Cherokee Nation of Indians, that freedmen who have been liberated by voluntary act of their former owners, or by law, as well as all free colored persons who were in the (Cherokee) country at the commencement of the rebellion, and were then residents therein, or who might return within six months, and their descendants, shall have all the rights of native Cherokees; and,

Whereas by the fifteenth article of the aforesaid treaty certain terms were provided under which friendly Indians might be settled upon unoccupied lands in the Cherokee country east of the ninety-sixth degree of west longitude; and the Indians thus settled were, upon full compliance with the provisions of said article, to be incorporated into and ever after remain a part of the Cherokee Nation, on equal terms in every respect with native citizens; and,

Whereas under the provisions of the aforesaid fifteenth article an agreement was entered into between the Cherokee Nation and the Delaware tribe of Indians, on the eighth day of April, eighteen hundred and sixty-seven, which agreement was approved, respectively, by the Secretary of the Interior and the President of the United States on the eleventh day of April, eighteen hundred and sixty-seven, and by the terms of which the Delaware Indians "became members of the Cherokee Nation, with the same rights and immunities and the same participation (and no other) in the national funds as native Cherokees;" and

Whereas under the provisions of the aforesaid fifteenth article an agreement was entered into between the Cherokee Nation and the Shawnee tribe of Indians, on the seventh day of June, eighteen hundred and sixty-nine, and approved by the Secretary of the Interior and the President of the United States, respectively, on the ninth day of June, eighteen hundred and sixty-nine, by the terms of which the Shawnee Indians were incorporated into and became a part of the Cherokee Nation on equal terms in every respect, and with all the privileges and immunities of native citizens of the Cherokee Nation; and

Whereas it is provided by the sixth article of the aforesaid treaty that all laws of the Cherokee Nation shall be uniform throughout said nation; and

Whereas by an item in the act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and eighty-four, and for other purposes, approved March third, eighteen hundred and eighty-three, the sum of three hundred thousand dollars was "appropriated, to be paid into the treasury of the Cherokee Nation, out of the funds due under appraisalment for Cherokee lands west of the Arkansas River, which sum shall be expended as the acts of the Cherokee legislature direct;" and

Whereas by an act of the Cherokee legislature, which was passed over the veto of the principal chief and became a law on the nineteenth day of May, eighteen hundred and eighty-three, the principal chief was directed to cause the said sum of three hundred thousand dollars to be paid out per capita to the citizens of the Cherokee Nation by blood and which sum has been paid out only to Cherokee citizens by blood, as directed by said act; and

Whereas by the said act of the Cherokee legislature the aforesaid freedmen, Delaware and Shawnee Indians have been deprived of their legal and just dues guaranteed them by treaty stipulations: Therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there be, and hereby is, appropriated, out of any money in the Treasury not otherwise appropriated, the sum of seventy-five thousand dollars, or so much thereof as may be necessary, to carry out the provisions of this act; and the amount actually expended shall be charged against the Cherokee Nation, on account of its lands west of the Arkansas River, and shall be a lien on said lands, and which shall be deducted from any payment hereafter made on account of said lands. The said sum, or so much thereof as may be necessary, shall be by the Secretary of the Interior distributed per capita, first, among such freedmen and their descendants as are mentioned in the ninth article of the treaty of July nineteenth, eighteen hundred and sixty-six, between the United States and the Cherokee Nation of Indians; second, among the Delaware tribe of Indians incorporated into the Cherokee Nation by the terms of a certain agreement entered into between said Cherokee Nation and Delaware Indians, under the provisions of the fifteenth article of the aforesaid treaty, on the eighth day of April, eighteen hundred and sixty-seven, and approved, respectively, by the President of the United States and the Secretary of the Interior on the eleventh day of April, eighteen hundred and sixty-seven; and, third, among the Shawnee tribe of Indians incorporated into the Cherokee Nation by the terms of a certain

agreement entered into between the said Cherokee Nation and Shawnee Indians, under the provisions of the aforesaid article and treaty, on the seventh day of June, eighteen hundred and sixty-nine, and approved, respectively, by the President of the United States and the Secretary of the Interior on the ninth day of June, eighteen hundred and sixty-nine, in such manner and in such amount or amounts as will equalize the per capita payment made to Cherokees by blood, in accordance with the act of the Cherokee legislature aforesaid, out of the sum of three hundred thousand dollars appropriated by the act of March third, eighteen hundred and eighty-three, aforesaid.

Approved, October 19, 1888.

JOINT RESOLUTION providing a method by which the Secretary of the Interior shall determine who are the persons entitled to share in the per capita payment of the funds appropriated by act of Congress approved October nineteenth, eighteen hundred and eighty-eight and for other purposes.

Whereas Congress, by an act entitled "An act to secure to Cherokee freedmen and others their proportion of certain proceeds of lands, under act of March third eighteen hundred and eighty-three," appropriated seventy-five thousand (75,000) dollars, or so much thereof as might be necessary, to be distributed per capita, by the Secretary of the Interior—

"First, among such freedmen and their descendants as are mentioned in the ninth article of the treaty of July nineteenth, eighteen hundred and sixty-six, between the United States and the Cherokee Nation of Indians.

Second, among the Delaware tribe of Indians, incorporated into the Cherokee Nation, by the terms of a certain agreement entered into between said Cherokee Nation and Delaware Indians under the provisions of the fifteenth article of the aforesaid treaty on the eighth day of April, eighteen hundred and sixty-seven, and approved, respectively, by the President of the United States and the Secretary of the Interior, on the eleventh day of April, eighteen hundred and sixty-seven; and, third, among the Shawnee tribe of Indians, incorporated into the Cherokee Nation by the terms of a certain agreement entered into by the said Cherokee Nation and Shawnee Indians, under the provisions of the aforesaid article and treaty, on the seventh day of June, eighteen hundred and sixty-nine, and approved, respectively, by the President of the United States and the Secretary of the Interior, on the ninth day of June, eighteen hundred and sixty-nine, in such manner and in such amount or amounts as will equalize the per capita payment made to the Cherokees by blood in accordance with the act of the Cherokee legislature,"

which became a law on the nineteenth day of May, eighteen hundred and eighty-three, and under which act the sum of three hundred thousand (300,000) dollars was paid into the treasury of the Cherokee Nation out of the funds due to the Nation, under appraisement of Cherokee lands lying west of the Arkansas River, and which sum, in any per capita distribution thereof, should have been paid to all the Cherokee citizens without regard to blood, but which was paid per capita only to Cherokees by blood.

And whereas the said act of October 19, 1888, does not make provision to enable the Secretary of the Interior to ascertain the proper persons to whom payment per capita, under the aforesaid law, is to be made: Therefore,

Be it resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior be, and he hereby is, authorized and directed to detail an Indian inspector for service in the Cherokee Nation in the Indian Territory, and elsewhere, to aid him in ascertaining who are entitled to share in the per capita distribution of the sum of seventy-five thousand dollars, appropriated by the act entitled "An act to secure the Cherokee freedmen and others their proportion of certain proceeds of land under the act of March third, eighteen hundred and eighty-three."

The said Secretary is also hereby authorized and directed to detail as many clerks of his Department as may be necessary, not exceeding three in number, to assist the Indian inspector in the performance of his duties hereunder, and at least one of said clerks shall be an expert stenographer and typewriter.

And the said Secretary is also hereby authorized and directed:

First. To give notice, by publication in two or more of the newspapers published in the Cherokee Nation, of the places at which freedmen or Delaware or Shawnee Indians may meet the Indian inspector detailed as herein provided, and present their claims, or answer objections made to their right to share in the per capita distribution of the fund appropriated as aforesaid by the act of October nineteenth, eighteen hundred and eighty-eight.

Second. To authorize the Indian inspector to summon witnesses and to establish an office or offices within the Cherokee Nation, at which necessary inquiries and investigation hereunder may be made.

And the said Secretary is also hereby authorized and directed to pay out of the said sum of seventy-five thousand dollars appropriated by the act of October nineteenth, eighteen hundred and eighty-eight, all traveling and other necessary expenses incurred hereunder; also to pay out of said seventy-five thousand dollars for any legal services or expenses, as in his opinion may be just and equitable, that may have been rendered or incurred on behalf of the beneficiaries under the aforesaid act of October nineteenth, eighteen hundred and eighty-eight, in relation to the claim that was created in behalf of said freedmen, Delawares, and Shawnees, by the act of the Cherokee legislature of May nineteenth, eighteen hundred and eighty-three, precluding said freedmen, Delawares, and Shawnees from their per capita distribution of the three hundred thousand dollars appropriated to the Cherokee Nation by act of Congress of March third, eighteen hundred and eighty-three.

