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Ely Moore and Daniel Woodson. Letter from the Acting Secretary of the Treasury, transmitting a communication from the Second Comptroller, with inclosures, certifying for an appropriation the amounts found due Ely Moore and Daniel Woodson, under the joint resolution approved April 2, 1894.

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ELY MOORE AND DANIEL WOODSON.

L E T T E R

FROM

THE ACTING SECRETARY OF THE TREASURY,

TRANSMITTING

A communication from the Second Comptroller, with inclosures, certifying for an appropriation the amounts found due Ely Moore and Daniel Woodson, under the joint resolution approved April 2, 1894.

MAY 14, 1894.—Referred to the Committee on Appropriations and ordered to be printed.

TREASURY DEPARTMENT,

May 12, 1894.

SIR: I have the honor to transmit herewith, for the consideration of Congress, copy of a communication from the Second Comptroller of the Treasury of the 11th instant, and its inclosures, certifying for appropriation the amounts found due to Ely Moore and Daniel Woodson, under the provisions of public resolution No. 15, approved April 2, 1894, entitled "Joint resolution authorizing the Secretary of the Interior to cause the settlement of the accounts of Special Agents Moore and Woodson, under the treaty of eighteen hundred and fifty-four, with the Delaware Indians, and so forth."

Respectfully, yours,

S. WIKE,
Acting Secretary.

The SPEAKER OF THE HOUSE OF REPRESENTATIVES.

TREASURY DEPARTMENT,

OFFICE OF THE SECOND COMPTROLLER,

Washington, D. C., May 11, 1894.

SIR: On the 27th ultimo this office certified a balance of \$3,658 due Ely Moore, being an amount claimed for balance of salary (per diem) and fees as special register and superintendent of sales of Delaware and Kaskaskia, etc., Indian trust lands from November 17, 1856, to March 23, 1857, inclusive, and from June 24 to August 24, 1857, inclusive, the same to be paid from appropriations as follows: Fulfilling treaties with Delawares, proceeds of lands, \$2,371; fulfilling treaties with Kaskas-

kias, Peorias, Weas, and Piankeshaws, proceeds of lands, \$1,287; total, \$3,658.

On the same day this office certified a balance of \$3,967.84 as due Daniel Woodson, being amount of his claim for salary and fees as special register and superintendent of sales of Delaware and Iowa Indian trust lands from May 29 to August 5, 1857, and for reimbursement of certain expenses incurred, the same to be paid from appropriations as follows: Fulfilling treaties with Delawares, proceeds of lands, \$3,639.50; fulfilling treaties with Iowas, proceeds of lands, \$58.34; total, \$3,697.84.

These claims have been settled and the balances certified under authority of joint resolution of Congress approved April 2, 1894, a copy of which is herewith inclosed.

It now appears that these balances can not be paid for the reason that the moneys from which they should have been paid have been distributed to the Indians under authority of law and treaty stipulations, and the matter is now presented to you, in accordance with the suggestion made by the Acting Secretary of the Treasury under date of May 7, 1894, with copies of all necessary papers, in order that the case may be transmitted to Congress for an appropriation to pay the same.

Very respectfully,

C. H. MANSUR,
Second Comptroller.

Hon. J. G. CARLISLE,
Secretary of the Treasury.

[PUBLIC RESOLUTION—No. 15.]

JOINT RESOLUTION authorizing the Secretary of the Interior to cause the settlement of the accounts of Special Agents Moore and Woodson, under the treaty of eighteen hundred and fifty-four, with the Delaware Indians, and so forth.

Whereas the accounts of Ely Moore, deceased, as special register and superintendent, and of Daniel Woodson, as special receiver and superintendent, for the expenses of the sale of the Iowa, and of the eastern and western portions of the Delaware, and of the Wea, and so forth, Indian trust lands in Kansas, under the several treaties of May, eighteen hundred and fifty-four, with said Indians, require further adjustment and final settlement: Therefore,

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 is hereby, authorized and required to cause administrative action to be taken upon the accounts of said Moore and Woodson, and to allow to the said Moore the sum of three thousand six hundred and fifty-eight dollars, and to the said Woodson the sum of three thousand six hundred and ninety-seven dollars and eighty-four cents, in full settlement and satisfaction of their respective claims for services under the treaties aforesaid, and pass the said accounts to the proper accounting officers of the Treasury for final settlement: and the acceptance of the said sums by said claimants, or their legal representatives, shall be taken as a full and complete relinquishment and satisfaction of their claims for services under the treaties aforesaid.

Approved, April 2, 1894.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, April 30, 1894.

SIR: I have the honor to return herewith Reports Nos. 4933 and 4934, for \$3,658 and \$3,492.59, respectively, the former in favor of Ely Moore for amount claimed for balance of salary (per diem) and fees as special register and superintendent of sales of Delaware and Kas-

kaskia, etc., Indian trust lands, from November 17, 1856, to March 23, 1857, inclusive, and from June 24 to August 24, 1857, inclusive; and the latter in favor of Daniel Woodson, on his claim for balance of salary and fees as special receiver and superintendent of sales of Delaware and Iowa Indian trust lands, from May 29 to August 5, 1857, and for reimbursement of certain expenses incurred, both allowances having been made under joint resolution approved April 2, 1894 (copy herewith).

The appropriations named on the said reports are extinct, all moneys belonging to the tribes named, with the exception of the Iowas, having been distributed per capita under several acts of Congress.

The attorneys in these cases, Messrs. Maxwell and Chase (attorneys for Gen. Brindle, attorney in fact), in their letter addressed to this office, dated April 7, 1894, presenting said claims for administrative action (copy herewith), claim that section 3689 of the Revised Statutes provides an appropriation to meet these cases. The papers are, therefore, returned for your decision on this point and for direction as to mode of payment.

Very respectfully,

D. M. BROWNING,
Commissioner.

The SECOND COMPTROLLER,
U. S. Treasury.

[Indorsements.]

TREASURY DEPARTMENT,
Second Comptroller's Office, May 1, 1894.

Respectfully referred to the Secretary of the Treasury for decision as to whether there is an appropriation now available for payment and, if so, the designation of the same.

C. H. MANSUR,
Second Comptroller.

TREASURY DEPARTMENT, *May 7, 1894.*

Respectfully returned to the honorable Second Comptroller.

As the funds from which the amounts allowed under public resolution of April 2, 1894, would have been paid have been distributed, under the law and treaty stipulations, to the several Indian tribes therein referred to, a statement of the case, with copies of all papers pertaining thereto, should be submitted to the Secretary of the Treasury for transmission to Congress for an appropriation to pay the same.

W. E. CURTIS,
Acting Secretary.

APRIL 30, 1894.

DEAR SIR: In the matter of the accounts of Special Agents Moore and Woodson, now pending before you under joint resolution approved April 2, 1894, we desire to invite your attention to the following:

Section 2093, U. S. Revised Statutes, requires that the net proceeds derived from the sale of Indian lands shall be paid into the Treasury in the same manner that money received from the sale of public lands are paid into the Treasury, and section 2094 makes appropriation of the amounts thus paid into the Treasury to be disposed of as provided in the treaties under which the proceeds from the sale of lands are derived, with authority to draw such funds from the Treasury as other public moneys are drawn therefrom, under such instructions as may from time to time be given by the President.

In the case of the sale of the Delaware and the Wea, etc., Indians it was impossible to tell at the time of the sale of the lands what the net proceeds arising there-

from would be, and consequently the gross proceeds were paid into the Treasury under the provisions of section 2093, there to remain until the expenses properly chargeable against the fund should be ascertained, when the net proceeds should go to the Indians and the expenses incident to the sale of the lands be paid to the persons entitled thereto.

When the money was covered into the Treasury only the net proceeds were to go to the Indians, and the amounts due Moore and Woodson were to go to them, and the United States thereupon became the trustee for both funds, and the amount due Moore and Woodson has not been, and can never be, paid to any one else but them or their legal representatives.

The Indian appropriation act of March 3, 1893, provides that all the funds now held in trust by the United States for the benefit of the Delaware tribe of Indians, etc., shall be paid per capita to said tribe. Now, as a matter of fact, the funds belonging to Moore and Woodson were not held in trust by the United States for the benefit of the Delaware Indians and consequently could not have been paid to them under the provisions of that act, and therefore must still be held by the United States as trustee for Moore and Woodson.

The money in question was erroneously covered into the Treasury before the payment of the legal and just charges against the same. The very object of the law (section 2093) was to meet just such cases as the present one, where the fund had been erroneously covered into the Treasury and could not be used to meet the express and lawful charges against it without specific appropriation.

It seems to us that this is simply a plain, legal proposition, and we have faith in your ability and long experience as a lawyer to believe that you will agree with us.

Yours, etc.,

MAXWELL & CHASE.

Hon. C. H. MANSUR,
Second Comptroller.

APRIL 7, 1894.

SIR: Herewith find certified copy of Public Resolution No. 15, authorizing the Secretary of the Interior to cause administrative examination of the accounts of Special Agents Moore and Woodson, under the several treaties of 1854, with the Delaware and other Indians, approved April 2, 1894.

We inclose the account of Ely Moore, administrator of the estate of Ely Moore, deceased, for the amount authorized to be allowed by said resolution, together with certified copy of letters of administration and power of attorney from said administrator to William Brindle, and also the account of Daniel Woodson for the amount named in said resolution, with power of attorney from Woodson to Brindle.

In the several treaties of 1854 with the Delawares, the Iowas, and the Weas, etc., the proceeds arising from the sale of the lands thereby ceded, after deducting therefrom the cost of surveying, managing, and selling the same, were to be disposed of for the benefit of the several tribes as therein provided.

The act of January 9, 1837, now sections 2093 and 2094 of the U. S. Revised Statutes, provides as follows:

"All moneys received from the sales of lands that have been, or may hereafter be, ceded to the United States by Indian tribes by treaties providing for the investment or payment to the Indians, parties thereto, of the proceeds of the lands ceded by them, respectively, after deducting the expenses of survey and sale, any sums stipulated to be advanced, and the expenses of fulfilling any engagements contained therein, shall be paid into the Treasury in the same manner that moneys received from the sales of public lands are paid into the Treasury."

Section 2094 provides as follows:

"All sums that are or may be required to be paid, and all moneys that are or may be required to be invested by the treaties mentioned in the preceding section, are appropriated in conformity to them, and shall be drawn from the Treasury as other public moneys are drawn therefrom, under such instructions as may from time to time be given by the President."

The moneys received from the sale of these lands were received in a frontier country, and under the provisions of section 2093, and, as a matter of safety, the gross proceeds derived from the sale of said lands were deposited in the Treasury, to be disposed of as in said treaties provided; that is, the money was to remain in the Treasury until the cost of surveying, managing, and selling the lands was ascertained, when that portion was to go to the persons entitled thereto, and the net proceeds to the Indians, and section 2094 makes appropriation both for the payment of the cost of surveying, managing, and selling the lands and the net proceeds for the benefit of the Indians, as required by the several treaties, as also by section 2093.

As these moneys never belonged to the Indians, nor to the United States as trustee, and as no disposition thereof could be made except as provided in the treaties

and laws herein cited, they must still be in the Treasury and applicable to the payment of the amounts found to be due to these special agents by Congress.

Section 3689 of the Revised Statutes provides that—

There are appropriated, out of any moneys in the Treasury not otherwise appropriated, for the purposes hereinafter specified, such sums as may be necessary for the same, respectively; and such appropriations shall be deemed permanent annual appropriations.

* * * * *

“To refund moneys received and covered into the Treasury before the payment of legal and just charges against the same.”

The U. S. Supreme Court (110 U. S. 688) decided that each of the persons charged with managing and selling these lands is entitled to 1 per cent commission on the gross receipts and in effect that said commissions and other items of expenses are just charges upon the gross proceeds. The moneys in this case were, therefore, covered into the Treasury “before the payment of legal and just charges against the same,” and section 3689, Revised Statutes, makes appropriation for the payment thereof.

The resolution authorizing the adjustment of the accounts of Moore and Woodson provides that the sums named therein shall be allowed them, respectively, and that the acceptance of the said sums by said claimants, or their legal representatives, shall be taken as a full and complete relinquishment and satisfaction of their claims for services under the treaties aforesaid.

The views herein expressed are fully sustained by the House Committee on Claims, as will appear by reports Nos. 819, Fiftieth Congress, first session, and 880, Fifty-second Congress, first session, copies of which are herewith inclosed, and also by report of your office to the Secretary of the Interior of July 19, 1885, wherein it is stated that—

“The laws governing the Indian Bureau in the settlement of this class of claims are the acts of August 7, 1882 (22 Stat., 345), and the act of January 9, 1837 (R. S., secs. 2093 and 2094).”

As appropriation is made by both sections 2094 and 3689 of the Revised Statutes for the payment of the principal amount yet due these special agents, we respectfully request that administrative action be taken on these accounts and that the same be forwarded to the accounting officers of the Treasury for the settlement and payment as contemplated by the resolution of Congress hereinbefore referred to.

In view of the importance of this matter and the long time these accounts have been pending we respectfully request that they be made special.

Very respectfully,

MAXWELL & CHASE,
Attorneys for Brindle, Attorney in fact.

The COMMISSIONER OF INDIAN AFFAIRS.