

NOTES TO THE NATION JANUARY 25, 2009

Friday, January 23, James H. Payne, United States District Judge of the Northern District of Oklahoma, granted a summary judgment in favor of the Oklahoma Tax Commission. This is the case where the Osage Nation sued the Tax Commission members, essentially to prove that Osage County was still a reservation—if it was, Osages living and working on the reservation would not have to pay state income taxes. We lost.

Had we won, some individuals would save some tax money. Strictly speaking about this case, it would not have affected the income to the Nation; however, the ripple effect of a loss will be critical.

A win could have meant:

- a. The question about the Skiatook, Ponca City and Skiatook casinos being on non-trust property would have been settled.
- b. We would not have to pay Oklahoma sales taxes on the businesses we operate.
- c. The Osage Nation would have jurisdiction over the whole county as respects the Nation's activities and possibly non-Osages.

Since we have lost:

- a. The Skiatook, Ponca City and Tulsa casinos are in jeopardy—roughly 75% of our income.
- b. We are exposed to claims of sales taxes to Oklahoma on all businesses we operate on non-trust property or restricted property.
- c. All businesses on non-trust and non-restricted property will be under state jurisdiction.
- d. The Osage Nation will have jurisdiction only on trust property and restricted property.

How did we get to this point?

About 7-8 years ago an attorney named Rice issued an opinion that the Osage Reservation still existed because it had never been disestablished. Every attorney dealing with the Nation jumped on that bandwagon, except one—Geoffrey Standing Bear. Standing Bear issued a memorandum in 2003 in which he gave his reasons—citing some of the same cases that Payne now mentions in his ruling. Standing Bear pointed out that the 1906 Act took the old reservation established in 1872 and made a new mineral reservation, but allotted the surface. He said that the surface had to be trust or restricted property to be under tribal jurisdiction—just what Payne says now.

I am attaching the 27 pages of the District Court ruling.

When the spin doctors put their interpretation on the ruling, they may say: "We just filed it too late." What Payne is saying, I think, is: "What's wrong with this administration? You're 100 years too late."

The Osage Congress has a legislative writer who is an attorney. We do not have a Congressional attorney to give opinions or legal advice. I have been advocating that we hire one. A Congressional subcommittee was established to select one from applicants we received months ago. I will be recommending that a thorough

review be made and we get a second opinion on the merits of the case. The Nation had spent some \$250,000 on this case before December last year and then Congress appropriated up to \$ 1 million more.

Tomorrow, we will be having a briefing at 1:30 PM. That meeting is to be a confidential meeting. What I am saying here should be generally known to all elected officials. I want to make these statements and personal opinions now, so that no one can claim it was leaked from that meeting.

I, and hopefully others, will encourage the Congress to have a briefing for the Osage public as soon as practical.

Kugee