



United States Department of the Interior

OFFICE OF THE SOLICITOR
Washington, D.C. 20240

IN REPLY REFER TO:

JAN 18 2001

Honorable J. Dennis Hastert
Speaker, U.S. House of Representatives
Washington, D.C. 20515

Honorable George H. Ryan
Governor, State of Illinois
State House, Room 207
Springfield, IL 62706-1150

Re: Land Claim of the successors to Chief Shab-eh-nay and his Band

Dear Speaker Hastert and Governor Ryan:

In 1998 the Prairie Band of Potawatomi Indians of Kansas requested the Department of the Interior to review the Band's claim, as the successor in interest to Chief Shab-eh-nay and his Band, asserting Indian title to 1,280 acres of land in DeKalb County, Illinois. Title to this land was recognized in a reservation set aside for Shab-eh-nay and his Band by the 1829 Treaty of Prairie du Chien. I am writing to advise you that, after considerable review of the relevant facts, we have determined that the Prairie Band has a credible claim for unextinguished Indian title to this land. I understand that the leaders of the Prairie Band are not asking that this claim be referred to the Department of Justice for litigation (and indeed, the Department of Justice has not reviewed this claim). Rather, the Band's leaders believe that such a claim should be resolved through legislation enacted by Congress.

I also understand that, since requesting the Department to review the claims, representatives of the Tribe have met and discussed this claim with members of Speaker Hastert's staff. Representatives of Governor Ryan's office have met with Interior Department officials and have asked of our position.

The origin of this title claim lies in the reservation set aside in Article III of the Treaty of Prairie du Chien signed July 29, 1829 by representatives of the United States and the United Nations of Chippewa, Ottawa and Potawatomi Indians, and subsequently ratified by the U.S. Senate. 7 Stat. 320. Such reservations of Indian land constitute recognition of Indian title. The Indian Nonintercourse Act, 25 U.S.C. § 177 (enacted by Congress in 1790), makes void any conveyance of Indian title without the consent of Congress. See *County of Oneida v. Oneida Indian Nation*, 470 U.S. 226 (1985). Our research has not

revealed any subsequent treaty or Act of Congress which authorized the conveyance of these lands.

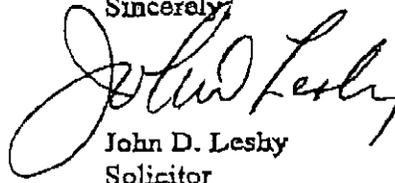
Article 5 of the Treaty of September 26, 1833 with the United Nations of Chippewa, Ottawa, and Potawatomi Indians provided that the lands reserved to Shab-eh-nay and his Band "be a grant in fee simple to him his heirs and assigns forever." 7 Stat. 433. This "fee simple" grant would have removed federal trust restrictions against alienation of those lands, but the Senate struck Article 5 from the 1833 treaty when it ratified it. See 7 Stat. 447. The legal effect was to maintain the 1,280 acres for Shab-eh-nay and his Band under the protection of the United States. These lands were, however, sold in 1849 at a public auction by the U.S. General Land Office to non-Indian settlers. Because this sale was not approved or authorized by Congress, there is a credible argument that it violated the Non-Intercourse Act.

Our research has also led us to the conclusion that the Prairie Band is the lawful successor in interest to Chief Shab-eh-nay and his Band. The Prairie Band did bring a claim against the United States under the Indian Claims Commission Act of 1946 and was paid for the loss of certain lands in northern Illinois. However, the reservation of land for Chief Shab-eh-nay and his Band was specifically excluded from the lands for which the Commission awarded payment. 11 Ind.Cl.Comm. 693, 710 (1962). As a result, we believe the U.S. continues to bear a trust responsibility to the Prairie Band for these lands.

There is evidence that Chief Shab-eh-nay tried to regain possession of these lands before his death in 1859, and that his family and friends continued these efforts after his death. In 1857 sympathetic non-Indian friends of the Chief purchased nearby land for a home for him. Almost a century after his death, a local Boy Scout troop erected a granite memorial to Chief Shab-eh-nay on this site. Representatives of the Prairie Band advised us that they have discussed this claim with local officials, and that the Prairie Band has an option to acquire some land in the claimed area.

The merits of this claim have been discussed among attorneys for this Department, attorneys representing the State of Illinois, and tribal attorneys. The success of any litigation to vindicate this claim is necessarily uncertain, and there is much to be said for pursuit of a settlement for ratification by Congress that would avoid the time, expense, and acrimony of litigation. We have long encouraged such settlements of credible claims, and there would appear to be a genuine possibility here of amicable resolution. We offer the Department's full cooperation in such an endeavor.

Sincerely,



John D. Lesky
Solicitor

cc: Chairman Badger Wahwasuck, Prairie Band of Potawatomi Indians
Chief Charles Dawes, Ottawa Tribe of Indians, Miami, Oklahoma
M. Francis Ayer, Morisset, Schlosser, Ayer & Jozwiak, Washington, D.C.
(representing the Prairie Band of Potawatomi Indians of Kansas)
Julian C. D'Esposito, Mayer, Brown & Platt, Chicago, Illinois
(representing Governor Ryan of Illinois)
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(representing the Governor of Illinois)