

May 3, 1930.

Hon. Burton K. Wheeler,
Senate Office Building,
Washington, D. C.

Dear Senator Wheeler:

We are in receipt of your good letter of the 2nd, advising that you had already drafted your report on S.872 and enclosing copy of same, for which we thank you.

Assuring you of our keen appreciation of your many courtesies in this and other matters, I am,

Sincerely yours,

ARS/C

UNITED STATES
DEPARTMENT OF THE INTERIOR
INDIAN FIELD SERVICE

Blackfeet Agency,
February 2, 1931,
Browning, Montana

The Secretary of the Interior,
Washington, D. C.

Sir:

We, the undersigned and members of the business council of the Blackfeet Tribe of Indians, residing in and upon the Blackfeet Indian Reservation, in the State of Montana, hereby empower, authorize, Joseph Brown, Robert J. Hamilton, and Richard Grant; elected and instructed as delegates by the said business council under date as first above written, and they are hereby directed to proceed at the expense of the tribe to Washington, D. C., to represent and act for the aforesaid tribe of Indians in all matters of legislation which are necessary to promote the interests and welfare of the tribe toward independent and self-supporting citizenship; and to appear before the Committees of Congress, the various departments, and Courts which have anything to do with Indian affairs, to advocate, prosecute, and work for the following matters, to-wit:

1st. To urge speedy trial, determination and adjudication of Fifty-five Treaty Claim now pending in the Court of Claims.

2nd. A bill--S. 5386--introduced on December 15, by request of the Department, which bill, if enacted, will reimpose restrictions on any land included in such patents, where such land has not been sold by a patentee and is free from mortgage.

3rd. A bill--H. R. 13569--providing for pensions for Indians in old age.

4th. We respectfully request an appropriation out of any moneys in the Treasury not otherwise appropriated, the sum of \$150,000.00 for the construction and improvement of the roads running from Two Medicine River to Heart Butte where a subagency and postoffice are maintained, a distance of $16\frac{1}{2}$ miles, from Heart Butte to Glacier Park Station, a distance of $17\frac{1}{2}$ miles, and from Browning through John Wren's ranch to Canadian Line, a distance of 35 miles.

5th. Such an appropriation to be available until expended, for the survey, improvement, construction and maintenance of Indian reservation roads not eligible to Government aid under the Federal Highway Act and for which no other appropriation is available, under such rules and regulations as may be prescribed by the Secretary of the Interior.

6th. We also respectfully request that the Secretary of the Interior be authorized, empowered, and directed to pay to the public schools of the State of Montana the sum of sixty cents per day for each day that Indian children enrolled in such school for the tuition of Indian children, under such rules and regulations as the Secretary of the Interior may prescribe, but formal contracts should not be required for compliance with Section 3744 of the Revised Statutes, for payment of tuition of Indian children in public schools. The sum of \$300,000.00 will be necessary to meet the educational requirements, we therefore respectfully ask for the above sum.

7th. That the appropriation of \$25,000.00 made in 1922 for the purpose of constructing a Highway through Blackfeet Indian reservation to connect the Highway from Yellowstone National with Glacier National Park. The said sum of \$25,000.00 was expended in construction of "scratch work grade", but in a year or so, the said "scratch work grade" was displaced by mother road running parallel.

8th.

Now then, the aforesaid Blackfeet Tribe of Indians were in no way responsible for the expenditure of the said sum of \$25,000.00 and was not requested by the Blackfeet Indians, who desire that the compulsory indebtedness be cancelled and relieve the Tribe of such an involuntary debt. The sum of \$25,000.00 was asked for by the Browning Commercial Club and was so appropriated by Congress in 1922 (S. 2327) Public, No. 519.

9th. We respectfully request that a delegation of five be permitted to visit Washington, D. C., at the expense of the Blackfeet Tribe of Indians for the purpose of looking after all matters of legislation affecting the interests and welfare of our tribe, to appear before the Committees of Congress and various Departments having to do with Indian affairs.

10th. It is proposed that the Indian Police be authorized, empowered, and directed to use whatever automobiles they may capture in performance

of their duties in conformity with the provisions of Prohibition Laws, but not surrender same to Prohibition Agents. Whatever cars may be captured should be either sold by the Indian service and proceeds deposited at Blackfeet Agency to the credit of the Liquor traffic suppression upon this reservation.

11th. We respectfully request that the Secretary of the Interior of the United States be authorized and directed to build an Indian Hospital and to furnish necessary equipment with fifty beds, cottages for a Physician, nurses, and other purposes, to be located at Blackfeet Agency Boarding School, Montana, at a total cost not to exceed \$250,000.00 which sum should be appropriated. Such an institution is absolutely necessary in the conservation of Health among our people.

12th. The matter of payment for outside hospital bills is one that has been carefully gone over by the Tribal Council, has been recommended repeatedly by them and is a need on this reservation that cannot be denied. The Government is not in a position with its own medical personnel and equipment to perform major operations. Many of our Indian people are suffering with ailments that only outside hospitalization and outside services can relieve. On the other hand if this service is not rendered to them they have little or no chance of recovery from sicknesses of this nature.

13th. The Tribal Council has repeatedly requested that sufficient funds be allowed the Superintendent of the Blackfeet Reservation to meet this kind of emergency expenditures for our Indian people. The amount necessary is not less than \$10,000.00, a year for at least three or four years until such chronic cases can be cleaned up.

14th. There is outstanding now a large number of bills of this kind against individual Indians where no action has been taken by the Department to settle them. The Indians concerned are without funds and an Indian person is fast losing his credit in going to a hospital off the reservation to get an operation performed even though such an operation might save his life. Immediate action should be taken in regard to this. Not only in the matter of paying up the accounts that are due but in taking care of current expenses of this nature.

15th. The following resolutions were adopted by the Tribal Business Council under date of Nov. 4, 1930, which we desire to call to your attention at this time:

"Whereas, Lands have been taken away from the Blackfeet Tribe of Indians without compensation and without due process of Laws, and, Whereas, said actions of the Department of the Interior are arbitrary, confiscatory and, Whereas we deem it proper, just and right that those lands so reserved for Reservoir site around Lower St. Mary's Lake be reconveyed to the said Blackfeet Tribe of Indians by enactment of the following to-wit: That all claim, right, title and interest in and to certain lands on the Blackfeet Reservation in the State of Montana, now reserved for reservoir site purposes (embracing about three thousand acres more or less) pursuant to the Act of Congress, dated _____

1902 Statute page, be and in hereby reinvested in the Blackfeet Tribe of Indians and provided, further that this Act shall be construed to make any such lands available for allotment or exchange allotment purposes. Provide further That all Reclamation projects within the Blackfeet Indian reservations shall be discontinued and the debt incurred by the construction and maintenance of such projects shall be cancelled."

"Whereas the agreement of May 1, 1888 (25 Stat., 113 Chapter 213), an Act to rectify and confirm an agreement with the Gros Ventre, Piegan Blood Blackfeet and River Crow Indians in Montana and for other purposes, in Article V - Provided that "In order to encourage habits of industry, and reward labor, it is further understood and agreed that in the giving out or distributing of cattle or other stock goods, clothing subsistence and agricultural implements, as provided for in Article III preference shall be given to Indians who endeavor by honest labor to support themselves, and especially to those who in good faith undertake the cultivation of the soil or engage in pastoral pursuits, as a means of obtaining a livelihood and the distribution of these benefits shall be made from time to time as shall be to promote the object specified," and whereas this provision has never been carried out in practice or enforced by the United States Government through the Department of the Interior and, Whereas the various tribes of Indians whose tribesmen cannot secure employment in any capacity regardless capability and efficiency. Be it therefore Resolved that an Employment Agency with a Labor Supervisor of Indian Blood be established in the State of Montana to solicit and find labor and employment for those who desire to work in the State of Montana or elsewhere and wherever possible to procure employment in any capacity."

We respectfully call your attention to the fact that for a number of years the attention of the Indian Office has been repeatedly called to the insufficiency of the ration allowances for old people. Regardless of this the appropriations and allotments made for this reservation have been cut down where conditions warrant and require that it should be increased. The situation is one that cannot be disregarded unless the Government submits to a condition where old indigent wards of the Government are going to actually suffer for the want of food and clothing. That during the past two or three years there has developed a controversy between the superintendent of the Blackfeet reservation and the Board of County Commissioners where on the one hand the Superintendent contends that the Board of County Commissioners should be responsible for the care of old indigent fee patent Indians or fee patent Indians who are incapacitated for other reasons other than old age, and that the Board of County Commissioners on the other hand, citing as their authority letters received from the central office at Washington, contend that such responsibilities properly belong to the Superintendent of the Blackfeet reservation.

It is the belief of this Committee that this matter is of too great importance to be longer disregarded. That if those fee patent Indians are to be taken care of by the Government that the necessary funds requested by the Superintendent for that purpose should be provided him and that he be instructed to take care of this responsibility. There is no question but that the allowance made for the Blackfeet

reservation for the purpose of taking care of its old and helpless people is wholly inadequate and that it should be materially and immediately increased.

16th. We respectfully request that all fee patent Indians be privileged to share equally with the trust patent Indians in all reimbursable appropriations.

17th. We respectfully request that should there be any tribal moneys become due to the Tribe through oil, mineral or pending claims before the Court of Claims be paid out to such Indians in per capita payments, to such as would be determined by the Superintendent in Charge and Tribal Council as capable and competent to manage their own affairs.

18th. We respectfully request that the Registration Rolls of the Blackfeet Indians be opened so as to enroll children born since the closing of the rolls.

19th. We respectfully request that the Blackfeet Indians be paid for water taken from the Lower St. Mary's into St. Mary's Canal and taken off the Blackfeet Indian Reservation and same sold to white settlers.

20th. We respectfully request that the Reclamation charges against the 40 acre irrigible allotments be cancelled, the charge now in many cases exceeding the value of the land which charge the Indians are not able to pay and that the Blackfeet Tribe of Indians demand compensation for diversion of Birch Creek by Conrad Investment and Land Company which is an independent corporation operating in the state of Montana, did divert all the waters of the said Birch Creek into their canal and selling same to homesteaders under the Carey Act, also appropriating the amount set aside by the Circuit Court of Appeals, Ninth Circuit, of 1,666 $\frac{2}{3}$ inches allowed by the said Court and we ask that the Indians be paid for their water and damages for the valuation of our water rights.

21st. We respectfully request that no water power site shall be appropriated, used, taken, or sold without the advice and consent of the Business Council and no allottee shall be permitted to sell any water power site situated within the limits of his allotment or allotments.

22nd. Whereas, the Blackfeet Indians of the State of Montana are desirous of representation before the Committees of Congress and the departments at Washington, D. C., having to do with Indian Affairs; that there are now before Congress certain legislation, and particularly in relation to the repeal or modification of the Act of June 30, 1919 to reopen the rolls of this tribe, as set forth herein. The tribe believes it should have representation; that these and innumerable other interests would be more fully protected, urgently advocated and properly prosecuted by a duly authorized and accredited representatives in whom the Blackfeet have confidence; and

Whereas, the Blackfeet Tribe of Indians of Montana have confidence in the ability, experience and integrity of Joseph W. Brown, Robert J. Hamilton and Richard Grant, who have made extensive study of our big claim, tribal affairs and conditions and along the line of the kind of service we desire:

Now therefore be it, Resolved by the Blackfeet Tribe of Indians through its Business Council by their assembled Council. That Joseph W. Brown, Robert J. Hamilton, and Richard Grant of our tribe be, and they are hereby, designated and appointed as delegates, agents and attorneys in fact, of our said Blackfeet Tribe, to enter into an agreement in writing for and on behalf of our said tribe with the law-firm who are now prosecuting our Fifty-five treaty claim, to represent our tribe in the preparation and prosecution of our claim against the United States Government for the diversion of St. Mary River, and in the event that they should turn down the proposition, then, to employ a tribal attorney as set forth in resolution adopted under date of 1930, to prosecute the said claim for the said diversion of St. Mary's River and to look after other matters and interests of the said Blackfeet Tribe of Indians as may be warranted by circumstances, or in any way pertaining or relating to our tribal lands or funds now in the Treasury of the United States, whether tribal or individual, and for the further purpose of giving our said tribe information and advice concerning our order that they may more fully know the facts and be thus enabled to act intelligently relative to their tribal affairs; and to also appear before the committees of Congress or the Government having to do with Indian Affairs in order to properly protect our vested property rights.

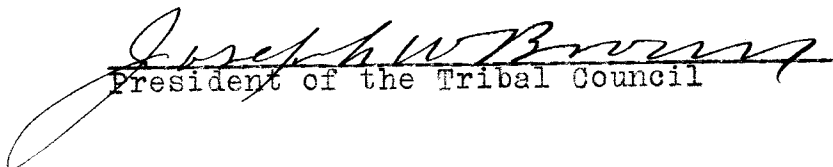
That the compensation of the said tribal attorney, if employed, must be in conformity with the existing law as per

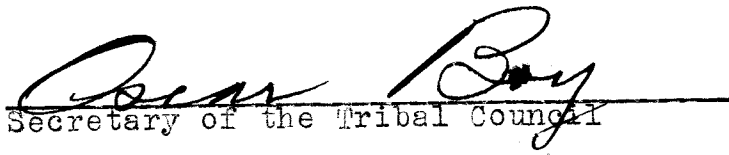
the resolutions adopted by the Business Council on the 24th day of July, 1930, and shall be subject to the discretion of the Secretary of the Interior, shall be fixed by said Secretary to include a reasonable and suitable allowance for expenses when actually engaged or required to travel in the interest of the said Blackfeet Tribe.

The contract herein authorized to be subject to the approval of the Secretary of the Interior and to conform to the existing law and regulations relating to Indian contracts for employment as herein proposed.

The Tribal Council should receive \$3.00, per diem, while in session.

Respectfully yours,


President of the Tribal Council


Secretary of the Tribal Council

MEMORANDUM

This delegation representing the Tribe is opposed to the system that is being inaugurated on many reservations of paying out to our old Indians a monthly allowance that is charged under a reimbursable plan against their lands. It is the contention of this delegation that the Government should take care of such old people on a gratuity basis and that they should not be compelled to enter reimbursable agreements that would eventually take the lands that the Government has allotted them as a treaty right.

It is further held that the view taken by the Indian Office and the Comptroller to the effect that fee patent Indians who are indigent should be supported by rations is placing the welfare of our old helpless full blood wards in jeopardy; that the Government has taken this view and rendered this opinion without providing any additional funds with which to meet this increased expense. That the County Commissioners of counties having Indian population are all too ready to immediately get from under the responsibility that they have borne in the past in taking care of indigent fee patent Indians and are now saying that the Government by its own decision has assumed this obligation. The local Superintendent cannot possibly meet this demand without further impoverishing the old full blood indigent wards and depriving them of what is lawfully due them.

It is further contended that the decision of the Department which permits the participation of fee patent Indians in the use of reimbursable appropriations is further injuring the interests of the full blood Indian wards and that the Department has made no provision for increasing such reimbursable appropriations in order to care for the needs of the patent in fee Indians whom they have stated are eligible to participate. It is the opinion of this delegation representing the Blackfeet tribe that the present appropriations for the care of the old and indigent are wholly inadequate and that for some time apparently has been. This urgent need has not received the consideration from Congress or from the Department that it really merits. It is our contention that the welfare of our old people and our helpless people is of first importance and that above all else they should be properly looked after and properly provided for.

It is further contended that the use of reimbursable funds when used for support purposes is re-acting against the industrial progress of the tribe and that reimbursable moneys should be used only for industrial purposes or for home building.

UNITED STATES
DEPARTMENT OF THE INTERIOR

INDIAN FIELD SERVICE

066

Blackfeet Agency
Browning, Montana
February 17, 1931

*Recd
Feb 21-31*

Mr. John G. Carter
% Serven, Joyce & Barlow
1422 F. Street, N. W.
Washington, D. C.

My dear John:

When I got that telegram of yours February 12 saying that you couldn't get the Montana Delegation together I was puzzled. When I got your letter of February 12 this morning it cleared the matter up.

What I referred to as "Montana Delegation" was our Blackfeet Delegation and when I got your telegram of the 12th instant, I began to think that our Indians had gone berserk and that I might have to gather them up all the way from Maryland to Alabama. I should have said the Blackfeet Delegation and intended to, but instead somehow, I got Montana, which of course left the wrong impression with you. I am wiring you this morning to find out when the Delegation started back or are starting back, confirmation of which is enclosed herewith.

I have a lot to thank you for, fellow, and I hope that some time I have a chance to return some of your kindnesses.

Very truly yours,

Forrest R. Stone
Forrest R. Stone,
Superintendent.

FRS:AEL
1 encl.

CLASS OF SERVICE DESIRED	
DOMESTIC	CABLE
TELEGRAM	FULL RATE
DAY LETTER	DEFERRED
NIGHT	CABLE
MESSAGE	LETTER
NIGHT	WEEK END
LETTER	LETTER

Patrons should check class of service desired; otherwise message will be transmitted as a full-rate communication.

WESTERN UNION

NEWCOMB CARLTON, PRESIDENT

J. C. WILLEVER, FIRST VICE-PRESIDENT

Send the following message, subject to the terms on back hereof, which are hereby agreed to

Blackfeet Agency, Browning, Montana
February 17, 1931

John G. Carter
% Seren, Joyce & Barlow
1422 F. Street, N. W.
Washington, D. C.

Has Blackfeet Delegation started home and when. Wire
Government rate collect.

Government day rate
Paid

Stone,

Confirmation Copy

NO.	CASH OR CHG.
CHECK	
TIME FILED	

Form 4206 A

OFFICE OF THE ATTORNEY GENERAL
Washington, D. C.

March 19, 1931.

Mrs. Joseph Lindon Smith,
Chairman of the Division of Indian Welfare,
General Federation of Women's Clubs,
132 E. 72nd Street,
New York City.

My dear Mrs. Smith:

Your letter of March seventh, relating to the case of United States as Guardian of the Pueblo of Taos v. Wooten, 40 Fed. (2d) 82, has been received and I am very glad to comply with your request to give the reasons why this Department did not apply to the Supreme Court for a writ of certiorari. In doing so, I may state some things that you already know about the case.

The general question involved was whether under the provision of the Pueblo Lands Act of June 7, 1924, the Indian title had been extinguished by adverse possession on the part of the defendants or their predecessors in interest. The Act provided that to support the plea of adverse possession the defendants who claimed ownership under color of title must prove open, notorious, actual, exclusive, continuous and adverse possession for at least 22 years prior to the passage of the Act, and that those claimants who were without color of title were required to prove possession, open, notorious, actual, exclusive, continuous and adverse from March 16, 1889, that is to say, for more than 35 years prior to the passage of the Statute.

In addition and in connection with the claim of title by adverse possession, claimants were required to prove that they "had paid the taxes lawfully assessed and levied thereon to the extent required by the Statute of Limitations, or adverse possession of the territory or of the State of New Mexico since the 6th day of January, 1902, to the date of the passage of the Act."

This federal statute adopted whatever requirements there might be in the state statutes respecting the payment of taxes as a condition to successfully asserting title by adverse possession. It was necessary therefore to look to the state statute. The statute involved is Section 3365 of the New Mexico Statutes, which provides:

"And in no case must adverse possession be considered established within the meaning of the law unless the party claiming adverse possession, his predecessors or grantors have for the period mentioned in this section, continuously paid all the taxes, state, county and municipal, which during that period had been levied upon the land or interest claimed, whether assessed in his name or that of another."

Now in all the cases involved in the decision of the Circuit Court of Appeals in the Wooten case, the defendants claiming title adversely to the Indians had established that their predecessors in interest had been continuously in possession of the property openly and notoriously, claiming title for more than twenty-two years prior to the passage of the act if with color of title, and for more than thirty-six years if without color of title. These facts were found by the Court and these findings were not questioned, and the findings of the trial court were in substance to the effect that the occupying claimants had during all this period, claimed title in good faith. It also was admitted that the occupying claimants had paid all the taxes that had ever been lawfully assessed against the property for more than twenty-two years prior to the passage of the Act, and that no other person had paid any of the taxes.

The only remaining question and the only question about which there was any dispute was whether there had been a "continuous" payment of taxes within the meaning of the New Mexico statute. It appeared that the occupying claimants had not in all cases in each year paid the taxes before they had become delinquent. They had all been paid before the property had been sold for taxes. The cases varied some in their facts. In one instance, it appears that a tax of \$2.84 for the year 1915 had for some reason not been paid until 1926, although all the other taxes before and after the year 1915 had been paid promptly before delinquency by the occupying claimants or his predecessors. In another instance, ex-soldiers in reliance upon a state exemption statute, later held unconstitutional, did not pay their 1920 taxes until after 1924. In one instance, the most extreme, taxes from 1919 to 1924 had been allowed to become delinquent. The fundamental question in the case was whether the word "continuous" payment meant also "prompt" payment or payment "before delinquency."

The question was first given serious consideration in this Department in December, 1928, when at the request of Attorney General Sargent at the instance of the Pueblo Lands Board, the matter was referred to me as Solicitor General. Files disclose that under date of December 6, 1928 I wrote a memorandum for the Attorney General, stating that "my impression is not that the tax must have been paid when due or within any particular time after they became delinquent, and that it can not be said that the taxes were not continuously paid merely because the occupying claimant allowed them to become delinquent or even to go to the tax sale. The idea underlying the statute is the taxes must have been paid from time to time by the occupying claimant in a way which persons who claim to own real estate ordinarily pay taxes. If the occupying claimant has paid the taxes from time to time in the way that owners of real estate ordinarily deal with their taxes, that would seem to satisfy the requirements of the Act. If an occupying claimant never paid any taxes and allowed them to accumulate and made no payment until he found it necessary to make it to save his rights under this statute, and his motive for making the payment was not that of a sincere and genuine claimant of ownership, but was merely to put him in a position to claim adverse possession under this statute, it might be said that there was not the continuous payment required by the Act. My idea is that the date of the passage of the Act does not primarily affect the matter. The Act does not require that the taxes must have been paid before the Act was passed. Some taxes levied before the Act was passed may have

been paid after its passage, but if they were paid in accordance with the common practice of ownership, even though there had been some delinquency, the fact of payment after the passage of the Act would not necessarily be fatal to the claimant."

At that time I suggested that as a New Mexico statute was involved, the decisions of New Mexico should be examined to find if the state court had construed this statute. This was done in the Department and no New Mexico decision was found. I further suggested that if there were no New Mexico decisions construing the New Mexico statute, the decisions of other states having similar statutes should be examined. This work was carefully done in the Department at that time and no decisions were found in the State courts under state statutes sufficiently like the New Mexico statute to support the claim that was then being advanced by the Government attorneys representing the Pueblos that an occupying claimant in good faith who had possession for all these years lost his right to title by adverse possession merely because he had allowed the taxes for any one year or more to become delinquent before he paid them.

The results of our inquiry at that time were transmitted to the Pueblo Lands Board. The Board proceeded in its own way to deal with the problem and the question was then carried into the Courts. The United States District Court in New Mexico reached a conclusion on this tax matter that did not differ substantially from that expressed by this Department as set forth above.

Notwithstanding the view of the District Court and those of the lawyers in this Department who had examined the question seemed to be in accord, the Solicitor General, authorized an appeal to the Circuit Court of Appeals, and the Court in the decision referred to, affirmed the decision of the District Court. The Circuit Court of Appeals said:

"If Congress had intended the claim of these settlers should be defeated if any time within the 22 years the settler had not paid his taxes until they became delinquent, it could easily have said so by inserting the words 'promptly' or 'before delinquency'. Or if New Mexico had intended the same thing it could have accomplished the result sought by similar wording in Section 3365, * * * We agree that the circumstances of delinquency might be such if would reflect upon good faith of his possession as required in other parts of the section, even if the payments are made continuously as herein interpreted, but here the trial court has found good faith and its findings in that respect is not challenged."

In speaking of the word "continuously" the Court further said:

"In any event, to construe the word as 'promptly' or 'before delinquency' appears to us to be unjustified and not in keeping with the spirit of the statute. We, therefore, hold that if a settler has paid all the taxes assessed with penalties and interest for all of the years involved prior to the filing of the suit and

prior to tax sale, he has complied with the tax paying requirement of the Act. The question of whether taxes may be paid after tax sale but before the expiration of the period of redemption is not presented by this record and is not decided."

The Court further said:

"Congress was not concerned about whether the settler paid the tax promptly or whether the tax officials of New Mexico acted vigorously or otherwise. It was concerned with the good faith of the settler and stated that a settler who has claimed ownership through the years must be consistent. If he claim ownership to the Pueblo Lands Board he must have assumed ownership to the state through the years by paying taxes like other owners. In short, there is no reason apparent why a harsher burden should be put on these settlers as to their taxes than on their neighbors."

After that decision, the case was again presented to the officials of the Department and to the present Solicitor General to determine whether an effort should be made to procure a review of this decision in the Supreme Court of the United States by an application for a writ of certiorari. The suggestion that a writ of certiorari be applied for was supported by the recommendation of Mr. Frazier.

It is the Solicitor General's duty to decide whether the Government shall take cases to the Supreme Court of the United States. When the matter came before him, the question involved was again thoroughly investigated in the Solicitor General's division, by the Solicitor General himself and by his assistant.

The decisions of every state which had a statute similar to that of New Mexico were carefully searched. Some additional decisions not previously cited were found, tending to refute the contention that merely allowing a tax now and then to become delinquent did not defeat the occupying claimant's rights. Among them were *Hinchman v. Whitstone*, 23 Ill. 185; *Osley v. Matson*, 156 Cal. 401; *Price v. Greer*, 89 Ark. 300; *Murphy v. Redeker*, 16 S. D. 612; *Votta v. Clifford*, 47 Fed. Rep. 614. The files of the Department which I have before me, show the most thorough painstaking re-examination of the whole question, and on July 10, 1930, the present Solicitor General concluded that no application for certiorari should be applied for. His memorandum in the files contains the following statement:

"In the Supreme Court we would be bound by the findings of fact contained in the final decree, from which it appears that all of the claimants had open, notorious, actual, exclusive, continuous, adverse possession of the lands in question under color of title from times prior to January 6, 1920, until June 7, 1924, the date of the passage of the Act to quiet title to lands within the Pueblo Indian Land Grants and for other purposes. The only question open to argument would be

the construction of the phrase "continuously paid all the taxes." No adequate reason has been suggested for regarding the construction of the Circuit Court of Appeals as wrong; indeed, it seems to me the more reasonable view to take of the statute. To interpret the word "continuously" to mean that the taxes must be paid without delinquency would lead to harsh and inequitable results and would accomplish no useful purpose. The statute requires open, notorious and continuous adverse possession. In these circumstances notice of the adverse claim may be inferred, and the regular payment of taxes was not therefore necessary as notice of the adverse claim of title. Continuous payment of taxes may more reasonably be inferred to have been considered by the Legislature a necessary showing of good faith on the part of the adverse occupant of the land. To add to the ordinary meaning of continuous (that is, without interruption) the meaning "without delay or delinquency" would in no way serve any purpose sought to be accomplished by the statute, and I believe the interpretation of the statute adopted by the Circuit Court of Appeals is much more reasonable than that insisted upon by the Government.

"Little comfort is to be derived from the decided cases. Such weight as they have would be against us, and as we would make a very poor showing on the reasonable construction of the statute I can see no hopes of success on appeal. Since the sole question involved is the interpretation of a local state statute, the Supreme Court of the United States would be most reluctant to review and reverse the judgments of the District Court and of the Circuit Court of Appeals unless we could clearly demonstrate error in the interpretation which they placed upon a local statute. This we could not do.

"These suits in effect are attempts to defeat bona fide claims predicated upon long-continued, open and notorious adverse possession, by a highly technical and harsh construction of a local statute. The Government should be content in having carried these cases unsuccessfully through the District Court and then to the Circuit Court of Appeals. For these reasons I have concluded not to proceed with the filing of a petition for certiorari."

You are, no doubt, aware of the fact that appeals to the Supreme Court is not a matter of right and that there is only a limited class of cases in which applications for certiorari are justified. The rule of the Supreme Court of the United States on this subject is as follows:

"5. A review on writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons therefor. The following, while neither controlling nor fully measuring the court's discretion, indicate the character of reasons which will be considered:

(a) Where a state court has decided a Federal question of substance not theretofore determined by this court, or has decided it in a way probably not in accord with applicable decisions of this court.

(b) Where a circuit court of appeals has rendered a decision in conflict with the decision of another circuit court of appeals on the same matter; or has decided an important question of local law in a way probably in conflict with applicable local decisions; or has decided an important question of general law in a way probably untenable or in conflict with the weight of authority; or has decided an important question of Federal law which has not been, but should be, settled by this court; or has decided a Federal question in a way probably in conflict with applicable decisions of this court; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this court's power of supervision.

(c) Where the Court of Appeals of the District of Columbia has decided a question of general importance, or a question of substance relating to the construction or application of the Constitution, or a treaty or statute, of the United States, which has not been, but should be, settled by this court; or where that court has not given proper effect to an applicable decision of this court.

One of the important functions of the Solicitor General is to consider carefully requests by other Government lawyers in the Department that applications for writs of certiorari be made, and to test such requests in the light of the foregoing rule. It is true that Mr. Frazer, a very competent lawyer who has earnestly represented the rights of the Indians in these cases, recommended petition for certiorari in this case, and that some, if not all, of the members of the Pueblo Lands Board would like to have seen the case taken to the Supreme Court, but there is hardly a Government case in which the Government loses in the lower court in which some very earnest and sincere lawyer or official in the Government service does not urge an application for certiorari to the Supreme Court. Those who long and earnestly represent certain views in the court below, naturally feel disappointed if they lose and are disposed to urge appeals.

If we yielded to all these requests, we would be violating the rules of the Supreme Court and swamping that court with useless litigation and causing useless trouble and expense to all concerned. After a case has gone through the United States District Court and gone through the Circuit Court of Appeals, before any further appeals are taken it is then taken by the Department to the Solicitor General's Office which is expected to have and has had by tradition

as able legal talent as there is in the Government service, to re-examine the case afresh in a judicial frame of mind and to determine whether any further litigation is necessary to the public interest. That was conscientiously done in the present case. When the question of appealing to the Supreme Court reached the present Solicitor General, he found that back in 1928 before the litigation had reached the Court, the question had been carefully examined in the Department by the then Solicitor General and a conclusion reached that the real question was one of good faith and whether all the taxes had been paid in the way in which undisputed owners of property commonly pay them, and that merely allowing taxes to become delinquent through inadvertence or oversight or honest claim of exemption, or lack of funds or for other like reasons, did not in and of itself, where a bona fide claim of ownership existed, defeat the claimant's rights. He found that a similar conclusion had been reached by the United States District Court and again by the Circuit Court of Appeals and that every judge who has passed on the question reached the same conclusion.

It was also obvious to him that the claimants in these cases or other predecessors in interest had been found to be in actual continuous possession of this property under claim of ownership for nearly a quarter of a century if with color title, and for more than a third of a century if without color of title, and had improved and occupied the land in good faith and that the Courts had so found and their findings were undisputed.

It also appeared that by the terms of the Statute if the Indians lost title through adverse possession by occupying claimants, they were to be compensated by payment out of the public Treasury of the value of the land. While this factor does not bear directly on the interpretation of the statute, Courts are but human and where the Indian was to be compensated in money for what he had lost, the disposition of the Courts would naturally be not to defeat a bona fide claimant who had occupied and improved the land in good faith for so many years, and by any forced construction of the statute.

If you will examine the rule of the Supreme Court above quoted, you will find clearly that this case did not come within sub-division (a) or sub-division (c) of rule 5. If you test the case by the provisions of sub-division (b) of that rule, you will find that there was no conflict between the decision of the Circuit Court of Appeals in this case and that of any other Circuit Court of Appeals on the same matter; that there was no important question of local law decided in conflict with applicable local decisions because there were no local decisions on the subject; and that there was no important question of general law decided in a way which we could honestly say was "probably untenable" or in conflict with the weight of authority, and no important question of Federal law was involved. Under all these conditions it is hard to see how the Solicitor General could have reached any other conclusion than he did.

It is true that there were a considerable number of sincere and earnest people who have the interest of the Indians greatly at heart who felt that their views should be accepted and that this case should be taken to the Supreme Court, regardless of what the Attorney General and Solicitor General thought about it. Obviously, the easy course for us would have been to shirk responsibility and avoid any criticism from the friends of the Indians by ignoring our own views about the case and doing what is commonly called "passing the buck", by filing a petition for certiorari and allowing the Supreme Court to deny it or affirm the decision below.

There are many cases in which we could avoid difficulty, disagreement and criticism by such a course of action but I think you will agree with me that that is not the way in which the Department of Justice should function. In the present case I have not a doubt that if application for certiorari had been made, it would have been denied or if granted the decision below would have been affirmed. Such a course would have avoided responsibility but gained nothing for anybody concerned, and advanced the interest of the Indian not one whit.

I am enclosing for your information a copy of a letter I wrote the Secretary of the Interior under date of December 18, 1930 relating to this case.

If there is any further information that you would like, please command me.

Very truly yours,

(Signed) WILLIAM MITCHELL

Attorney General.

December 18, 1930.

The Honorable
The Secretary of the Interior.

My dear Mr. Secretary:

I have your letter of December 5th, enclosing a letter dated November 26th from Dr. John Randolph Haynes of Los Angeles, urging that a case be taken to the Supreme Court of the United States from the Circuit Court of Appeals involving the question as to what is meant by continuous payment of taxes necessary under the proceedings of the Public Lands Board to be established by an occupying claimant to entitle him to maintain the defense of adverse possession against the Indian title.

This matter first came to my attention in 1928, when, as Acting Attorney General, I examined the law and wrote a memorandum for the general guidance of the Pueblo Lands Board. The suggestion then made to me by the counsel for the Pueblo Lands Board was that there was no continuous payment of taxes by an occupying adverse claimant if he allowed the taxes for any year to become delinquent. We did not agree with that view here in the Department, but reached the conclusion that merely allowing the taxes to become delinquent one year did not defeat the claim of adverse possession and that the real test was whether there was a continuous payment of taxes in good faith in a way such as is usual with bona fide owners of property. The view here in the Department at that time was thereafter determined to be the law by the United States District Court and the United States Circuit Court of Appeals, and the question came up before the present Solicitor General as to whether the Government should apply for a writ of certiorari in the Supreme Court to review the decision of the Circuit Court of Appeals. A very careful examination of the law was again made and the conclusion reached that there was no prospect of reversing the decision. None of us here saw any prospect of inducing the Supreme Court to hold under these statutes that merely allowing a tax to become delinquent where it is paid after delinquency, interrupts the continuity of payment of taxes required by the act. It must be borne in mind that under the Act of Congress relating to this matter, in order to establish adverse possession against the Indian title the occupying claimant must show that he or his predecessors in interest have been in possession under color of title, that is, under some deed or conveyance, for at least 22 years and that if there is no color of title he or his predecessors must have been in possession for at least 35 years, and that this possession must have been open, notorious, adverse, and under claim of right. We can never get to the question as to what is continuous payment of taxes unless this adverse possession for these periods is first established. No court would be disposed to defeat the claim of an occupying claimant who has held possession all those years and paid all the taxes on the property merely because he had allowed the taxes now or again to become delinquent, especially where this law contemplates that where the land is lost to the Indians because of adverse possession and the failure of the Government to sue promptly, the Indians will be paid in money by the United States. Unless it is held that merely delinquency in taxes does not interrupt continuous payment, the only possible rule is that all of the taxes must be paid in good faith by the occupying claimant in accordance with the practice common among bona fide owners of property, who we all know frequently

allow their real estate taxes to become delinquent for one reason or another.

The case in the District Court of Appeals, to which reference is made, has been finally disposed of as the time has gone by when any application for certiorari could be made. There is no case now pending before the Department in which any decision of the Circuit Court of Appeals has been rendered in which any application for certiorari is under consideration. I am told that there is one case in the Circuit Court of Appeals now pending and awaiting decision next Spring, which involves the question, among others where there is an interruption of a continuous payment of taxes if the owner not only allows the tax for a particular year to become delinquent but allows it to proceed to a tax sale from which he redeems. I am also under the impression that the question is rather one of minor importance. However, that may be, it appears that no case can come before the Department for consideration as to whether an application for certiorari should be made to the Supreme Court until the case now pending in the Circuit Court of Appeals is decided.

Respectfully yours,

(Signed) WILLIAM D. MITCHELL,

Attorney General.

Browning Montana

May 10th / 31

John². Carter.

Dear Sir.

PAID
MAY 15 1931

It just to my mind today
in order to learn some news from you.

We had a big conference at Heart
Butte on 7 + 8 This month. We also made
some resolutions on our about our Big
claim. We Indians to get our money in
per capital payments. also discussed on
several occasions. also if another deligation
be sent to Washington D.C. to elect full Blood
Indians to represent the Tribes rights.

you also promised me + Two Sun White Owl
that we was to be some of the deligation
from here. at the time the deligation
was send from here. most of us objected.

Bob J. Hamilton. but never there is Mr. H. Stone
our Ind Agent sent him too.

Now my friend I've been waiting to hear
from you. it has been long time since
I haven't heard of you.

Page

2

I had a hard winter last, on account of
my illness, & since was unable to work
but still remain quite recovered from it.
The reason why I mentioned my unphysical
health. I want to ask you for a favor.
I wish you would try to get me a suit of
clothes. I don't want you to buy them for
me. but I want charity.

Will close now with all best regards
Hoping to hear from you soon.

Good bye.

Your sincere friend

Mike Little Dog.