

Solicitor's Memo Reveals Current Status Of Tribal Constitution and Bylaws

At the request of Delford Lang as well as BIA officials, the Tribune is publishing a memo from the Regional Solicitor's office concerning the effect of the termination law on the constitution and bylaws of the Klamath Tribe. With both the remaining and withdrawing groups discussing the need for tribal reorganization it is felt that this information particularly appropriate.

February 11, 1959

TO: Bureau of Indian Affairs.

Your memorandum of January 16 asks our opinion relative to the inquiry of Dibbon Cook, Secretary of the Klamath Tribal Executive Committee, whether or not any portion of the constitution and by laws of the Klamath Tribe has been abrogated by the Klamath Termination Act, as amended.

Section 19 of the Klamath Termination Act provides:

"Any powers conferred upon the tribe by such constitution which are inconsistent with the provisions of this Act are hereby terminated. Such termination shall not affect the power of the tribe to take any action under its constitution and bylaws that is consistent with this Act without the participation of the Secretary or other officer of the United States."

The Klamath Termination Act has, therefore, abrogated the Klamath Tribe's constitution and bylaws to the extent that the same conflict with the Klamath Termination Act. In a determination of the extent of the conflict of the constitution and bylaws with the Klamath Termination Act, attention is invited to the fact that the Klamaths are not disbanded as a tribe upon completion of the provisions of the Act and the publication of the proclamation provided for in section 18 of the Act. As stated by the Solicitor in Opinion M-36284 of May 20, 1955:

"Section 14(a) of the act provides that the laws of Oregon with respect to the abandonment of water-rights by non-use shall not apply to the tribe and its members until 15 years after the date of the proclamation. This language indicates that the tribe will continue in existence beyond the date of the proclamation. The remaining group of members who do not elect to withdraw are repeatedly mentioned in the act as a 'tribe'. (See Section 12 of the act). Likewise in Section 14(b) of the act it is provided

that nothing in the act shall abrogate any fishing rights or privileges of the tribe or the members thereof enjoyed under federal treaty. If nothing in the act can abrogate such fishing rights or privileges of the tribe, then it would appear obvious that the proclamation date would not abrogate such rights or privileges of the tribe, and that the tribe would continue as such for the purposes of exercising such rights and privileges."

Viewing the tribal constitution and bylaws in the light of the above provisions of section 19 of the Klamath Termination Act and the opinion of the Solicitor, it is readily apparent that the constitution and bylaws have been abrogated in several particulars, including but not limited to the following:

1. Article III of the constitution has been completely abrogated. Pursuant to the Termination Act, membership in the tribe is composed now of those whose names appeared on the final roll created pursuant to the provisions of the Klamath Termination Act and who did not elect to withdraw from the tribe, and withdrawing members until they are fully paid off. When withdrawing members are fully paid, they cease to be tribal members.

2. Article IV of the constitution has been partially abrogated. The jurisdiction of the General Council no longer embraces the management of all tribal business. Pursuant to the Klamath Termination Act, the management of all tribal assets will be performed by a trustee in accordance with a trust agreement between the United States and the trustee.

3. Article V of the constitution, entitled "Powers," is partially abrogated. The Tribal Council can no longer manage all tribal property for the reasons stated in 2 above. The tribe's powers to borrow money and to contract are not abrogated by the provisions of the Klamath Termination Act, but the tribe would be limited in so doing inasmuch as the tribal assets would be in the hands of the trustee and not available to the tribe to pledge or otherwise encumber.

We cannot, of course, anticipate what the tribe may seek to do in the future. Any proposed action of the tribe in the future must be tested against the provisions of the Klamath Termination Act. If the proposed action conflicts, it is invalid, if it does not, it is valid . . .

Fringe Unit Sales Information Given

Given following is a tabulation of the acceptable bids received in KTL-1-59, held Feb. 16, 1959, at the tribal land sales office. With 31 units being offered for sale, acceptable bids (in excess of the realization value) were received on 5. Of the remaining 26 units, bids for less than the realization value were received on two and no bids were received on 24.

Unit No.	High Bidder	Amt. Bid	Realization Value	Members Int.
12B	L. Gienger	\$107,798	\$104,798	1 gr. of 4
88B	Rufus & Dorothy I. Robinson	350	250	0
101	Joseph Kycek	1,055	1,000	2
130	Joseph Kycek	760	629	4
132	Joseph Kycek	1,000	750	2

A schedule for oral auction bidding between tribal members to be held at the tribal land sales office on Wednesday, March 4 and Thursday, March 5, for units advertised under invitation KTL-1-59, is given as follows:

Wednesday, March 4, 1959

Time	Unit No.	No. of Bidders Scheduled
8:45 A. M.	119	2
9:30 A. M.	107	7
10:15 A. M.	106	3 and 1 group
11:00 A. M.	95	2 and 1 group
1:30 P. M.	97	2 and 1 group
2:15 P. M.	99	1 and 1 group
3:00 P. M.	115A	2 groups
3:45 P. M.	115B	2 groups

Thursday, March 5, 1959

Time	Unit No.	No. of Bidders Scheduled
9:30 A. M.	12A	3
10:15 A. M.	117	1 and 1 group
11:00 A. M.	128	2
1:30 P. M.	222	2

Auction bidding by tribal members on units in the first two fringe sales (KTL-1-58 and KTL-2-58) resulted as follows:

Unit No.	Successful Bidder	Amount Bid
70	Joseph Jackson, Jr.	\$ 1,460
89	John H. Copeland	800
91	Joseph Jackson, Jr.	2,150
92	Joseph Jackson, Jr.	10,000
103	Coralie Crawford Nelson	9,150
105	Joseph Jackson, Jr.	12,500
113	Theodore A. Crume	26,750
123	Dorothea McAnulty	2,570
131	Robert Doak	800
114B	Irwin Crume	12,250
108	Roland James Hicks	3,900

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Bradshaw calculated that per capita for remaining members would run at \$1500 to \$1700 per year under the current timber sales contract. He stated that there were no provisions for accumulation of proceeds for expansion, the main objective being operation of the area available, making it as productive as possible. Bradshaw related that he didn't know what BIA intentions regarding a March per capita were, but that if there was to be one, it would best be made by the BIA. However, if trust execution

went through by March 2, it would have to be made by the bank, he added.

Other matters discussed included the possibility of the trustee setting up a loan program, which Bradshaw advised against for the present as leading to collection problems, financial difficulties, etc. Also, he noted, the trust instrument precludes a member's borrowing against his share. Inheritance of shares was also discussed.

The next meeting was set for March 17.