

1975 S.C. Op. Atty. Gen. 60 (S.C.A.G.), 1975 S.C. Op. Atty. Gen. No. 3988, 1975 WL 22286

Office of the Attorney General

State of South Carolina

Opinion No. 3988

March 6, 1975

*1 Mr. Gilbert Blue

Chief

Catawba Indian Tribe

Route 3, Box 395

Rock Hill, SC 29730

Dear Chief Blue:

You have inquired as to the status of approximately 630 acres of land in York County, South Carolina, which was purchased by Joseph F. White as an agent of the State of South Carolina on December 24, 1842, for the use and benefit of the Catawba Indians (see enclosed copy of the deed).

In order to fully answer this inquiry, it is initially necessary to examine the history of the Catawbas and their relationships with the State of South Carolina and the United States. On March 13, 1840, the Catawba Indians and five Commissioners appointed by the Governor, Partick Noble, entered into a Treaty at the Nation Ford Catawba. The Catawbas agreed to grant to the State of South Carolina all their right, title and interest to approximately fifteen (15) square miles of land in the Districts of York and Lancaster. In exchange the Commissioners agreed to furnish the Catawbas with a tract of land of the value of five thousand dollars (\$5,000.00) and also of pay them two thousand five hundred dollars (\$2,500.00) at the time of their removal from the former Indian lands and fifteen hundred dollars (\$1,500.00) per year for nine years. The lands to be purchased for the Catawbas were to include three hundred (300) acres of good, arable lands fit for cultivation to be purchased in Haywood County, North Carolina, or in some other thinly populated region where the Indians may desire. According to the Report of the Commissioners submitted to the Governor on April 3, 1840, the Catawba Indians had leased out every foot of their land and the tribe consisted of only 88 members (12 men, 36 women and 40 children).

The Report of the Commissioners also recommended that the State employ an agent to purchase the land for the Catawba Indians and distribute among them their annual payments. Mr. Joseph F. White was appointed agent to see that the treaty terms were carried out and to report back to the Legislature regarding the land to be purchased. The State of North Carolina, however, refused to consent to the purchase of lands in Haywood County by South Carolina for the Catawbas. In an attempt to make some arrangement for the care and relief of the Catawbase who had begun to drift back into South Carolina, on December 22, 1842, Joseph F. White purchased 630 acres of land in York County on behalf of the State of South Carolina for the use and benefit of the Catawba Indians. See generally D. Brown, The Catawba Indians: The People of the River (1966) for an excellent history of the Catawbas and their relationship with the State of South Carolina.

Based on the Treaty of Nation Ford South Carolina continued to owe the Catawbas a debt of honor. From 1900 to 1946 the South Carolina Legislature appropriated approximately \$400,000.00 for the Catawba Indians in partial payment of that debt of honor. W. R. Bradford, The Catawba Indians of South Carolina (S. C. Dept. of Educ., 1946). On December 14, 1943, negotiations involving the State of South Carolina, the Catawba Tribe and the Bureau of Indina Affairs colminated in a 'Memorandum of Understanding'. In this Memorandum, South Carolina agreed inter alia to contribute \$75,000.00 for the purchase of additional lands for the Catawbas and to convey all lands to the United States in trust. See D. Brown, supra at 336 for a complete list of the obligations of all contracting parties. A committee created by the General Assembly purchased 3,432.8 acres for the Catawbas and transferred the the land to the Bureau of Indian Affairs

for the use of the Catawbas. The Catawbas continued to reside on the federally supervised reservation until 1959. On March 28, 1959, dissatisfied with restrictive federal land measures, the Tribal Council voted forty (40) to seventeen (17) authorize Congressman Robert Hemphill to introduce a bill to sever all tribal relationship with the federal government. This bill (Public Law 86-322, 73 Stat. 592, a copy of which is enclosed) was signed into law by the President on September 21, 1959. Tribal members were given the option of taking their share in land or in cash. After the distribution of the Catawbas' assets, on June 19, 1962, Secretary of the Interior, Steward L. Udall, announced the termination of the legal relationship which the Government had for nearly 20 years with the Catawba Indian Tribe of South Carolina and with its individual members as Indians. See enclosed letter from the United States Department of the Interior, Bureau of Indian Affairs, to Director, South Carolina Archives Department.

*2 This fairly recent dispersion of the federal Catawba reservation has necessitated an opinion from this Office concerning the status of the old 630 acre State reservation. It is the Opinion of this Office that the 630 acre State reservation is still held in trust by the State of South Carolina for the use and benefit of the Catawba Indians under the terms of the deed of December 24, 1842.

The deed of 1842 created a charitable trust with the State of South Carolina as settlor, Joseph F. White or his successor in office as the trustee and the Catawba Indians as the beneficiaries. As pointed out in G. Bogert, *Trusts & Trustees* § 379 (2d ed. 1962):

Trusts to help the underprivileged or distressed are charitable even though not confined to the belief of relief of the poor or sick. It is deemed in the public interest to assist such persons in asserting and procuring their rights. Gifts to aid minority groups such as Indians or negroes fall into this class. (footnotes omitted).

Extensive research has revealed no evidence that this trust has terminated under any of the applicable legal doctrines for termination of charitable trusts. See generally Bogert, supra §§ 399 & 1008. The deeds concerning the federal reservation indicate that 3,432.8 acres was purchased in 1943 (D. Brown, supra at 357 m.79) and that there were 3,434.3 acres to be divided in 1959 according to the Bureau of Indian Affairs. C. Hudson, *The Catawba Nation* 102 (1970). From the amount to be distributed in 1959, or 35 acre tract of land on which the school, church and playground were located and a 100 acre tract that included a fish pond were set aside and given in trust to the Catawba Mormon Church. These figures indicate that the 630 acre state reservation was not included in the distribution and sale of the federal reservation. Moreover, because the 630 acres is held under a charitable trust bestowed by the State of South Carolina, an order from a court would be required to terminate it. See Bogert supra § 399.

Further evidence of the continued existence of this charitable trust is that the York County Auditor and Tax Collector consider the land owned by South Carolina and therefore tax exempt. S. C. Dept. of Archives and History, Report on the Status of Catawba Indian Land, September 13, 1971. The South Carolina General Assembly also recognizes the continued existence of a Catawba Indian Reservation as exemplified by Act No. 580, [1971] S. C. Acts & Jts. Res. 1030, which states:

All mobil homes on the Catawba Indian Reservation and on the one hundred acres held in trust for the Catawba Indians by the Church of Jesus Christ of Latter Day Saints in York County are hereby exempt from all county property taxes.

In light of the foregoing it is the opinion of this Office that the 630 acre State reservation is still held in trust by the State of South Carolina for the use and benefit of the Catawba Indians.

Very truly yours,

John L. Choate

*3 Staff Attorney

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