

(7) Federal Register Notice of Final Determination

- October 21, 1981
- April 6, 1982

Bureau of Indian Affairs

Final Determination That the Lower Muskogee Creek Tribe—East of the Mississippi, Inc., Does not Exist as an Indian Tribe

This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Pursuant to 25 CFR 54.9(h) notice is hereby given that the Assistant Secretary has determined that the Lower Muskogee Creek Tribe—East of the Mississippi, Inc., does not exist as an Indian tribe within the meaning of Federal law. This notice is based on a confirmed determination, following a review of public comments on the proposed findings, that the group does not meet four of the criteria set forth in 25 CFR 54.7 and, therefore, does not meet the requirements necessary for a government-to-government relationship with the United States.

Notice of the proposed findings to decline to acknowledge the group was published on page 11718 of the Federal Register on February 20, 1981. Interested

parties were given 120 days in which to submit factual or legal arguments to rebut evidence used to support the findings that the Lower Muskogee Creeks (hereinafter referred to as LMC) do not exist as an Indian tribe.

During the comment period, two substantive rebuttals were submitted challenging the proposed findings pursuant to 25 CFR 54.9(g). The first was submitted on May 18, 1981, over the signature of Neal McCormick of Cairo, Georgia, chief of the petitioning group. A second, and separate rebuttal, was submitted on June 9, 1981, by John Wesley Thomley of Molino, Florida, as vice chief of the petitioning group. Subsequent to publication of the proposed findings, Mr. Thomley notified the Acknowledgment staff that he was severing all connections with the McCormicks and that he intended to file a separate rebuttal contending that the original petition had omitted substantial amounts of important evidence.

Three letters were received in support of the findings: one from the Director of the McIntosh Reserve of Carroll County, Georgia; one from the Director, Office of Indian Heritage for the State of Georgia; and one from the Principal Chief of the Muskogee (Creek) Nation of Oklahoma.

Both rebuttals were carefully considered, individually as well as collectively, to determine whether the sum of the evidence and arguments would strengthen the group's overall petition for acknowledgment. The rebuttals, whether considered separately or together, did not present evidence which would warrant changing the conclusion that the LMC does not exist as an Indian tribe within the meaning of Federal law.

Although both rebuttals spoke to some degree to the four criteria which the LMC had failed to meet, neither rebuttal addressed the following major factual conclusions set out in the proposed findings: (1) The unstable membership which shows great fluctuations in size and composition; (2) the lack of historical data for most geographic areas and for many time periods, and the concurrent lack of evidence of political continuity; (3) the apparent recent institution of "clan" organizations; and (4) the lack of historical connections or association between families that would be expected from the asserted historical tribal character. The conclusions regarding the limited historical identification of the group as Indian and the lack of proven Creek ancestry for a large part of the group's membership were either not addressed or were

answered by restating earlier arguments. Some of the factual conclusions in themselves were sufficient to deny tribal status to the group, but collectively they were overwhelmingly against the LMC assertion that they were a tribe.

In accordance with § 54.9(j) of the Acknowledgment regulations, an analysis was made to determine what, if any, options other than acknowledgment are available under which the Lower Muskogee Creek Tribe—East of the Mississippi, Inc., could make application as a tribe for services and other benefits available to recognized Indian tribes. No viable alternatives could be found due to the group's uncertain Indian ancestry, the geographical dispersion of its membership, and the group's lack of inherent social and political cohesion and continuity. This conclusion is based on independent research conducted by the Acknowledgment staff and on the factual arguments and evidence presented in the LMC petition and in the two rebuttals which challenged the proposed findings.

As individuals, however, those who shared in Docket 21 will also share in the per capita award to be made under Docket 275. Persons who did not share in Docket 21 who have applied and meet the requirements of the judgment fund distribution plan could share in Docket 275. With regard to future awards to individual Eastern Creek Indian descendants, we are unable to say what the eligibility requirements for sharing in such awards might be or who the eligible beneficiaries would be.

A report summarizing the Department's response to the evidence and arguments submitted to refute the proposed findings is available to the petitioner and interested parties upon written request. Requests for copies of the report or the proposed findings published earlier should be addressed to the Assistant Secretary—Indian Affairs, Department of the Interior, 18th and C Streets, N.W., Washington, D.C. 20242, Attention: Branch of Federal Acknowledgment.

This determination is final and will become effective December 21, 1981 unless the Secretary of the Interior requests the determination be reconsidered pursuant to 25 CFR 54.10(a-c).

Ken Smith,

Assistant Secretary—Indian Affairs.

October 8, 1981.

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