

**Opinion of Hon. John Birdsall, Attorney General, Republic of Texas to His Excellency Sam Houston, President,  
Republic of Texas in reference to the Cherokee Lands:**

TO HIS EXCELLENCY THE PRESIDENT OF THE REPUBLIC OF TEXAS:

Sir, I have looked into the treaty with the Cherokee Indians and their associate bands together with the documents accompanying the same, and have endeavored to bestow upon them the consideration and reflection which their importance demands.

As far as it was possible for the general consultation to concede and establish the rights of the tribes in question to the territory designated, The Indian Title was guaranteed by that body in their solemn declaration and pledge made on the 13<sup>th</sup> of November 1835, and severally signed by all the members of that body. The language of that instrument partakes largely of the strong and deep feeling that marked the crisis at which it was put forth. It would be difficult to combine language in any form better calculated to produce with those to whom it was addressed, implicit and unqualified confidence as to its truth and sincerity.

A departure at this time from the Stipulations and profession without good cause, cannot fail to be regarded by the Indians and world, as an act of the gross perfidy and injustice.

If it were admitted that the constitution transcended its legitimate powers in executing the Declaration and pledge referred to, still as the Indians could not be presumed to know the limitations, if any, that were imposed upon the authority of that body, the principles of common justice and good faith would seem to require its fulfillment by the people of Texas.

A little attention, however, to the character of that body and the subsequent course of the Government, will, I think, satisfy all that its powers were fully equal to the authority it assumed. This body consisting of about sixty members was a radical and primary representation of the people of all Texas (Tejas) in their political capacity.

They assembled independently of Coahuila in the political organization, which had formerly existed, and by this act became virtually severed and separated from the Mexican Empire. They were the only political authority known to the country (Tejas) for the time being, and were, therefore, necessarily charged with the duties and attributes of Government.

They were the Government de facto, they exercised the prerogative of government, and they suspended the Mexican land laws and closed the Mexican levied troops, created civil and military officers, placed the country in a position of defense and finally organized a provisional government.

If there was any one subject more immediately connected with their duties than another, or more clearly within the range of their powers, we should infer from the history of that period, it was that of our relations with the Indians Bands upon the Northern frontier. Aware of the importance of cultivating a friendly understanding with these Indians, the Mexican Government had in May '35 made provisions for selecting from their vacant lands in Texas (Tejas) such a district as should seem most appropriate for their location.

On the 13<sup>th</sup> of November following the Consultation, appreciating the policy of such an arrangement, made their Declaration and pledge.

If this was not within the scope of their powers, was the closing of the land offices and the suspension of the land system by them a lawful act? Of (example) if lawful, are all the titles and surveys made since the offices were ordered to be closed, legal and valid? A little reflection will show us that any attempt to restrain the powers of the Consultation within special limits, and sustain or validate their acts as they seem to fall within or beyond those limits, involves consequences to this country of the most serious character.

In December 1835, the provisional Government established by the Consultation on appointed Commissioners to treat with the Tejas-Cherokee Indians, in pursuance of the proffer in the Declaration and Pledge, they commissioned them, gave them written instructions and dispatched them on their mission. Their labors resulted in the treaty of

23 of February 1836.

It will be observed that so far as concern the claims of the Indians to the District of Country assigned them, as lying 'North of the San Antonio Road, the Neches, and West of the Angelina and Sabine Rivers', the right is concluded and established by the declaration and Pledge. To this extent it had become a vested right and the only office of the Commissioners upon this part of the treaty was, to ascertain and fix with more precision, if possible, the bounds and limits of the Grant.

I have compared with some attention the provisions of the treaty with instructions furnished the Commissioners, and am unable to discern any discrepancies unfavorable to the government.

That it would be more convenient to have all the lands of the Republic clear of Indian Claims, and subject to the disposition of our own citizens, is very plain - - but that they also are of right entitled to a resting (place) and suitable provision in the country where their lot has been cast is equally plain, and whatever may be the disparity between them and us in point of intelligence, power and social condition, they have the same right as ourselves to the benefit of those great principles of natural justice and equity, which are immutable and universal.

I have been favored by Chief Justice Collingsworth with a perusal the note of this opinion on this subject and fully concur in all the views he presents.

With great respect, Your Obdt. (Obedient) Servt. (Servant),

John Birdsall, Attny. Genl.