

Testimony of Chief Douglas G. Lankford
Miami Tribe of Oklahoma
Before the Subcommittee on Indian, Insular, and Alaska Native Affairs
Legislative Hearing Concerning H.R. 487 (Mullin).

June 10, 2015
11:00 a.m. 1324 Longworth
House Office Building
Washington, D.C. 20515

Chairman Young and Members of the Subcommittee:

Thank you for the opportunity to appear before you today and thanks to our congressman, Mr. Mullin for introducing this bill.

On behalf of the Miami Tribe of Oklahoma, we respectfully request that you pass H.R. 487. The purpose of H.R. 487 is to make it clear that the Miami Tribe of Oklahoma (“Tribe”) has the legal ability to lease, sell, convey, warrant or transfer all or any portion of the interest in real property not held by the United States in trust for the benefit of the Tribe. The legislation is necessary because the federal Non-Intercourse Act of 1834 (25 U.S.C. § 177) now interferes with the Tribe’s ability to lease, mortgage, or sell fee land owned by the Tribe. (Trust lands will not be affected.)

25 U.S.C. § 177, the so-called Indian Nonintercourse Act, restricts Indian tribes from conveying *any* lands without federal approval in the form of a “treaty or convention.” The Act was designed to “protect Indian tribes by ensuring Indian lands were settled peacefully and Indians were treated fairly.” The precursor to the Act was originally passed in 1790, and although its purpose is quite outdated, the Supreme Court recently said of the Act that it “remain[s] substantially in force today, . . . [and] bars sales of tribal land without the acquiescence of the Federal Government.”¹

As you may imagine, the Act has generated a great deal of litigation. The Oneida Nation of New York, in particular, has been the subject of many Nonintercourse Act lawsuits. The Nation has had ongoing battles with the State and local governments in New York regarding whether various of its lands passed out of Indian ownership with the proper type of consent. The U.S. Supreme Court sided with the Nation, finding that “the Oneidas stated a triable claim for damages against the County of Oneida for wrongful possession of the lands they conveyed to New

¹ *City of Sherrill v. Oneida Nation of New York*, 544 U.S. 197, 204 (2005) (internal citation omitted).

York State in 1795 in violation of [the Act].² More recently, a federal district court refused to find that a county could foreclose on land originally ceded under the State treaties that the Nation had reacquired in fee simple:

The Nonintercourse Act, in plain language, prohibits the conveyance of lands from any Indian nation. The foreclosure sought by the County would be a conveyance of lands from the Nation. Accordingly, the foreclosure is prohibited by the Nonintercourse Act.³

It is well settled, therefore, that *federal* approval in the form of a treaty or a statute is required before tribes can give up title to their lands.

Several tribes have obtained special legislation from Congress authorizing them to sell or mortgage specific lands.⁴ We are seeking similar relief. Relief from 25 U.S.C. § 177 is necessary to enable my Tribe to effectively manage our lands, to put them to productive use, and to sell fee parcels that are determined to be excess or were purchased for investment purposes. Without this specific exemption, a potential cloud will remain on our lands. Title insurance companies will not issue title commitments either to lenders or prospective purchasers because of the uncertainties raised by the Non-Intercourse Act. Without this relief my Tribe is not able to effectively manage our assets for the benefit of our people. We simply seek the right to control our own business affairs and determine our future.

Thank you, Mr. Chairman and Members of the Subcommittee, for the opportunity to appear before you today and be heard on this issue.

² Id. at 202 (citing *County of Oneida v. Oneida Indian Nation of New York*, 470 U.S. 226 (1985)).

³ *Oneida Indian Nation of New York v. Madison County*, 401 F. Supp. 2d 219, 228 (N.D.N.Y. 2005).

⁴ See, e.g., Pub. L. No. 102-497, 106 Stat. 3255 (authorizing the Mississippi Band of Choctaw Indians to sell land to National Disposal Systems, Inc.); Pub. L. 107-331, 116 Stat. 2834 (giving the Seminole Tribe the ability to transfer a particular parcel without further congressional authority); Pub. L. No. 103-435, 108 Stat. 4566 (citing the Act while approving the sale of a parcel owned by the Ysleta Del Sur Pueblo); Pub. L. No. 105-256, 112 Stat. 1896 (Lower Sioux).