

1974 WL 27482 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 11, 1974

\*1 Honorable Robert L. McFadden  
York County Representative  
Box 707-CSS  
Rock Hill, SC 29730

Dear Mr. McFadden:

You have inquired whether a non-Indian, now the widow of a Catawba Indian, is entitled to the same status as a Catawba Indian for the purpose of continuing to reside on the Catawba Indian Reservation (approximately 600 acres of land set aside by the State).

The present legal status of the Catawba Indians is apparently an unresolved issue. The United States has terminated its legal relationship with the Catawbas (see enclosed letter from the United States Department of the Interior, Bureau of Indian Affairs to Director, South Carolina Archives Department) and does not recognize the Catawba Indians as a tribe (see enclosed bulletin from the Coalition of Eastern Native Americans, Inc.).

There is no South Carolina law governing tribal membership status for the Catawba Indians, and it is the opinion of this Office that South Carolina would follow the general rule elicited in several federal cases that in the absence of express legislation to the contrary, an Indian tribe has complete authority to determine all questions of its own membership. Slattery v. Arapahoe Tribal Council, 453 F.2d 287 (10th Cir. 1971); Prarie Band of the Pottawatomie Tribe of Indians v. Udall, 355 F.2d 364 (10th Cir. 1966), cert. denied, 385 U.S. 831 (1966); Martinez v. Southern Ute Tribe of Southern Ute Reservation, 249 F.2d 915 (10th Cir. 1955), cert. denied, 356 U.S. 960, reh. denied, 357 U.S. 924 (1958); 42 C.J.S. Indians § 10 (Cum. Supp. 1974). There appears little justification for either federal or state courts to become involved in intertribal controversies unless an individual's constitutional rights are in issue.

On March 22, 1843, Joseph F. White, the South Carolina agent for the Catawba Indians, 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 enclosed copy of the deed).

As a general rule, such title as Indians have to possess and occupy land is in the tribe, and not in the individual. The right of individual Indians to share in the tribal property usually depends upon tribal membership, the property of the tribe being held in communal ownership. 41 Am. Jur.2d Indians § 24 (1968).

It therefore appears that the non-Indian widow of a Catawba Indian is not entitled to continue to reside on the reservation.

Very truly yours,

John L. Choate  
Legal Assistant

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