

**DECISION**

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

**FILE:** B-219834

**DATE:** October 31, 1985

**MATTER OF:** Bureau of Land Management, Hyder Townsite  
Funds Disposition

**DIGEST:**

Bureau of Land Management (BLM) may properly pay \$18,244.92 jointly to a BLM trustee and an Alaska townsite representative for deposit in an account in a local bank for the benefit of the townsite. Because the townsite in question is not incorporated, applicable BLM regulations require that funds from sale of lots and assessments be used by the BLM trustee "in making public improvements." A local bank account with joint control constitutes a reasonable mechanism for expending the funds in question.

This decision is in response to a request from Mr. Edward P. Greenberg, Chief of the Division of Finance, Bureau of Land Management, (BLM) Department of the Interior. Mr. Greenberg requests a decision regarding the propriety of certification of a check in the amount of \$18,244.92, made payable jointly to a BLM trustee and a representative of a townsite in Alaska, for the purpose of depositing those funds in an account in a local bank for the benefit of the townsite. For the reasons set forth below, this Office would have no objection to certification of the check in question.

**BACKGROUND**

Hyder Townsite is an unincorporated community located in southeast Alaska. Hyder Townsite was established in 1923 under section 11 of the Act of March 3, 1891 (formerly codified at 43 U.S.C. § 732 (1970)), which provides for a survey of the townsite and the appointment by BLM of a townsite trustee, who is responsible for disposing of lots by award or by sale. See

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43 C.F.R. § 2565.0-3 - 2565.9 (1984).<sup>1/</sup> BLM regulations require the trustee to issue deeds to occupants and sell unoccupied lots. Id. at §§ 2565.4 - 2565.5. The regulations further provide that the trustee may use proceeds from the sale of lots and other trust income under certain conditions to make public improvements:

"Final report of trustee; disposition of unexpended moneys and unsold lots.

"After the disposal of a sufficient number of lots to pay all expenses incident to the execution of the trust, including the cost of the subdivisional survey, the trustee will make and transmit to the Bureau of Land Management his final report of his trusteeship, showing all amounts received and paid out and the balance remaining on hand derived from assessments upon the lots and from the public sale. The proceeds derived from such sources, after deducting all expenses, may be used by the trustee on direction of the Secretary of the Interior, where the town is unincorporated, in making public improvements, or, if the town is incorporated such remaining proceeds may be turned over to the municipality for the use and benefit thereof. After the public sale and upon proof of the incorporation of the town, all lots then remaining unsold will be deeded to the municipality, and all municipal public reserves will, by a separate deed, be conveyed to the municipality in trust for the public purposes for which they were reserved." Id. at § 2565.7 (emphasis added).

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<sup>1/</sup> The Federal Land Policy and Management Act of 1976 repealed section 11 of the 1891 law. Pub. L. No. 94-579, § 703(a), October 21, 1976, 90 Stat. 2790. However, the Act included a savings clause providing: "Nothing in this Act \* \* \* shall be construed as terminating any \* \* \* land use right or authorization existing on the date of approval of this Act." Id. § 701, 90 Stat. 2786. Accordingly, because the Hyder Townsite was established under section 11 prior to its repeal, that statute and its associated regulations remain applicable to BLM administration of the Hyder Townsite.

Because of a lawsuit, which has been pending for several years, the last lot sale for Hyder Townsite was held in 1975.<sup>2/</sup> Further, because the community has been reluctant to incorporate, the townsite trust account has remained open many years longer than the BLM regulations apparently contemplate. Currently, the amount of \$18,244.92 is held in a Treasury suspense account for Hyder Townsite.

The residents of Hyder Townsite have requested that the balance of funds be transferred to a local bank account on their behalf. The signature of the BLM trustee and the townsite representative would be required to withdraw these funds from the account for public improvement purposes.

#### ANALYSIS

Initially, we note that BLM must act in accordance with its own regulations regarding townsite administration. Statutory regulations, such as those applicable here, which are otherwise valid, have the force and effect of law, and may not be waived by the agency in individual cases. 60 Comp. Gen. 15, 26 (1980).

Here, the pertinent BLM regulation provides that net income to the trustee from sales and assessments "may be used by the trustee on direction of the Secretary of the Interior, where the town is unincorporated, in making public improvements, or, if the town is incorporated such remaining proceeds may be turned over to the municipality for the use and benefit thereof." Id. at § 2565.7. Accordingly, because Hyder Townsite is not incorporated, the funds in question may be used only "by the Trustee on direction of the Secretary of the Interior \* \* \* in making public improvements."

Accordingly, BLM may not unconditionally transfer the funds in question to any "representative" of Hyder Townsite or take any other action which relieves the Hyder Townsite trustee of his fiduciary responsibility under the regulation to ensure that the funds are used "in making public improvements."


However, we conclude that BLM's proposed action in this case would not constitute an impermissible transfer of the funds in question to the townsite representative. Under the BLM proposal, the Hyder Townsite trustee would retain control over the funds because his signature would be necessary to withdraw funds from the account for public improvement purposes. The use of a bank account requiring the signatures

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<sup>2/</sup> There are currently 64 lots and 10 blocks remaining undeeded.

of both the townsite trustee and a townsite representative constitutes a reasonable mechanism by which the trustee may administer the funds and ensure that the funds are "used \* \* \* in making public improvements." There is no requirement in the law or regulations that the townsite community have no element of control in the decision-making process.

Accordingly, this Office has no objection to certification for payment of a check for \$18,244.92 made payable jointly to a BLM trustee and a representative of Hyder Townsite for the purpose of depositing those funds in an account in a local bank for benefit of the townsite.

*for*   
Comptroller General  
of the United States