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W.M. J. WOTHERSPON  
COMPTROLLER GENERAL

**DECISION**



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

**FILE:** B-108439

**DATE:** November 16, 1976

**MATTER OF:** Assignment of payments due Alaska Native Regional Corporations

**DIGEST:** Alaska Native regional corporation's proposed assignment of rights to distribution of funds under Alaska Native Claims Settlement Act, 43 U.S.C. § 1601 et seq. (Supp. IV, 1974) is prohibited since right to distribution is claim within meaning of the Anti-Assignment Act, as amended, 31 U.S.C. § 203. Proposed assignment does not satisfy requirements of Act since the amount due to the Corporation is uncertain and dependent upon future appropriation acts.

This decision is in response to a letter from the Assistant Secretary of the Interior, requesting our opinion on the propriety of acknowledging a proposed assignment of funds to be distributed by the Department from the Alaska Native Fund (ANF) established by section 6 of the Alaska Native Claims Settlement Act (ANCSA), Pub. L. No. 92-203, December 18, 1971, 85 Stat. 688, 43 U.S.C. § 1601 et seq. (Supp. IV, 1974). Section 6 provides for the distribution of the ANF over a period of 11 years to Alaska Native regional corporations formed pursuant to section 7 of ANCSA. The Bristol Bay Native Corporation (BBNC), one of these regional corporations, proposes an assignment of its right to future distributions from the ANF to a financing institution as security for a long-term loan. BBNC has requested that the Department of the Interior (Interior) recognize or acknowledge such an assignment, as lending institutions will provide the loan at the prime rate of interest only upon this condition. The Assistant Secretary stated that the Department has doubts that it may recognize such an assignment but that it was suggested to him that the Government has recognized assignments by defense contractors in analogous situations. For that reason the Assistant Secretary has asked our Office whether Interior is authorized by law to recognize such an assignment.

The ANF consists of funds from two sources: (1) annual sums totaling \$462,500,000, to be appropriated by the Congress through fiscal year 1981 as authorized to be appropriated by section 6 of the Act, 43 U.S.C. § 1605(a)(Supp. IV, 1974), and (2) \$500,000,000 pursuant to the revenue sharing provisions of section 9 of the Act which provides for the deposit of a share of Alaska's mineral revenues into the fund until the \$500 million sum is reached.

Interior makes quarterly distributions to the 13 native corporations. After a regional corporation has received its shares of the ANF, it is required to distribute portions of those sums to its stockholders, to village corporations within its regions, and to the class of stockholders who are not residents of any of those villages. BBNC does not intend to, nor could it, assign any portion of its future payments from the ANF which is targeted for stockholders or village corporations. According to Interior, it desires only to assign those payments which are otherwise authorized to be deposited into its corporate treasury without further distribution being required. We further understand that at this time BBNC only intends to assign those portions of the ANF which it will receive from appropriations authorized by section 6(a) of the Act. That being the case, we are considering herein only those funds which Congress may see fit to appropriate to the ANF in the coming years.

BBNC points out that as a corporation under Alaskan law, it has the right to assign payments due it. The Corporation informally advises us that it plans to make such assignments whether or not the Government recognizes them. The primary result of the Government's not recognizing the assignment is as noted above, that BBNC will have to borrow at interest rates in excess of the prime rate. We have found nothing in ANCSA itself which might be construed as either authorizing or prohibiting an assignment, or Government recognition of such an assignment. However, the so-called Anti-Assignment Act, 31 U.S.C. § 203 (1970) generally governs the assignment of claims against the United States. That Act provides, in pertinent part:

"All transfers and assignments made of any claim upon the United States, or of any part or share thereof, or interest therein, whether absolute or conditional, and whatever may be the consideration therefor, and all powers of attorney, orders, or other authorities for receiving payment of any such claim, or of any part or share thereof, except as hereinafter provided, shall be absolutely null and void, unless they are freely made and executed in the presence of at least two attesting witnesses, after the allowance of such a claim, the ascertainment of the amount due, and the issuing of a warrant for the payment thereof."

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"The provisions of the preceding paragraph shall not apply in any case in which the moneys due or to become due from the United States or from any agency or department thereof, under a contract providing for payments aggregating \$1,000 or more, are assigned to a bank, trust company, or other financing institution, including any Federal lending agency: Provided,

\* \* \* \* \*

"That unless otherwise expressly permitted by such contract any such assignment shall cover all amounts payable under such contract and not already paid, shall not be made to more than one party, and shall not be subject to further assignment, except that any such assignment may be made to one party as agent or trustee for two or more parties participating in such financing;

"That in the event of any such assignment, the assignee thereof shall file written notice of the assignment together with a true copy of the instrument of assignment with (a) the contracting officer or the head of his department or agency; (b) the surety or sureties upon the bond or bonds, if any, in connection with such contract; and (c) the disbursing officer, if any, designated in such contract to make payment.

"Notwithstanding any law to the contrary governing the validity of assignments, any assignment pursuant to this section, shall constitute a valid assignment for all purposes."

The provisions of the Act excepting the assignment to financial institutions of moneys due under Government contracts from the general requirements of the Act were added by the Assignment of Claims Act of 1940, 54 Stat. 1029. Prior to this amendment, such assignments were prohibited by the Anti-Assignment Act. See B-181246, August 18, 1975. The purpose of the Assignment of Claims Act is to make it easier for Government contractors to obtain private financing in order to carry out Government contracts more effectively. See Central Bank v. United

States, 345 U.S. 639 (1953); Produce Factors Corp. v. United States, 467 F.2d 1343, 1348 (Ct. Cl. 1972). The general prohibition against assignments of claims against the Government was to be continued, with this narrow exception allowed. See Produce Factors Corp., id. at 1347.

While the assignment of the right to moneys due under Government contracts may be somewhat analogous to the assignment proposed by BBNC, as was suggested to the Assistant Secretary, the language and purpose of the Assignment of Claims Act preclude application of its provisions to non-contract situations. The right of a Native regional corporation to receive payments from the ANF is not a contract with the Government, and, therefore, the proposed assignment does not come within the exception provided by the Assignment of Claims Act.

It is our opinion that Native corporations' rights to payments from the ANF are claims against the Government within the meaning of the general provisions of the Anti-Assignment Act, and that the requirements of that Act must be complied with before the Government can recognize any assignment of those rights. This result is supported by both the broad construction given the Anti-Assignment Act, and by certain provisions of ANCSA.

The Anti-Assignment Act has been construed broadly to cover all types of claims against the United States. For example, the Supreme Court, in Ball v. Halsell, 161 U.S. 72, 78 (1895), stated:

"[T]he act has \* \* \* been held by this court to include all specific assignments, in whatever form, of any claim against the United States under a statute or treaty, whether to be presented to one of the executive departments, or to be prosecuted in the Court of Claims; and to make every assignment void, unless it has been assented to by the United States." (Citations omitted.) (Emphasis added.)

In United States v. Gillis, 95 U.S. 407, 413 (1877), the Court, after quoting the statutory language, said in pertinent part:

"No language could be broader or more emphatic \* \* \* The words embrace every claim against the United States, however arising, of whatever nature it may be, and wherever and whenever presented."

Section 2(a) of ANCSA, a declaration of policy provision, states:

"Congress finds and declares that--there is an immediate need for a fair and just settlement of all claims by Natives and Native groups of Alaska, based on aboriginal land claims."  
(Emphas's added.)

Section 4(c) of ANCSA provides for the extinguishment of all claims against the United States based on aboriginal title or United States statute or treaty.

Funds deposited into the ANF represent partial payment for the settlement of Native claims against the United States. (The remainder of the payment is in the form of land to be selected by village and regional corporations under section 12 of ANCSA.) Thus, the regional corporations' rights to ANF distributions are claims against the United States which come within the purview of the Anti-Assignment Act. Therefore, the proposed assignment by BBNC of its right to future distributions from the ANF comes within the purview of the Anti-Assignment Act.

The Anti-Assignment Act, despite the language stating that all assignments not complying with its requirements are null and void, has been construed as not preventing assignments of claims against the United States, but rather as limiting their validity. A non-complying assignment binds the parties to it, but does not bind the United States. See Lay v. Lay, 248 U.S. 24 (1918); 55 Comp. Gen. 744, 746 (1976). Therefore, BBNC may assign its right to future distribution from the ANF without meeting the requirements of the Anti-Assignment Act, but the Government will not be bound to recognize such an assignment.

Before an assignment binding on the Government can be made, the Anti-Assignment Act requires, among other things: (1) that the claim be allowed; (2) that the amount of the claim be ascertained; and (3) that a warrant for payment be issued. Simply stated, Congress wished to authorize recognition of assignments only at the point at which the money is actually ready to be delivered to the claimant. For the reasons stated hereafter, BBNC's claim has not reached that stage and payments due it may not be validly assigned pursuant to 31 U.S.C. § 203.

- In the instant case the Congress, in enacting the ANCSA, has provided for the settlement of all Native claims. However, while Congress has, in effect, fixed the total maximum amount that may be paid in settlement of these claims, the exact amount of the distribution to each regional corporation, including BBNC, is not presently ascertainable.

The amount of the distribution from the ANF to each regional corporation is dependent upon the number of Natives enrolled in that corporation's region. See section 6(c) of ANCSA. As noted in the Assistant Secretary's submission, the final roll will not be complete until sometime after January 1977. See Pub. L. No. 94-204, 89 Stat. 1145. Also, litigation concerning the operation of the distribution formula, such as the pending case of Doyon Ltd. v. Kleppe, No. A75-89 (U.S. D.C. Alaska), may affect the relative size of distributions to the regional corporations. The amount of BBNC's claim is also dependent upon the amount of money the Congress may choose to appropriate in any given year or in toto. Since, for the reasons noted above, the exact amount of each corporation's distribution is not presently ascertainable, the amount of BBNC's claim has not been ascertained as contemplated by the Anti-Assignment Act.

In addition, the requirement that a warrant for payment be issued before a binding assignment can be made cannot be met by BBNC. For a warrant or its equivalent to be issued the funds to pay the claims must have already been appropriated. In the instant case, the funds due the Alaskan natives are to be appropriated on a yearly basis and distributed on a quarterly basis. Until each year's appropriation has been enacted and the entitlement of each corporation thereof calculated, no warrant for payment may be drawn. It appears that the requirement of the Anti-Assignment Act cannot be met either.


One of the major purposes of the Anti-Assignment Act was to enable the Government to deal only with the original claimant in, for example, establishing the correct amount of the claim. See, e.g., United States v. Shannon, 342 U.S. 228 (1952). Recognition of an assignment in this situation well before the amount due was ascertained and the money due appropriated would run contrary to the purposes of the Anti-Assignment Act. Moreover, it is not clear that the Government's right to set-off any claims it may have against the Corporation at the time a payment comes due would be preserved once it has bound itself to an assignment. See American Fidelity Co. v. National City Bank of Evansville, 266 F.2d 910, (1959).

In accordance with the above, it is our opinion that the provisions of 31 U.S.C. § 203 prohibit Interior's recognition of BBNC's proposed assignment.

The Assistant Secretary of the Interior states that in the event we hold, as we here do, that the proposed assignment by BBNC is not binding on the United States, the Department will seek legislation to

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authorize this procedure. As long as the Government's interests are adequately protected under such legislation, we would interpose no objection.

  
Deputy Comptroller General  
of the United States