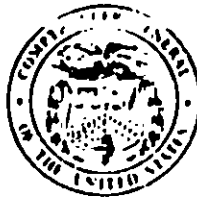


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J. Barker
GCM

DECISION



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

FILE: B-108439

DATE: April 13, 1978

MATTER OF: Investment of funds appropriated to Alaska Native Fund.

DIGEST: Moneys appropriated to liquidate claims of Alaska natives pursuant to Alaska Native Claims Settlement Act are not Indian tribal trust funds, subject to the provisions of 25 U.S.C. §§ 161a and 162a for earning interest and investment by the Secretary of the Interior, until they are actually transferred to the Alaska Native Fund. Section 5 of the Omnibus Act, Pub. L. No. 94-204, is applicable only to moneys already in the Fund but not yet distributed. In accordance with section 38 of the Fiscal Year Adjustment Act, transfer to the Fund can take place no earlier than July 1 of each fiscal year. Accordingly, the Department of the Interior has no authority to invest funds appropriated on behalf of the Alaska Native Fund from October 1 through June 30 of each year. Moneys earned from such investments to date should be returned to the Treasury as miscellaneous receipts pursuant to 31 U.S.C. § 484.

Our Office has been requested by the Deputy Solicitor of the Department of the Interior to decide whether the Secretary of the Interior is authorized to distribute to the Alaska Native Regional Corporations on September 30, 1977, approximately \$1.5 million in interest earned between October 1, 1976, and June 30, 1977, from the investment of \$30 million appropriated for transfer to the Alaska Native Fund (Fund) and ultimately for distribution to Alaska natives under the terms of the Alaska Native Claims Settlement Act (Act), as amended. 43 U.S.C. § 1601 et seq. (Supp. V, 1975).

The sum invested was appropriated pursuant to the 1977 Interior Department Appropriation Act (Pub. L. No. 94-373, 90 Stat. 1051 (July 31, 1976)). Under the terms of Section 38 of the Fiscal Year Adjustment Act, Pub. L. No. 94-273, April 21, 1976, 90 Stat. 375, 380-381, those monies were to be transferred from the general fund of the Treasury into the Settlement Fund in the fourth quarter of the fiscal year (i.e., on July 1, 1977). On October 1, 1976, the Interior Department received a warrant for the \$30 million appropriation from the Department of the Treasury. Thereupon, the submission advises us, "Rather than permit the \$30 million to lie in

the United States Treasury for nine months without earning interest, officials of the Bureau of Indian Affairs invested that sum, earning almost \$1.5 million through June 30, 1977."

Under sections 1605 and 1608 of Title 43, United States Code, the Fund is to consist of annual congressional appropriations, totaling \$462,500,000, 4 percent interest per annum on any amounts authorized but not actually appropriated within 6 months after the fiscal year for which they were authorized, and payments from the State of Alaska and from the United States for mineral bonuses, royalties, and rentals, up to a total of \$500 million. Section 1605 provides that except for enumerated reserves, all money in the fund shall be distributed at the end of each fiscal quarter among the Alaska native regional corporations created under the provision of the Act.

The Deputy Solicitor's present inquiry results from issues raised by the amendment of the original authorizing Act by the Fiscal Year Adjustment Act. The authorizing legislation as originally enacted read in pertinent part as follows:

"§ 1605. Alaska Native Fund.

"(a) Establishment in Treasury; deposits into Fund of general fund, interest, and revenue sharing moneys

"There is hereby established in the United States Treasury an Alaska Native Fund into which the following moneys shall be deposited:

(1) \$462,500,000 from the general fund of the Treasury, which are authorized to be appropriated according to the following schedule:

(A) \$12,500,000 during the fiscal year in which this chapter becomes effective;

(B) \$50,000,000 during the second fiscal year;

(C) \$70,000,000 during each of the third, fourth, and fifth fiscal years;

(D) \$40,000,000 during the sixth fiscal year; and

B-108439

(E) \$30,000,000 during each of the next five fiscal years."

Section 38 of the Fiscal Year Adjustment Act amended the above-quoted section 43 U.S.C. 1605(a)(1)(D) and (E) to read:

"(D) \$40 million during the period beginning July 1, 1976, and ending September 30, 1976; and

"(E) \$30 million during each of the next five fiscal years, for transfer to the Alaska Native Fund in the fourth quarter of each fiscal year."

We have been asked to determine the effect of the Adjustment Act amendment on the \$30 million appropriation authorized under § 1605(a)(1)(E) prior to its scheduled transfer on July 1, and thus, the proper disposition of interest earned on funds which have been appropriated for, but not yet deposited into, the Alaska Native Fund.

The Deputy Solicitor of the Department of the Interior has taken the position that funds appropriated for the Settlement Fund should be classified as Indian tribal trust funds during the period between October 1 and July 1 even though the statute allows transfer to the Settlement Fund no earlier than July 1. Thus, in his view the funds would be subject to the interest payments and investment provisions of 25 U.S.C. §§ 161a and 162a (1970). Section 161a states that all Indian tribal funds with account balances exceeding \$500 held in trust by the United States shall bear simple interest at the rate of 4 percent per annum unless another rate is otherwise authorized by law. Section 162a authorizes the Secretary of the Interior to withdraw any tribal funds from the United States Treasury and to deposit such funds in banks selected by him or to invest such funds in public debt obligations of the United States or obligations guaranteed by the United States.

The Deputy Solicitor stated that this Office's earlier opinions limiting the Secretary's authority to invest Alaska native moneys "are now open to question" because the legislative history of section 5 of Pub. L. No. 94-204, 89 Stat. 1145, January 2, 1976, commonly called "the Omnibus Act," shows that Congress intended that such authority not be limited, and that the Settlement Act's declaration that the settlement be accomplished "without creating a lengthy wardship or trusteeship" is, contrary to our previous holdings, not meant to be applicable to the short-term investment of appropriations authorized by the Act.

B-108439

In support of his position, the Deputy Solicitor argues that while a literal reading of the Settlement Act as amended by the Fiscal Year Adjustment Act (Pub. L. No. 94-273, § 38, 90 Stat. 375 (1976)) would appear to limit the Secretary's authority to invest appropriations designated for payment to Alaska natives, the legislative history of section 5 of the Omnibus Act, passed in the previous session of the same Congress, "demonstrates a broad intent on the part of Congress to prevent further waste of the investment potential of moneys designated for distribution to Alaska natives pursuant to the Settlement Act, and that therefore such a strict reading of the legislation is unwarranted."

In our view, neither our previous decisions nor their subsequent overturning by the Congress in section 5 of the Omnibus Act are applicable to the question before us. In B-108439, October 31, 1972, affirmed by us on December 28, 1973, we held that based on our reading of the legislative history of the Settlement Act, supra, moneys deposited in the Fund at the beginning of the fiscal year (or any time within 90 days thereafter), could be treated as Indian tribal trust funds (for purposes of investment and interest pursuant to 25 U.S.C. §§ 161a and 162a) only until completion by the Secretary of Interior of a roll of Alaska natives eligible for benefits.

The Congress disagreed with our interpretation of its intent and the resulting restrictions placed on the Secretary's authority to invest the sum placed in the Fund prior to distribution. Section 5 of the Omnibus Act, supra, provides that for purposes of 25 U.S.C. §§ 161a and 162a, " * * * the Alaskan Native Fund shall, pending distribution under section 6(c) of the Settlement Act, be considered to consist of funds held in trust by the Government of the United States for the benefit of Indian tribes: * * *." (Emphasis added.)

Currently, then, the moneys in the Alaska Native Fund at any given time, in whatever amount, and whenever deposited, may be treated as Indian tribal trust funds for purposes of the interest and investment provisions of 25 U.S.C. §§ 161a and 162a. In the instant case, however, we are not concerned with appropriations already deposited in the Fund and awaiting the statutory date for distribution to the regional corporations. The Deputy Solicitor's problem arises because subsection (E) of 43 U.S.C. § 1605(a)(1), as amended by section 38 of the Fiscal Year Adjustment Act, does not permit the transfer to the Fund of appropriations made for that purpose until the fourth quarter of the fiscal year, even though the appropriation may have been made and a warrant issued early in the fiscal year.

B-108439

Prior to the enactment of the Congressional Budget and Impoundment Control Act of 1974 and of the Fiscal Year Adjustment Act, the funds here at issue would, assuming enactment of the appropriation prior to the start of the fiscal year, have been deposited into the Alaska Native Fund on July 1, 1977 and under the provisions of section 1605(a)(3)(c), would have been distributed at the end of the fiscal quarter on September 30, 1977. Thus the \$30 million in question would have remained within the Treasury for the use of the United States and would be unavailable for investment purposes by the Secretary of the Interior until July 1, 1977. On that date, the first day of the new fiscal year, the appropriated funds would be deposited into the Alaska Fund and would earn interest or be invested until September 30, 1977, when they would have been distributed among the Alaska Regional Corporations. The same calendar dates would have governed each of the \$30 million installments authorized for appropriation for deposit into the Fund during the four succeeding years, had the law not been changed. The funds would thus be subject, by virtue of section 5 of the Omnibus Act, to the interest and investment provisions of 25 U.S.C. §§ 161a and 162a for a maximum of 3 months under the previous law.

The enactment of section 501 of the Congressional Budget and Impoundment Control Act of 1974, Pub. L. No. 93-344, however, changed the fiscal year of the Federal Government from the July 1, to June 30 cycle to an October 1 to September 30 cycle, to take effect as of October 1, 1976. Congress recognized that various problems would arise from the fiscal year change. In section 502(b), it required that the Director of the Office of Management and Budget (OMB) submit such proposed legislation as he considered necessary to accomplish an orderly transition to the new fiscal year. Subsequently, the Director of OMB submitted a proposal, later enacted as the Fiscal Year Adjustment Act, in response to this mandate. The purpose of that Act was to make changes in various existing laws to conform to the new fiscal year dates in an effort to insure that no interruption or changes would occur in the administration of authorized programs. Care was taken to be sure that no substantive or policy changes were made in any prior existing legislation. The law was merely a technical measure required to effect a smooth transition from the old fiscal year to the new one.

The effect of the passage of section 38 of the Fiscal Year Adjustment Act was to alter the language of the Fund's statutory timetable so that the installments transferred into the Fund would be made on precisely the same calendar dates as they would have been made prior to the fiscal year changeover. Otherwise,

with the new fiscal year, the investment and interest provisions of 25 U.S.C. §§ 161a and 162a would become effective on October 1, a full 9 months earlier than before. Thus, had Congress wished to achieve the result advocated by Interior, it could have omitted the direction in section 38 to transfer the funds in the fourth quarter of each fiscal year. Having passed it, in clear and unambiguous language--i.e., \$30 million is authorized to be appropriated for transfer to the Fund on July 1--we must conclude that the appropriation is subject to the relevant interest and investment provisions for a maximum of 3 months (from July 1, the first date on which it may be transferred to the Fund, to September 30, the date it must be distributed to the regional corporations).


This result leaves both the Alaska Native Fund and the Treasury in exactly the same positions as they would have been in if there had been no change in the date of the fiscal year. The Treasury still has full use of the moneys (or need not borrow additional moneys) for 9 months before they are transferred to the Fund and made subject to 25 U.S.C. §§ 161a and 162a. There is no evidence that Congress intended that Treasury would incur the "loss" of those funds or that the Fund would gain a corresponding benefit, and, in fact, the enactment of the Fiscal Year Adjustment Act--which was under active consideration at the time the Omnibus Act was enacted--indicates plainly that no substantive changes were intended.

Further, the main purpose behind the passage of section 5 of the Omnibus Act was to allow for the investment of moneys already in the Fund which were lying idle because of our earlier decisions. We do not believe that in passing section 5, Congress also intended that the fund would receive an additional benefit as a result of the change in the fiscal year. For example, H.R. Rept. No. 94-729, id. at 23, states in part that the Omnibus Act was needed since "* * * funds appropriated in settlement of the Natives' claims may remain in the Treasury for as long as 3 months before actual payment to the Natives." (Emphasis supplied.) The enactment of section 38 of the Fiscal Year Adjustment Act--only three months later--assured the continuation of that practice.

Accordingly, we must conclude that there was no authority on the part of the Department of Interior to pay interest on or invest, in accordance with 25 U.S.C. §§ 161a and 162a, funds appropriated to pay the settlement with the Alaska natives during the period from October 1, 1976, through June 30, 1977. There is similarly no authority for such interest and investment during fiscal year 1978 and succeeding fiscal years.

B-108439

As to the proper disposition of the interest earned on the funds in question, moneys received by Government agencies are subject to the requirements of 31 U.S.C. § 484 (1970) that moneys received for the use of the United States be deposited in the Treasury as miscellaneous receipts. The funds in question should be so treated.


Deputy Comptroller General
of the United States