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

FILE: B-114868.18 DATE: AUG 9 1978

MATTER OF: Definition of residency—Hopi and Navajo Indian Relocation Commission

DIGEST:

1. Pub. L. No. 93-531, provides relocation benefits for members of the Hopi and the Navajo Indian Tribes who "reside" on lands partitioned to the other tribe. However, the Act does not define the term "reside." The Hopi and Navajo Indian Relocation Commission has discretion to determine, within the restrictions set forth herein, which persons should be considered to reside on the partitioned lands and be eligible for relocation benefits under the Act. Payments on behalf of relocatees are made to the heads of their households.

2. Relocation benefits are available for households required to move pursuant to the Act. Persons who moved because of harassment or intimidation or in anticipation of partition but prior to passage of the Act should not be considered to be eligible for benefits.

The Navajo and Hopi Indian Relocation Commission (Commission) requested our assistance in determining which persons are eligible for relocation benefits under Pub. L. No. 93-531, approved December 22, 1974, 88 Stat. 1712, 25 U.S.C. § 640d et seq., (1976) (the Act). The Act provides for "settlement and partition of the relative rights and interests as determined by the decision in the case of Healing v. Jones (210 F. Supp. 125, D. Ariz., 1962, aff'd 363 U.S. 758 (1963)) * * * of the Hopi and Navajo Tribes * * * to and in lands within the reservation established by the Executive order of December 16, 1882 * * *." 25 U.S.C. § 640d(a).

Under section 13 of the Act, 25 U.S.C. § 640d-12, the Commission is required to prepare and submit to Congress, within 24 months of the issuance of a District Court Order partitioning the land in question between the two tribes and setting final boundaries, a relocation report concerning the relocation of households and members thereof of each tribe and their personal

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property, including livestock, from lands partitioned to the other tribe. The report must contain, among other matters:

> "(1) the names of all members of the Navajo Tribe who reside within the areas partitioned to the Hopi Tribe and the names of all members of the Hopi Tribe who reside within the areas partitioned to the Navajo; and
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> "(2) the fair market value of the habitations and improvements owned by the heads of households identified by the Commission as being among the persons named in clause (1) of this subsection." 25 U.S.C. § 640d-12(b).

It must also contain a detailed plan for relocation. The Commission's relocation report and plan was required to be based on the partition lines approved by the District Court. However, the District Court Order partitioning the lands was recently vacated on appeal. Sekaquaptewa v. MacDonald, No. 77-1977 (9th Cir., May 15, 1978). Therefore, no report has been prepared to date.

Relocation payments under this Act may be made to heads of households identified in the report as residing in the area who contract with the Commission to move within certain timeframes specified in the Act. The Commission may also make payments to eligible persons who moved voluntarily prior to issuance of the report (25 U.S.C. § 640d-12(c)(5)) and it is our understanding that a number of households have already been relocated under this authority.

The Act sets forth certain restrictions on eligibility for the various benefits provided. For example, persons who moved into an area after May 29, 1974, which then is partitioned to a tribe of which they are not members may receive no relocation benefits under 25 U.S.C. § 640d-13(c) and persons moving into the partitioned area after December 22, 1973, would not be eligible for moving expenses and for replacement dwelling benefits under 25 U.S.C. § 640d-14. It is also clear that the relocation must have been necessitated by the provisions of the Act, and that payments on behalf of relocatees must be made to the head of their households. Finally, to be eligible for benefits, the individual must be listed in the Commission's report as "residing" in an area partitioned to the other tribe.

Although there is no definition of the term "head of household" in the Act, the Commission has decided administratively to follow the definition of the Internal Revenue Code of 1954. See 25 C.F.R. § 700.5(a). The Commission has asked for assistance in arriving at an equitable definition of "residence" and in determining when a move may be said to be "required" by the Act. Neither term is dealt with specifically in the Act.

We have been requested to review nine possible legal positions proposed by the Commission, to determine their consistency with the intent of the Act. The first page and a half of each opinion is identical, with separate factual situations and conclusions following. In a meeting with a member of the Commission and its attorney, we were advised that we need not evaluate the individual positions in detail.

Before turning to a discussion of the relevant issues, we might note that we do not agree with the identical first sentence of each position. That sentence states:

> "It is a well established principle of law that when the language of an act is clear and unambiguous, the intent of the legislature will be derived therefrom, and it is not necessary to go behind the language of the act to determine the intent of the legislative body."

We believe that the very fact that the Commission can present a full range of legal positions based upon the provisions of this Act demonstrates that the Act's intent as expressed through its language is not clear and unambiguous. We would point out, however, that we did not find anything in the legislative history which is very helpful in resolving the issues which are presented in these legal positions.

Insofar as we can determine, the major differences between the nine legal positions center around two criteria: (1) the meaning of the term "reside" and (2) the reasons that some of the tribal members have moved from the area subject to partition. We offer a few general comments about each of these points, although to a large extent, their scope is interdependent.

1. Reason for Move

Under 25 U.S.C. § 640d-13(b), payments may be made to the heads of households identified in the Commission's report who contract with the Commission to relocate. In addition, payments may be made under other sections of the Act to people who are required to relocate because of the partition prescribed by the Act. Thus, to some extent, the reasons for particular households or a member of a particular household having left the area subject to partition may effect the entitlement to certain payments under the Act.

The Act contemplates an orderly relocation subsequent to the submission of the relocation report to Congress, 25 U.S.C. § 640d-12(c)(5), and pursuant to contracts entered into between relocatees and the Commission. However, as mentioned earlier, the Act also authorizes and directs the Commission to proceed with voluntary relocations as promptly as practicable following its first meeting. As long as such moves are made after the passage of the Act and with the approval of the Commission, they are clearly moves made "pursuant to the Act." Those persons who moved after the passage of the Act but without the Commission's approval, however, may have their moves considered as being made "pursuant to the Act" only if the Commission is able to make the determinations (such as a valid appraisal of a habitation) necessary to support the payment of relocation benefits and if, after the final partition line is drawn, such households would actually have been required to move.

We would include in this group the persons identified in the Commission's third legal position who moved after they read the District Court's February 10, 1977, partition order (subsequently vacated by the Court of Appeals on May 15, 1978) and found that they were living in an area partitioned to the other tribe; and persons identified in the Commission's fourth legal position who moved after December 12, 1975, the date on which a mediator appointed pursuant to the Act, recommended a partition line to the United States District Court. Although these persons apparently failed to contact the Commission to request an appraisal of their homes and improvements, and did not observe other procedural requirements for an orderly voluntary relocation, we nevertheless feel that they too moved "pursuant to the Act," and, if they meet the conditions set forth above and are otherwise eligible, they should be entitled to benefits. While the Act does not specifically provide for the situation in which relocation moves are made without the Commission's prior approval, we feel that such moves, if subsequently determined to be eligible for benefits, are compensable under the Act because one of the purposes of the Act is to facilitate the relocation of households as promptly as practicable.

Under Legal Position Five, the Commission proposes the inclusion of people who moved prior to the mediator's partition report but subsequent to a District Court order freezing new construction in the area held for joint use by both tribes without a permit issued by both tribes. Legal Position Six would include persons who left the area prior to the mediator's partition report but subsequent to the decision in *Healings* v. *Jones*, which required the consent of both tribes for new construction in the area declared to be a joint use area. Legal Position Eight would include persons who left the area before the mediator's partition report because of harassment and intimidation from members of the other tribe. While the reasons for moving in all three instances are excellent, we do not see how the moves can be said to have been made "pursuant to the Act" in question unless they relocated after enactment of this Act.

In Legal Position Nine, the Commission suggests a blanket inclusion of all persons who moved from the area after January 2, 1971, the date of enactment of the Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA), Pub. L. No. 91-646, 84 Stat. 1895. The Commission appears to suggest that persons not eligible for payments under Pub. L. No. 93-531, *supra*, could elect the benefits of Pub. L. No. 91-646. We disagree with this position. Pub. L. No. 93-531 was enacted after the URA, and provides for relocation payments specifically for moves from the partitioned lands. It is a well settled rule that a statute authorizing funds for a specific object takes precedence over a more general authorization which would otherwise apply. See 19 Comp. Gen. 892, (1940); 38 *id*. 758, 767 (1959).

Legal Position Two suggests inclusion of persons who are temporarily away from their homes for economic reasons, and Legal Position Seven would include persons who may have moved as long as 15 years ago but for cultural and familial reasons, regard the home to be relocated as their "real" or spiritual home. Most of these individuals are either "heads of households" or their spouses. The question is not why such persons moved but whether we must necessarily regard them as having moved at all. This is best discussed under the section on the meaning of the term "reside."

II. "Reside"

As noted above, the report of the Commission must identify each tribal member who "resides" within the area to be partitioned. Neither the statute nor its legislative history gives any indication of the meaning to be given to the word "reside." As indicated in the nine legal positions presented, there are a broad range of possibilities.

One way of interpreting that word is to require actual occupancy of the land. (Legal Position I) There is support for this position since portions of the Act are modeled upon the URA, *supra*. In fact, many of the policies and positions of the Uniform Relocation Act are incorporated by reference into the subject Act. For example, payments for moving expenses may be made to heads of households "as if the household members were displaced persons under section 4622 of title 42." 25 U.S.C. § 640d-14(b). In making these payments and payments for replacement dwellings, "the Commission shall establish standards consistent with those established in the implementation of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970." 25 U.S.C. § 640d-14(c).

The URA provides that (1) payments can be made to a displaced homeowner who must move from "a dwelling actually owned and occupied by such displaced person," 42 U.S.C. § 4623; and (2) payments may be made to a displaced person (normally a tenant) who was forced to move from a dwelling "which dwelling was actually and lawfully occupied by such displaced person," 42 U.S.C. § 4624. An argument could be made that the Commission is required to adopt the "actually occupied" standard of the Uniform Relocation Act, at least with respect to moving expenses and payments for replacement dwellings, in view of the consistency requirement of 25 U.S.C. § 640d-14(c), discussed above. On the other hand, the Commission, in our view, has a supportable basis to conclude that the Congress, by using the word "reside," instead of "actually occupied" chose to permit adoption of a more liberal standard.

The Commission, in Legal Position Two, has indicated that the word "reside" should be used in a very broad legal sense. The Commission suggests use of the definition given that word in Corpus Juris Secundum:

> "In this sense the word 'reside' means legal residence; legal domicile, or the home of a person in contemplation of law; the place where

> a person is deemed in law to live, which may or may not always be the place of his actual dwelling, and thus the term means something different from being bodily present, and does not necessarily refer to the place of actual abode." 77 CJS 285 (1962).

The persons described in Legal Position Two are said to have moved away temporarily to earn a better living for their families who presumably stayed behind on the old homestead. Such persons may retain ownership of the habitation and improvements and may qualify as heads of households. If they have only temporarily left the area to support their families, we have no problem regarding such persons, if otherwise eligible, as "residing in" the area.

The Commission has requested that we pay particular attention to Legal Position Seven, which, it states, reflects the unique character of the culture and background of the Navajo and Hopi peoples. This position, as mentioned before, encompasses persons who have left the partitioned area as much as 15 years ago for economic reasons but who, in many cases, return on weekends and holidays to visit their families and tend their orchards, gardens, and livestock. If such persons can be regarded as heads of the households which remained behind on the homestead, retain a property interest in the house, improvements, or livestock, and return regularly to care for their property, we believe they too may be regarded as "residing in" the area.

With regard to those who do not meet these criteria, in the materials submitted by the Commission, there was a moving statement by an Indian affected by this legislation which explains the powerful spiritual ties each Indian feels for his reservation home. He feels that an Indian always remains a "resident" no matter how many years he is forced to live away from his Tribe for economic or other reasons. We are very sympathetic with this point of view, but we do not believe that the use of this concept to define the meaning of the word "reside" is consistent with the intent of Congress. There is no indication in the statute or its legislative history that the Congress intended to use the word "reside" in other than its ordinary English sense. Accordingly, such persons may not be considered residents for the purpose of determining eligibility under this Act.

In view of the lack of a definition of the term "reside" in the Act or its legislative history, we feel that the Commission has some latitude to determine, within the restrictions we have set forth above, which persons may be considered residents of the area for the purposes of this Act. As a practical matter, however, in exercising this discretion, the Commission may wish to consider whether funds authorized in the Act are sufficient to cover the cost of relocating persons eligible for benefits under the broader of the legally acceptable interpretations of the residency requirement. If it appears that funds authorized are insufficient to cover the costs of relocation benefits under a broad interpretation of residency, the Commission may wish to consider a narrower interpretation so as not to create entitlements which cannot be satisfied. We note that during the course of House and Senate debates on the Hopi-Navajo land partition bill (H.R. 10337), it was estimated that between 6,000 to 8,000 relocatees would be involved. 120 Cong. Rec. 16783 (1974); 120 Cong. Rec. 37728 (1974). Although the Act lacks specific guidance about the meaning of the term "reside," the amount authorized and numbers mentioned during the congressional debates on the bill could perhaps serve as a guide in setting the limits on entitlement to relocation benefits.

We have tried to indicate which positions are not consistent with the Act and which are legally permissible, although not necessarily desirable. The responsibility for making findings of fact, policy decisions, and determinations of eligibility in accordance with these guidelines rests with the Commission.

R.F.KELLER

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of the United States