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DECISION

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

118241

FILE: B-202123 DATE: April 26, 1982

MATTER OF: Payment in Lieu of Taxes Act--Arizona School Districts

DIGEST: 1. Where county is responsible for supporting schools and funds them with its own tax revenues, entire amount of Forest Service (16 U.S.C. § 500) revenues expended for schools, regardless of whether such expenditure exceeds minimum required by State law, must be treated as received for purposes of computing county's payment under the Payment in Lieu of Taxes Act (PILT), 31 U.S.C. § 1602.

2. Where county which is required by State law to pass a certain portion of its Forest Service receipts on to politically and financially independent school districts, chooses to pass on sum which exceeds State-mandated minimum, amount by which county's expenditure exceeds minimum must be viewed as "received" for purposes of computing the PILT payment.

3. If no minimum payment is specified in State law, but instead the State delegates the right to determine the amount of the Forest Service receipts to pass on to the politically and financially independent school districts to the County Board of Supervisors, the entire payment to the schools may be regarded as the equivalent of a State-mandated minimum, and need not be deducted from the PILT payment. In case of Arizona, however, State statutes indicate that school districts are not independent of county. Definitive interpretation of status of school districts is for Arizona authorities.

The Acting Associate Solicitor for the Division of Energy and Resources, Department of the Interior, has asked for an interpretation of a provision of the Payment in Lieu of Taxes Act of 1976 (PILT), 31 U.S.C. §§ 1601-1607. Specifically, he asks what portion of Forest Service revenues paid by a state to a county must be considered to be "received" by the county (and therefore deducted from its PILT) where the county has disbursed approximately one-half the amount to school districts under a state law which does not specify how much must be distributed to school districts, but requires only that the county give the school districts an amount that will provide a "real benefit" to the schools.

We conclude that where a county is responsible for providing and supporting public schools and funds them with its own tax revenues, the entire amount of Forest Service revenues expended for the schools, regardless of whether such expenditure exceeds the minimum required by state law, must be treated as "received" for purposes of computing the county's 31 U.S.C. § 1602 payment. On the other hand, where a county which is required by State law to pass a certain portion of its Forest Service receipts on to politically and financially independent school districts chooses to pass on a sum which exceeds the state-established minimum, the amount by which the county's expenditure exceeds the minimum must be viewed as "received."

The Payment in Lieu of Taxes Act of 1976 authorizes and directs the Secretary of the Interior to make payments on a fiscal year basis to each unit of local government in which certain types of Federal lands are located. Section 2 of the Act, 31 U.S.C. § 1602, sets forth alternative formulae to be used in determining the amount of these payments:

> "(a) The amount of any payment made for any fiscal year to a unit of local government under section 1601 of this title shall be equal to the greater of the following amounts--
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> "(1) 75 cents for each acre of entitlement land located within the boundaries of such unit of local government (but not in excess of the population limitation determined under subsection (b) of this section), reduced (but not below 0) by the aggregate amount of payments, if any, received by such unit of local government during the preceding fiscal year under all of the provisions specified in section 1604 of this title, or
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> "(2) 10 cents for each acre of entitlement land located within the boundaries of such unit of local government (but not in excess of the population limitation determined under subsection (b) of this section)." (Emphasis added.)

Among the provisions specified in section 1604 is 16 U.S.C. § 500, which provides that:

> "On and after May 23, 1908, twenty-five per centum of all moneys received during any fiscal year from each national forest shall be paid, at the end of such year, by the Secretary of the Treasury to the State or Territory in which such national forest is situated, to be expended as the State or Territorial legislature may

> prescribe for the benefit of the public schools and public roads of the county or counties in which such national forest is situated.* * *"

Any Forest Service revenues which are "received" by a county thus serve to reduce the payment in lieu of taxes made to that county.

The submission notes that the issue presented arose when Navajo County, Arizona, protested the Bureau of Land Management's (BLM) determination of the amount due it under the Payment in Lieu of Taxes Act for fiscal year 1980. Arizona law provides that any forest reserve funds which are received by the state from the United States are to be apportioned among the counties according to the forest reserve acreage contained in each county (A.R.S. § 41-736), and that these funds are to be disbursed by the county "for the benefit of public schools and public roads of the county as the board of supervisors may direct." A.R.S. § 11-497. Navajo County's share of the forest reserve funds for the fiscal year preceding 1980 came to $777,951, and BLM treated this sum as the amount received by the county under 16 U.S.C. § 500. The county protested that only $316,854 should have been attributed to it, because that is the amount that it retained for its own use. Since the remainder of the $777,951 had been passed on to school districts, the county claimed that it was entitled to an additional $70,434.

On November 4, 1980, the Bureau of Land Management denied the county's protest on the basis that:

> "Arizona law does not require the counties to pass the Forest Service payment to school districts. It leaves it up to the Board of Supervisors to determine how the revenue will be spent. Because State law does not require a minimum distribution of these funds, we must deduct the full amount of the Forest Service payment received by the counties each fiscal year."

The county appealed this decision to the Interior Board of Land Appeals. A short time later, the case was brought to the attention of Interior's Office of the Solicitor, which moved to have the appeal vacated and the case remanded to BLM for further consideration. The submission states that the reason for the Office of Solicitor's motion to vacate was that the county had brought to its attention an opinion by the Attorney General for the State of Arizona interpreting A.R.S. § 11-497, which concluded that the allocation of funds between public schools and roads must be "reasonably calculated to provide a real benefit to both schools and roads." The motion to vacate was granted by the Board of Land Appeals on February 5, 1981.

In 58 Comp. Gen. 19 (1978), we interpreted payments "received" by units of local government for purposes of 31 U.S.C. § 1602 as funds actually received and available to the counties for obligation and expenditure to carry out their own responsibilities, thereby alleviating the fiscal burdens imposed on local governmental units by the presence of tax-exempt Federal lands within their jurisdictions. We accordingly concluded that Congress did not intend that payments to local governments under the Act be reduced by amounts which, by virtue of State law, merely pass through these governments on the way to politically and financially independent school districts which are alone responsible for providing the services in question. On the other hand, we said, if a local government is, by State law, itself responsible for providing school services and collects taxes from local residents for that purpose, the Congress intended that "in lieu" tax payments under section 1602 be reduced by the amount of section 1604 revenues which the local unit received and passed through to the schools, since in the absence of "in lieu" payments, the total costs of providing school services would be borne by the local unit's tax revenues.

We are now asked an additional question: Are disbursements of Forest Service revenues by a local unit of government--for example, a county--which exceed the minimum level of spending for schools required by State law, to be viewed as "received" by the county, and therefore deducted from section 1602 payments?

As indicated above, we have already held that where a county itself is responsible for providing and funding the schools within its boundaries and taxes its citizens to raise funds to operate them, the amount of Forest Service revenues which the county disburses for schools must be viewed as "received" by the county and deducted from the county's "in lieu" payment. Otherwise, there would be an aggregate Federal payment in excess of the amount owed to the county in lieu of taxes for Federal lands within its jurisdiction. In other words, the Forest Service payment belongs to the county, as if it were part of its own tax revenues. It makes no difference in this situation whether the county passes on to the school district only a State required minimum or more than the State requires. All Forest Service revenues should be deducted from the county's "in lieu" entitlement, since the county has the responsibility both for the maintenance of county roads and also for financing the schools within its boundaries.

Where a county which is required by State law to pass a certain portion of its Forest Service receipts on to politically and financially independent school districts chooses to pass on an amount exceeding the minimum required by the State legislature, the county must deduct any moneys which it had the option of retaining for its own purposes from its "in lieu" entitlement. In a State which does not prescribe a minimum payment to politically and financially independent school districts but instead delegates that function to the

County Board of Supervisors, the County Board's actual allocation is the equivalent of a State-authorized minimum, and need not be deducted from the PILT.

In the case of Arizona, on which the inquiry specifically focuses, the Bureau of Land Management states that "the county is solely responsible for one [roads] and the School Districts are solely responsible for the other [schools]." We do not know the basis for that determination. Without attempting to rule on what is essentially a matter of State law, however, we note that according to the Arizona State statutes, the school districts receive at least a portion of their funding from the counties. A.R.S. § 15-992 authorizes the board of supervisors of each county, at the same time and in the same manner as other property taxes are levied, to "levy school district taxes on the property in any school district in which additional amounts are required." Taxes levied on property located within a particular school district are to be credited to the school fund of that school district. Likewise, when a school district decides to establish a high school, the County Board of Supervisors levies an annual tax on property in the district, the amount of which is estimated by the school board and certified to the county school superintendent. Section 15-994 provides that:

> "The board of supervisors of each county shall annually, at the time of levying other taxes, levy a county equalization assistance for education tax on the property within the county. * * * The county treasurer shall apportion all monies collected from the county equalization assistance for education tax levy to the school districts within the county in accordance with section 15-971, subsection B * * *."

Moreover, the school boards do not appear to be independently responsible for determining the level of additional revenues required by their districts, nor do we see any authority for the school boards to impose and collect property taxes necessary to generate school revenues on their own initiative. A.R.S. Ch. 9, Arts. 5 and 6. A.R.S. § 15-991 provides that:

> "B. The county school superintendent, not later than July 10 each year, shall file, in writing, with the board of supervisors his estimate of the amount of school funds required by each school district for the ensuing year, based on the budgets adopted by the governing boards of the school districts. The estimate shall * * * contain an estimate of the total amount to be received for the year by each school district from the county school fund and the special county school reserve fund. The county school

superintendent shall estimate the additional amounts needed for each school district from the primary property tax and the secondary property tax and certify such amounts to the board of supervisors in writing at the time of filing his estimate."

If it is determined by the State Attorney General, the Judiciary, or otherwise that under Arizona law, school districts are not politically and financially independent of the counties in which they are located, the payments of Forest Service receipts to the school districts must be regarded as fulfilling a county responsibility to support its schools, just as any payments for county roads from the amount retained by the Board of Supervisors fulfills a different county responsibility. Under these circumstances, the 16 U.S.C. § 500 receipts expended by counties for schools would have to be treated as received by the counties for purposes of computing payments under 31 U.S.C. § 1602.

for Milton J. Socolar
Comptroller General
of the United States