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Request for Audit of Bering Straits Native Corporation of Alaska (B-114868.37)

Ben Worrell of your staff has asked for our opinion on GAO's authority to audit the Bering Straits Native Corporation (BSNC) of Alaska. By letters dated May 30, 1978, and June 14, 1978, Senator Ted Stevens and Congressman Don Young, respectively, requested that GAO perform an investigative audit of the BSNC. By a May 18, 1978, letter to Senator Stevens (copy attached to May 30, 1978, Stevens letter) Richard L. Davis, Jr., the Executive Vice President of BSNC, reported the desire of the BSNC Board of Directors that GAO undertake an investigative audit of all its business since the company's date of incorporation. The Davis letter discloses that the underlying rationale for the request is the belief of the Board of Directors, shared by Mr. Davis, that the corporation lost substantial sums of monies as the result of "misinterpretation and possible fraud, poor outside professional counsel and financial advice, and lack of professional management."

The BSNC is an Alaska Native Regional Corporation established under the terms of the Alaska Native Claims Settlement Act (Act), 43 U.S.C. 1601, 1606 (Supp. V 1975). The Act's purpose is to provide an equitable solution to the aboriginal claims of the Natives of Alaska. See 43 U.S.C. 1601 (Supp. V 1975), H.R. Rep. No. 92-523, and H.R. Conf. Rep. No. 92-746, reprinted at 1971 U.S. Code Cong. & Adm. News at pp. 2193 and 2247, respectively. Under the Act, the native claims would be settled by conveying to them title to some 38,000,000 acres of land, by paying them $462,500,000 from the United States Treasury in installments over a 10-year period, and by paying them $500,000,000 from mineral royalties as a full extinguishment of their claims to additional lands. See 43 U.S.C. 1603, 1605, 1608, 1611 (Supp. V 1975). These assets would be received on a schedule and basis set forth in the Act and administered through the 12 (or possibly 13) regional corporations and the village corporations established under the Act, 43 U.S.C. 1605(c), 1606-1608 (Supp. V 1975)

The regional corporations are organized as business for profit organizations under the laws of the State of Alaska and in accordance with the terms of the Act. 43 U.S.C. 1601(d) (Supp. V 1975). Although the Act sets certain requirements concerning such matters as the distribution of funds received by the regional corporation to stockholders and village corporations, approval by the Secretary of Interior of the original articles of incorporation, and stockholders' rights, the Act does not set any express limitations on the use of funds retained by the regional corporation in the corporate treasury. See 43 U.S.C. 1606 (Supp. V 1975). Otherwise the regional corporations possess those powers to expend and invest funds consistent with the powers granted by the corporate by-laws, articles of incorporation, and the laws of the State of Alaska, not otherwise inconsistent with the Act. Also, the Act specifies that the accounts of the regional corporations shall be audited annually by independent certified public accountants. 43 U.S.C. 1606(o) (Supp. V 1975). No audit function is specifically reserved to our Office in the Act. */

As you know, GAO has authority under provisions of the Budget and Accounting Act of 1921, 31 U.S.C. 41, et seq. (1970), the Accounting and Auditing Act of 1950, 31 U.S.C. 65 et seq. (1970), and the Legislative Reorganization Act of 1970, as amended, 31 U.S.C. 1154 et. seq. (Supp. V 1975), to investigate the receipt and expenditures of public funds, to audit financial transactions of all Federal Government departments and agencies, with certain exceptions not relevant here, and to review and evaluate the results of Government programs and activities carried on under existing law.

Under the foregoing provisions, we would have authority to audit an Indian Tribe's use of Federal grant assistance, provided that the applicable statute, agency regulations,

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*/ S. 35, 92d Cong., 1st Sess. (1971) required GAO to conduct annual audits of certain corporations that would have been established under the provisions of the Senate bill. The conference committee on the disagreeing votes of the two Houses on the Senate Amendment to the House bill (H.R. 10367) deleted the provisions requiring GAO audit and substituted the present provisions requiring audits by certified public accountants.

and/or grant agreement afford us access to the pertinent records. However, GAO has no statutory jurisdiction to audit strictly tribal matters, or to examine tribal records and affairs, for a purpose which does not relate to grant funds, tribal trust funds, or other Federal funds, programs, or activities. A voluntary request for such an audit could not enlarge GAO's statutory jurisdiction. B-114868.18-O.M., November 23, 1976. Indeed, in a similar situation involving a request by Senator Abourezk to audit Navajo fiscal affairs, including but not limited to Federal funds, we concluded as follows:

> "The basic point to be made is that GAO can conduct only such audits as are within the scope of its statutory functions. In order to conduct any audit, we must, of course, also have access to pertinent records and other information, either by right or by voluntary agreement where we have no right of access. However, the essential legal requirement in any case is that the audit be for a purpose within GAO's statutory jurisdiction. Otherwise our resources would be diverted from their lawful purposes in violation of 31 U.S.C. §628 (1970). Therefore, a voluntary request for a GAO audit, coupled with an agreement for access to the necessary records, cannot be entertained where the audit would not relate to our statutory functions." B-114868.18-O.M., Nov. 23, 1976.

We observe that section 5 of Public Law 94-204, 89 Stat. 1145, January 2, 1976, provides that for the purposes of the interest payments and investment provisions of 25 U.S.C. 161a and 162a, the Alaska Native Fund, pending distribution, be considered to be funds held in trust by the United States for the benefit of the Indians. See H.R. Rep. No. 94-729, reprinted at 1975 U.S. Code Cong. & Adm. News at p. 2389-2391. However, after the funds have been distributed to the regional corporations, they are essentially private funds subject to the control and disposition of the regional corporations consistent with their corporate by-laws and articles of incorporation, laws of the State of Alaska, and the Act. See Sen. Rep. No. 92-405, 92d Cong. 1st Sess. 108 (Oct. 21, 1971) and H. Conf. Rep. No. 92-726 reprinted at 1971 Code Cong. &

Adm. News at pp. 2247, 2253. Thus, in the absence of specific statutory authority in the Act, we do not believe that investigative audits of the business transactions of regional corporations established under the Act are within the scope of our statutory functions.

We have also been informally advised by Ben Worrell of your staff that similar requests for audits of other regional corporations may be forthcoming. Accordingly, we suggest that you may wish to develop a consistent policy of declining to conduct such investigative audits in view of the fact that such audits are not within the scope of our statutory functions.

cc: Mr. Pierson, OGC
Mr. Worrell, CED
Mr. Kepplinger, OGC
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