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DECISION

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

26-02453

FILE: B-185659

DATE: August 1, 1979

MATTER OF: Lumbee Indians of North Carolina

DIGEST: (1) Final sentence of Pub. L. No. 84-570 states that nothing in Act will make Lumbee Indians eligible for Federal services performed for Indians and that none of Federal statutes affecting Indians because of their status as Indians shall be applicable to Lumbee Indians. Purpose of this provision is to assure that Act was not used in and of itself to acquire Federal benefits. However, provision does not deny to Lumbees benefits accorded Indians if they are otherwise entitled under the requirements of another Act.

(2) Lumbee Indians are not entitled to or denied benefits of Native American Programs Act of 1974, 42 U.S.C. §§ 2991, by virtue of last sentence of sec. 1, Pub. L. No. 84-570. NAPA benefits can be extended to, among others, public and non-profit agencies including governing bodies of Indian tribes on State and Federal reservations, and to public and non-profit private agencies serving Indian organizations in urban or rural non-reservation areas. HEW contends this indicates congressional intent to extend benefits to State recognized tribes as well as to other organizations serving Indians. Since neither statutory language nor its history gives clear indication of intended beneficiaries, views of agency charged with administering statute must be given great weight. Hence, we will not object to determination by HEW that NAPA programs are available to State recognized Indian tribes such as the Lumbees.

BFA
BGC 00006

Federal programs
Native Americans
~~Technical assistance~~
Native American Law
State Law
Federal Law
Eligibility determination
Compensation
claims
06046

[Protest Involving Proposal Rejection]

CNG 1/47
DLG 02/45
DLG 02/46
P 272

(3) Department of the Interior states that unless otherwise provided, most statutes referring to "Indians" do so within a context which actually means "Indian tribes." HEW contends that statute authorizing benefits to, among others, governing bodies of Indian tribes on Federal and State reservations (including a reservation of a State recognized tribe) and to public and non-profit private agencies serving Indian organizations in urban or rural non-reservation areas confers benefits on Lumbee Indians, who are a State recognized, non-reservation tribe. In absence of clear indication in language or history of Native American Programs Act of 1974 of intended beneficiaries, GAO will not object to HEW's determination that the Lumbees are eligible to participate in the Act's programs.

A bid protest was filed several years ago by United Southeastern Tribes, Inc. (USET) because its proposal to provide training and technical assistance to 40 grantees of the Office of Native American Programs (ONAP) was rejected by the Department of Health, Education and Welfare (HEW), Office of Human Development. HEW apparently rejected USET's proposal because of its refusal to furnish any assistance to one of the grantees, the Lumbee Regional Development Association, Inc. (LRDA), which serves the Lumbee Indians of North Carolina (Lumbees). By decision dated November 2, 1976, United Southeastern Tribes, Inc., B-185659, this Office denied the protest on grounds of timeliness, but agreed to reserve the question of whether non-federally recognized or terminated Indian groups are eligible for programs funded under the Native American Programs Act of 1974 or other legislation aimed at benefitting Indians. This is the question we are now considering.

One of the grounds of USET's protest was the contention that "An Act Relating to the Lumbee Indians of North Carolina," Pub. L. No. 84-570, enacted June 7, 1956, 70 Stat. 254, renders the Lumbees ineligible for assistance under Title VIII (the Native American Programs Act of 1974, 42 U.S.C. § 2991 et seq. (1976) (hereafter referred to as title VIII)) of the Head Start, Economic Opportunity, and Community Partnership Act of 1974, as amended, (Act), 42 U.S.C. § 270, as well as for assistance under any other legislation, the eligibility for which is dependent on the status of being an Indian.

After a number of "whereas" clauses and the enacting clauses, Pub. L. No. 84-570 provides in pertinent part as follows:

"* * * That the Indians now residing in Robeson and adjoining counties of North Carolina, originally found by the first white settlers on the Lumbee River in Robeson County, and claiming joint descent from remnants of early American colonists and certain tribes of Indians originally inhabiting the coastal regions of North Carolina, shall, from and after the ratification of this Act, be known and designated as Lumbee Indians of North Carolina and shall continue to enjoy all rights, privileges, and immunities enjoyed by them as citizens of the State of North Carolina and of the United States as they enjoyed before the enactment of this Act, and shall continue to be subject to all the obligations and duties of such citizens under the laws of the State of North Carolina and the United States. Nothing in this Act shall make such Indians eligible for any services performed by the United States for Indians because of their status as Indians, and none of the statutes of the United States which affect Indians because of their status as Indians shall be applicable to the Lumbee Indians.

"Sec. 2. All laws and parts of laws in conflict with this Act are hereby repealed." (Emphasis added.)

While we agreed that the immediate question was the eligibility of the Lumbees to receive Federal funds under title VIII, the language of Pub. L. No. 84-570 is similar to that contained in a number of termination statutes (see, e.g., Klamath Termination Act, 25 U.S.C. § 564q (1970)), and the rights of many other groups of Indians, both for title VIII benefits and other Federal assistance programs, would be affected by our determination of the Lumbee question. Accordingly, we solicited the views of other interested parties on the broader question of whether any legislation, which by its terms is applicable to "Indians" but which term is not otherwise defined, may be administratively determined to apply to the Lumbees or other non-federally recognized tribes.

Comments were received from a great many interested parties. A number of Indian organizations representing federally and non-federally recognized tribes, the North Carolina Commission of Indian Affairs, several individual tribes, HEW and the Department of the Interior,

Bureau of Indian Affairs have now responded with their views. The nature and number of the suggestions and comments have emphasized the myriad of considerations which are important in making determinations of eligibility for Federal services to Indians. All comments have received our careful consideration, but because of the number of responses received, we shall specifically address only those comments representative of the views submitted on the question of Lumbee eligibility for benefits under title VIII.

The initial question which we must discuss is whether the provisions of Pub. L. No. 84-570, which are quoted and underscored above, preclude the Lumbees from receiving benefits accorded by the United States to Indians. USET, among others, believes that the statute denies any and all benefits to the Lumbees which would be conferred because of their status as Indians.

We believe, however, that there is a different and better interpretation of this Act. This interpretation, set forth by the United States Court of Appeals for the District of Columbia Circuit in Maynor v. Morton, 510 F. 2d 1254 (1975), holds that "The whole purpose of this final clause of the one paragraph operative portion of the Lumbee Act was simply to leave the rights of the 'Lumbee Indians' unchanged." Id. at p. 1258.

The plaintiff in that case was certified by the Department of the Interior as an Indian within the meaning of the Indian Reorganization Act, even though he did not live on a reservation and was not a member of a recognized tribe. By virtue of the enactment of Public Law No. 84-570, the Department wished to refuse services under the Indian Reorganization Act to Mr. Maynor and 21 other persons previously identified by the Department as Indians. The court disagreed:

"True, the limited purposes of the legislation appears to be to designate this group of Indians as 'Lumbee Indians' and recognize them as a specific group. Moreover, Congress was very careful not to confer by this legislation any special benefits on these people so designated as Lumbee Indians. But we do not see that Congress manifested any intention whatsoever to take away any rights conferred on any individuals by any previous legislation." (Emphasis in original.) Id. at 1257-1258.

In the words of the Court--

"The whole purpose of the clause, from whence arises the issue in this case, was simply to make sure that a simple statute granting the name 'Lumbee Indian' to a group of Indians, which hitherto had not had such designation legally, was not used in and of itself to acquire benefits from the United States Government." (Emphasis supplied.) Id. at 1259.

Accordingly, it is our view that whether Federal benefits may be accorded to any or all of the Lumbees must be determined without regard to the provisions of Public Law No. 84-570. It constitutes neither congressional recognition of the Lumbees as Indians for the purpose of establishing eligibility for Federal benefits nor congressional direction that they be denied benefits if otherwise entitled. In other words, if entitlement to Federal benefits depends solely upon the status conferred by Public Law No. 84-570, the Lumbees cannot qualify. If they can base their entitlement on some other legislative authority, they can be included. It will thus be necessary to examine the authorizing legislation for each program in question on a case-by-case basis.

With regard to eligibility of the Lumbees for title VIII benefits by letter of August 5, 1977, HEW indicates that it relies on a legal memorandum dated April 3, 1975, in which the then Deputy Assistant Secretary of Human Development concluded that "(1) the Lumbees are eligible for funding under the Native American Programs Act of 1974 and (2) [the final clause of] Public Law No. 84-570 presents no legal bar to funding of the Lumbees by ONAP because financial assistance under that agency's program is predicated on economic and social conditions (being disadvantaged) rather than Indian status." As set forth in title 42, United States Code, the pertinent provisions of title VIII provide:

"§ 2991a. Congressional statement of purpose.

"The purpose of this subchapter is to promote the goal of economic and social self-sufficiency for American Indians, Hawaiian Natives and Alaskan Natives."

"§ 2991b. Financial assistance for native American projects.

"(a) The Secretary is authorized to provide financial assistance to public and nonprofit private agencies including but not limited to, governing bodies of Indian tribes on Federal and State reservations, Alaskan Native villages and regional corporations established by the Alaska Native Claims Settlement Act, and such public and nonprofit private agencies serving Hawaiian Natives, and Indian organizations in urban or rural nonreservation areas, for projects pertaining to the purposes of this subchapter. In determining the projects to be assisted under this subchapter, the Secretary shall consult with other Federal agencies for the purpose of eliminating duplication or conflict among similar activities or projects and for the purpose of determining whether the findings resulting from those projects may be incorporated into one or more programs for which those agencies are responsible."

"§ 2992c. Definitions.

"(2) 'Indian reservation or Alaskan Native village' includes the reservation of any federally or State recognized Indian tribe, including any band, nation, pueblo, or rancheria, any former reservation in Oklahoma, and community under the jurisdiction of an Indian tribe, including a band, nation, pueblo, or rancheria, with allotted lands or lands subject to a restriction against alienation imposed by the United States or a State, and any lands of or under the jurisdiction of an Alaskan Native village or group, including any lands selected by Alaskan Natives or Alaskan Native organizations under the Alaska Native Claims Settlement Act;"

HEW points out that section 2991b(a) provides the eligibility requirements to qualify as an "Indian" for the purposes of programs conducted pursuant to title VIII. It is stated that the Lumbees are not a federally recognized tribe and noted that they do not reside on a State reservation. However, the memorandum states:

"* * * they have, however, been recognized by the State of North Carolina as Indians and would qualify for assistance under this provision as an Indian organization in a rural nonreservation area."

HEW also maintains that since ONAP provided services under the Economic Opportunity Act of 1964, as amended, until its transfer to HEW by the Act, the Act operated only to transfer administrative responsibility for the original program and services. The memorandum cites H.R. Rep. No. 93-1043, 93d Cong., 2d Sess. (1974) in support of this proposition:

"The Act authorizes the Secretary of Health, Education, and Welfare to continue operation of the Native American Program in the same manner as that program is now being carried out under Title II of the Economic Opportunity Act under a delegation from the Director of Economic Opportunity * * *."

Senate Report No. 93-1292, 93d Cong., 2d Sess. (1974), also notes that:

"A major element for the variety of Native American projects is overcoming the problems of poverty * * *. The amount of the basic grants to reservations is based on the number of poor residents * * *. The Committee's bill continues the present focus of the Native American Program * * *."

DLG-00163

The views of the National Tribal Chairman's Association (NTCA) on the subject of Lumbee eligibility for title VIII benefits were submitted June 30, 1976, as an interested party in the bid protest by the United Southeastern Tribes and are representative of the comments subsequently received from other interested parties who argue that the Lumbees are ineligible to receive title VIII services. NTCA is an organization of the elected or acknowledged leaders of tribal governments of 188 federally recognized Indian tribes. It disputes the HEW position that funding under title VIII may be predicated on the Lumbees' status as economically and socially disadvantaged in the absence of their being federally recognized Indians. While NTCA acknowledges that title VIII is a poverty program, it argues that it is designed to assist only those who are both economically disadvantaged and are American Indians, Hawaiian natives or Alaskan natives. Under this theory, the Lumbees either receive as (federally recognized) American Indians, or not at all. NTCA also takes issue with the HEW position that because the Lumbees are State recognized, they qualify for assistance as an Indian organization in a rural nonreservation area. Absent a specific congressional acceptance of State recognition as sufficient to establish eligibility, NTCA maintains that State recognition is irrelevant for purposes of determining eligibility for participation in Federal Indian programs.

The views of the Lumbees are contained in a position paper forwarded to this Office by letter of January 7, 1977, from the LRDA. The LRDA supports its contention that the Lumbees are eligible for assistance under title VIII as a federally recognized, nonreservation group of Indians by citing the decision in Maynor v. Morton, 510 F. 2d 1254 (1975), in which the court stated that Public Law No. 84-570 had the effect of "legislative recognition for the entire group." It also notes that the Lumbees are a State recognized nonreservation group of Indians.

The stated purpose of title VIII is to promote the economic and social self-sufficiency for, as pertinent here, American Indians. This class designation is a restriction on eligibility imposed in addition to those defined by the broader purposes of the Act. The various titles of the Act provide funds and services for specific groups for the broad purpose of aiding socially and economically disadvantaged persons. We are concerned here with a specific title carrying out the broad purposes of a comprehensive law. Benefits accorded by title VIII are available only to those otherwise eligible individuals who are Indians.

In presenting the views of the Department of the Interior, the Acting Commissioner of Indian Affairs stated that "in the absence of a preponderance of evidence to the contrary, most congressional statutes when referring to 'Indians' do so within a context which actually means 'Indian tribes.'" He notes that this flows from a special political relationship based upon the Constitution, treaties and/or congressional actions which is established between the United States and the tribes. Generally, the special benefits and services to Indian tribes and their members have flowed from this special political relationship established by Federal recognition of a group of individuals as a tribe.

The practice of extending Federal recognition to Indian tribes arises from the unique legal status of those tribes under Federal law and from the plenary authority of Congress to legislate specifically for Indians. Federal legislation relating to Indians as such is not based upon racial classifications, but rather reflects the power of Congress "to regulate Commerce * * * with the Indian tribes." U.S. Const. Art. I. section 8, cl. 3. Federal legislation in behalf of Indians may also constitute an exercise of Congress' spending, war, property, or other constitutional powers. Federal recognition of a group of individuals as an Indian tribe can be accomplished either by legislation or by the Executive Branch. In this regard, the Secretary of the Interior is charged by 43 U.S.C. § 1457 (1976) with the supervision of public business relating to Indians. His responsibilities with respect to Indian affairs are defined by 25 U.S.C. § 2 (1976):

"The Commissioner of Indian Affairs shall, under the direction of the Secretary of the Interior, and agreeably to such regulations as the President may prescribe, have the management of all Indian Affairs and of all matters arising out of Indian relations."

The Secretary of the Interior, in discharge of his statutory responsibilities, has issued regulations to be followed for a group of Indians to receive Federal acknowledgement of existence as a tribe. 43 Fed. Reg. 39361 (1978) (to be codified in 25 C.F.R. § 54).

Of course, the Lumbees have not been federally recognized as an Indian tribe by the Secretary of the Interior, nor, for the reason discussed above, may the congressional recognition of the Lumbees as Indians in Public Law No. 84-570 be used as a basis for Lumbee entitlement to Indian benefits. However, as HEW points out, the Secretary of HEW is authorized by the Native American Programs Act of 1974 to provide financial assistance to public and non-profit agencies, including but not limited to, governing bodies of Indian tribes on Federal and State reservations. Section 803, 42 U.S.C. § 2991b(a). An Indian reservation is defined as a reservation of any federally or State recognized Indian tribe. Section 813, 42 U.S.C. § 2992c(2). The HEW Secretary is also authorized by section 803, supra, to provide assistance to public and non-profit private agencies serving Indian organizations in urban or rural nonreservation areas. (The Lumbees fall, if anywhere, in this latter category since they do not live on a reservation.)

HEW suggests that, at minimum, when sections 803 and 813 are read together, they indicate an intent on the part of Congress to extend benefits to State recognized tribes, as well as to other organizations serving Indians. These Indians might come from federally or State recognized tribes. The Lumbees are, of course, recognized as a tribe by the State of North Carolina.

The Department of the Interior declined to comment on the eligibility of the Lumbees for title VIII benefits. However, the Acting Commissioner of Indian Affairs noted that Congress has from time-to-time provided special benefits for groups with special social and/or economic needs. He stated that "[i]n some such instances, it seems likely that Congress intended that Indian people, as a racial entity, be among the special beneficiaries." The Acting Commissioner states that agencies charged with administering Indian legislation will have to determine for themselves "whether persons of Indian descent who do not enjoy a special political relationship with the United States are included among the beneficiaries."

B-185659

As HEW points out, the entire Act is directed at improving the situations of socially and economically disadvantaged individuals, with title VIII directed at socially and economically disadvantaged Indians. Substantial arguments have been presented to us on both sides of the issue of whether the provisions of title VIII were specifically intended to provide benefits to persons of Indian heritage who are not members of federally recognized tribes but who are members of State recognized tribes. While the language of title VIII may be ambiguous, nevertheless there is a sufficient basis in the language used to support an interpretation that permits title VIII funds to be made available to State recognized tribes such as the Lumbees whether living on reservations or in urban or rural non-reservation areas. Further, where statutory language is ambiguous, great deference should be given to the views of the agency which is responsible for carrying out the Act's provisions.

In view of the broad ranging purposes of title VIII and the Act as a whole and since the language of the statute may readily be read to support HEW's position, we do not believe that that agency's position is unreasonable or unwarranted. Accordingly, we will not object to a determination by HEW that title VIII programs are available to State recognized Indians such as the Lumbees. In reaching this conclusion, however, we pass on the following caveat set forth by the Acting Commissioner of Indian Affairs:

"We do believe, however, that it is incumbent upon Agencies administering 'Indian' programs to give close attention to this matter and not establish a relationship with such Indian groups which might unthinkingly lead to their developing a status not readily distinguished from those Indian tribes whose political relationship has been well defined. This could in the long run prove detrimental to those tribes to which the United States has special trust obligations."


Deputy Comptroller General
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