



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

30128
099798

B-108439

October 31, 1972

Dear Mr. Secretary:

Our Office has been requested to render a decision as to whether or not the Alaska Native Fund established by the Alaska Native Claims Settlement Act, Public Law 92-203, approved December 18, 1971, 85 Stat. 688, may be properly classified as an Indian tribal trust fund and thus be eligible for interest payments under the law found at 25 U.S.C. 161a and for investment under the law found at 25 U.S.C. 162a. 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 trust 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.

Under section 6 and 9 of Public Law 92-203, the Alaska Native Fund is to consist of the following:

1. A total of \$462,500,000 from annual congressional appropriations.
2. 4 percent interest per annum on any amount authorized to be appropriated by subsection 6a which is not appropriated within six months after the fiscal year in which payable.
3. A total of \$500,000,000 from payments from the State of Alaska and from the United States for mineral royalties and lease rentals.

The Deputy Solicitor of the Department of the Interior has taken the position that the fund in question is an Indian tribal trust fund and thus entitled to the interest payments and investment provisions of 25 U.S.C. 161a and 162a, while the Assistant General Counsel of the Treasury Department has concluded that the fund may not be properly classified as an Indian tribal trust fund.

In support of the Interior Department's position the Deputy Solicitor argues that:

PUBLISHED DECISION
52 Comp. Gen. _____

(1) All payments into the Alaska Native Fund may be expected almost immediately but the quarterly distribution of moneys in the fund which are to be paid to the certain regional corporations cannot, under subsection 6(c) of Public Law 92-203, be made until "after completion of the role prepared pursuant to section 5." Thus, the moneys in the fund are properly for classification as trust funds and are entitled to draw interest or to be available for investment, particularly during the two year period which it is anticipated will be needed to complete the preparation of the role.

(2) The natives of Alaska, including the three aboriginal ethnic groups of Indians, Aleuts and Eskimos, have long been recognized as wards of the United States and are treated in material respects the same as all the aboriginal tribes of the United States, and thus are entitled to the benefits of and are subject to the general laws governing the Indians of the United States; and,

(3) Affirmative support for the position taken is generally drawn from a colloquy between Senators Gravel and Bible during consideration of the Alaska Native Claims Settlement Act.

Regarding the remarks of Senators Gravel and Bible, the Congressional Record of December 14, 1971, shows that during Senate consideration of the conference report on the Alaska Native Claims Settlement Act, the following colloquy took place.

"Mr. GRAVEL. * * *

"Mr. President, before proceeding, I would like to clarify two minor points. According to the bill funds will be appropriated into the Alaska native fund beginning this fiscal year; that is before July 31, 1972. But no funds will be paid out from the Alaska Native fund to the regional or village corporations until the Secretary of the Interior has completed the Native enrollment. That procedure could take as long as 2 years. It is my understanding that in the interim the appropriated funds will be held in a special fund in the U.S. Treasury. Will there be any interest credited to that account while the funds are withheld pending enrollment?

"Mr. BIBLE. The bill does not by its terms provide for interest on the appropriated funds once they are, in fact, appropriated although interest at the rate of 4 percent per annum beginning 6 months after the end of any fiscal year in which Congress fails to make a scheduled appropriation is provided.

"As to funds withheld pending enrollment, it is the committee's intention that the Secretary of the Treasury shall use his existing statutory authority to invest and manage the Alaska Native fund pending enrollment and to credit any interest so earned to that fund. When the enrollment is completed, the total balance, including accrued interest will be paid to regional corporations in accordance with the bill." See 117 Cong. Rec. S. 21656.

In support of the Treasury Department's position, the Department's Assistant General Counsel argues that: (1) the fund in question is not a fund for Indian tribes and (2) the composition of the fund is specifically and categorically outlined by Congress in section 6 and--except for interest payable under 6(a) where there is a delay of more than six months by the Congress in appropriating moneys due under the act--no interest on the fund in question is payable.

In concluding that the fund is not a fund for Indian tribes the Treasury position does not rest on any disagreement with the position of the Interior Department that the three aboriginal ethnic groups of Alaska are recognized wards of the nation and that these aboriginal groupings have been and may be considered to be subsumed under the general definition of Indian tribes. Rather, the Treasury position rests on the fact that the Alaska Native fund is created for distribution to the regional corporations established by Public Law 92-203 and not to aboriginal groupings which might be considered "tribes." Further, the act speaks throughout of "Natives of Alaska" as the ultimate individual beneficiaries of the settlement involved and defines a native as a citizen of the United States who has one-fourth degree or more Alaska Indian, Aleut or Eskimo blood. It is thus not essential for enrollment that such a person be a present member of any aboriginal native village or group. Finally, the Indian tribal funds presently accounted for as trust funds by the Treasury are held for particular recognized tribes of native origin or organization and the trust funds are derived from revenues earned or received by the specific groups.

With regard to the second point made by Treasury, it is stated that the fact that a single provision is made for interest demonstrates an attention by the Congress to the subject of interest and an intent to exclude any other type of interest. In this regard, it is argued that it would be unrealistic to suppose that Congress intended interest upon the interest authorized for a delayed appropriation. In addition, the Treasury argues that it has always taken a position which is well recognized by Congress that appropriated funds are not subject to investment or interest earnings unless such increment is specifically authorized. Finally, Treasury argues that the computations of royalty provided for in section 9 of the act do not include recognition of the possibility of the accrual of interest on the royalties already paid in determining a maximum payment of \$500 million dollars.

During consideration of this matter Counsel for the Alaska Federation of Natives requested opportunity to present arguments supportive of the proposition that the Alaska Native Fund is an Indian Tribal fund and thus entitled to be carried on the books of the Treasury as an interest-bearing trust account.

In oral and written arguments Counsel advanced the following points:

- (1) The term "Indian Tribes" as used in 25 U.S.C. 161a should not be narrowly construed as it is used in its broad generic sense to refer to all aboriginal groupings in keeping with what Counsel advances as the view that this statute expresses a broad congressional policy of guaranteeing at least 4 percent interest on all monies held in trust by the Government for the benefit of aboriginal Americans;
- (2) Administrative practice under the statute demonstrates that the Government has not limited its applications solely to "Indian Tribes" in any narrow sense;
- (3) The Alaska Native fund is within the category of funds entitled to interest under 25 U.S.C. 161a;
- (4) The legislative history of the Alaska Native Claims Settlement Act is consistent with the application of 25 U.S.C. 161a.
- (5) Under the long-established judicial rule that ambiguities are to be construed in favor of the aboriginal people, citing Worcester v. Georgia, 6 Pet. 515, 582 (1832), the Government

should give the Alaska natives the benefit of the doubt in the construction of this statute; and,

(6) The Alaska Native Claims Settlement Act was to effect a fair and just settlement of all claims of these Alaska natives and the Government's failure to allow for the payment of interest on the funds made available for this settlement would defeat the fundamental purpose of the act.

For the most part the Natives of Alaska do not fall into well-defined tribal groups. See Cohen, Handbook of Federal Indian Law (U.S. Department of the Interior, 1945) chap. 21, sec. 1, p. 402. See also, In Re Sah Quah, 31 Fed. 327, 329 (1886) for judicial recognition that the natives of Alaska by standards of habits, modes of living, and traditions have a patriarchal rather than tribal system. In view of this, under a strict construction of the term Indian tribe as used in 25 U.S.C. 161a, 162a, most historical organizations of native Alaskans would not be covered under those statutes.

A dominant factor in our consideration of this matter is that we can find no legitimate basis for treating the natives of Alaska—the ultimate beneficiaries—any differently from the treatment that is accorded under those statutes to other aboriginal groups geographically situated in the contiguous lower forty-eight States. In this light, recognizing that the legal position of the individual Alaskan native has been generally assimilated to that of the other Indians of the United States, see Cohen, supra, chap. 21, sec. 6, p. 404, we do not think that the lack of formal tribal organization for the Alaskans should be determinative.

It is our view that the trust nature of the Federal holding of these sums during completion of the roles required by section 5 of Public Law 92-203 more than outweighs the fact that the regional corporations who will be the initial recipients of these funds may not historically be characterized as Indian tribes. We also believe that any doubts involved concerning the payment of interest are resolved by the only legislative history available, i.e., (1) the specific provision for the payment of interest in the bill which passed the Senate; (2) the explanation during consideration of the conference report on the floor of the Senate by the spokesman for the Senate Conferees, Senator Bible, that it was the intention of the conference committee that existing statutory authority should be used to invest and manage the Alaska Native Fund; and (3) the fact that there was no statement on the floor of the House of Representatives during consideration of the conference report or otherwise which was contrary to Senator Bible's explanation to the Senate.

B-108439

Thus, it is our decision that these corporations may, for the purpose of interest payment and investments under the provisions of law found at 25 U.S.C. 161a and 162a, be treated as Indian tribes pending enrollment under Public Law 92-203.

Sincerely yours,

(SIGNED) ELMER B. STAATS

Comptroller General
of the United States

The Honorable
The Secretary of the Interior