COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548 40319

B-108439

December 28, 1973

The Honorable
The Secretary of the Interior

Dear Mr. Secretary:

By letter dated November 13, 1973, Assistant Secretary of the Interior Laurence E. Lynn, Jr., asked that our decision of October 31, 1972, 52 Comp. Gen. 248, pertaining to the classification of the Alaska Native Fund (hereafter called the "Fund") as an Indian Tribal trust fund, be "clarified" to establish its applicability to monies remaining or placed in the Fund after completion of the statutory enrollment period. The Fund was established pursuant to the Alaska Native Claims Settlement Act (hereafter called the "Act"), Pub. L. 92-203, approved December 18, 1971, 85 Stat. 688.

Mr. Lynn also asked whether the appropriate date for the initial distribution of monies in the Fund to the Regional Corporations which are the statutory distributees is December 17, 1973 - the date on which it is anticipated that the enrollment of Alaskan natives, required by section 5 of the Act, will be completed - or December 31, 1973, the last day of the fiscal quarter during which the roll was completed.

In our previous decision, we held--based on the legislative history of the Act--that the Fund properly may be considered to be an Indian tribal trust fund, within the meaning of the law found at 25 U.S.C. 161a and 162a, "pending enrollment under Public Law 92-203." The above-mentioned sections provide that Indian tribal trust funds, with account balances exceeding $500, are entitled to receive simple interest at the rate of 4% per annum, and further, that the Secretary of the Interior (the Secretary) may, in his discretion, withdraw such funds from the United States Treasury and deposit them instead for investment purposes in selected banks or invest such funds in obligations of the United States. Mr. Lynn's letter asks us, in effect, to remove our qualifying phrase "pending enrollment under Public Law 92-203," because it suggests that the special status of the Fund as an Indian tribal trust fund would be terminated once the roll was completed, and the provisions of sections 161a and 162a for interest payments and investment eligibility would no longer be applicable.

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Section 5 of the Act directs the Secretary to prepare a roll of Alaskan natives living at the time of enactment (December 18, 1971), by region, village, or other residence as of the date of the 1970 census enumeration. The roll must be completed on or before December 18, 1973. Thereafter (with the exception of a reserve for attorney and similar fees, and an equitable share for a 13th Regional Corporation, pending final decision as to whether to establish one and completion of its formal organization) all the assets of the Fund are to be distributed at the end of each fiscal quarter to 12 (or possibly 13) Regional Corporations, on the basis of the relative numbers of natives living in each region of the State, as ascertained by the roll. (Section 6(c) of the Act). Under sections 6(a) and 9 of the Act, the Fund is to consist of the following:

1. Annual congressional appropriations, totalling $462,500, through Fiscal Year 1987;

2. 4% interest per annum on any amounts authorized but not actually appropriated within six months after the fiscal year for which they were authorized; and

3. Payments from the State of Alaska and from the United States for mineral bonuses, royalties, and rentals, up to a total of $500,000,000.

It is thus apparent that while most of the assets in the Fund at any given time will be disbursed within a relatively short period, under the terms of the Act the Fund will be periodically replenished and will remain in existence for eight more fiscal years.

Mr. Lynn urges that the payments into the Fund made subsequent to the initial distribution, as well as the amounts reserved to pay attorney fees and to preserve a share for a possible 13th corporation, should continue to be regarded as Indian tribal trust funds and therefore continue to receive 4% interest payments and be eligible for investment. He relies on "the essentially tribal nature of the regional corporations" which will not be affected by completion of the roll, and the fact that none of the monies subsequently held in the Fund can be turned over to the Corporations upon request but must be retained until expiration of the quarter.

As stated above, we held in our previous decision that the Fund proper could be considered to be an Indian tribal trust fund - but only until the roll was completed. Also, as indicated above, our holding was based primar on the explanation made during consideration of the conference report on the floor of the Senate by the spokesman for the Senate Conferees, Senator Bible, to the effect that it was the intention of the Conference Committee

that existing statutory authority be used to invest and manage the Alaskan Native Fund "pending enrollment and to credit any interest so earned to that fund." We can find no evidence of congressional intent to preserve the trustee relationship between the United States and the Alaskan natives for a longer period. On the contrary, the declaration of policy in section 2(b) of the Act states:

> "The settlement should be accomplished rapidly, with certainty, in conformity with the real economic and social needs of Natives, without litigation, with maximum participation by Natives in decisions affecting their rights and property, without establishing any permanent racially defined institutions, rights, privileges, or obligations, without creating a reservation system or lengthy wardship or trusteeship, and without adding to the categories of property and institutions enjoying special tax privileges or to the legislation establishing special relationships between the United States Government and the State of Alaska." (Emphasis added.)

The Conference Report (Rept. No. 92-746, at p. 40), in describing the declarations of policy in what later became section 2 of the Act, stated, "The lands granted by this Act are not 'in trust' and the native villages are not Indian 'reservations.'"

The declaration of policy in section 2 of the Act was adopted essentia unchanged from the Senate version of the legislation. Senate Rept. No. 92-405 (at p. 80) states:

> "The settlement of Alaska native land claims is to be final and complete and the present legislation intends to avoid prolonged legal or property distinctions or implications of wardship based upon race. Accordingly, the assets granted in settlement of the claims will be, or will rapidly become, ordinary and unrestricted forms of property." (Emphasis added.)

The Report further explains the intent of the declaration of policy as follows: (p. 108)

> "Section 2(c) states the intent of Congress to settle the claims promptly, to avoid litigation, to maximize participation by Natives in decisions affecting their rights and property, and to vest in them, as soon as

> prudently possible, control over the lands to which they are to receive title, the revenues which are distributed, and the corporations established under this Act. A major purpose of this Committee and the Congress is to avoid perpetuating in Alaska the reservation and the trustee system which has characterized the relationship of the Federal Government to the Indian peoples in the contiguous 48 States." (Emphasis added.)

It seems clear from the legislative history that the Congress - the settlor of the trust in question - intended it to be ended at the earliest practical time.

A trust relationship has its inception when a separation of legal and equitable interests in the corpus takes place and terminates when such interests are reunited. In re Coutts' Will, (1931) 249 N.Y.S. 788, 794. We believe that termination of the implied trust relationship in the instant case will have been accomplished when the roll is completed, making it possible for the first time to ascertain the specific members of the class of beneficiaries and the proportionate share each is to receive, through the mechanism of the Regional Corporations. This conclusion is further strengthened by the provisions of section 6(c) of the Act itself. Once the roll is completed, with the exception of the relatively small sums withheld for legal fees and for the 13th corporation, "all money in the Fund" must be distributed at the end of each fiscal quarter. It is true that for brief intervals of time during the next eight years—never longer than three months—fresh inputs of funds may accumulate in the Fund until they too are disbursed at the end of the fiscal quarter. The requirement that the funds be distributed only at the specified intervals instead of the day or week they may be covered into the Treasury can be explained, we believe, by considerations of fiscal and management efficiency. Furthermore there appears to be no duty on the part of the Government to invest or obtain interest on balances held for short periods of time awaiting liquidation or distribution. Cf., In re Whitney's Estate (1926), 248 p. 754; Liberty Title and Trust v. Pleus (1948), 61 A2d 297. See also 8 Comp. Gen. 625 (1929) in which we held that a fund entitled "Indian Moneys; proceeds of labor" was not entitled to interest payments pursuant to 31 U.S.C. 161a since it was not carried on Treasury books to the credit of an Indian tribe. (This oversight was later corrected by amending legislation.) In speculating about the reason why this account was not included as an interest-bearing fund, we stated:

> "A reason for the omission of this trust fund from the provisions of the act might be found in the fact that the moneys in said fund are made available currently

> for expenditure for the benefit of the tribe, agency, or school on whose behalf they were received, hence, there would not be in said fund such stable balances as ordinarily are regarded as interest bearing." (Emphasis added.)

The amounts set aside for attorney fees for services rendered in connection with consultations on securing enactment of the legislation or claims against the United States which were extinguished by the Act, is to cover an ordinary business expense frequently incurred in the administration and termination of any trust estate. In interpreting a somewhat analogous provision in another statute which reserved and set aside from unexpended balances of trust funds, "a sufficient sum to pay certain administrative expenses," this Office held that "the only funds to bear interest were those set aside as trust funds." The reference to the other reserved funds explains their ultimate disposition but does not suggest that they should bear interest. (4 Comp. Gen. 633 (1925)) Section 20 of the Act directs that certain attorney and consultant fees be paid out of the Fiscal Year 1973 appropriations. The deadline for filing claims for such fees was December 18, 1972. Procedures for processing and determining these claims is also prescribed. Once awards are made and certified, the Secretary of the Treasury is directed to pay the amount of the claim from the funds set aside for this purpose. He is given no discretion and no duties to perform, other than the act of disbursement. He serves merely as a custodian of the funds until the time of disbursement. We see no basis to infer a trust relationship.

With respect to whether the funds set aside for a possible 13th corporation constitute a trust, we note from Mr. Lynn's letter that the question of whether to organize the 13 corporation will be determined this month. Even if the decision is in the affirmative, we are unable to infer a trust relationship extending beyond the enrollment period. It appears to us that the 13th corporation must be regarded as a distributee on the same basis as the other 12 Regional Corporations except that payment of its share may be delayed beyond the end of the fiscal quarter if its formal organization is not completed.

In summary, we affirm our previous decision that the monies in the Fund may be considered as being Indian tribal trust funds within the meaning of 31 U.S.C. 161a and 162a but only until the completion of the roll on December 18, 1973. On the basis of the legislative history and the language of the Act, we can find no intent to continue the trust relationship for the entire life of the Fund.

With respect to the appropriate date for the initial distribution of the assets of the Fund, we think that the plain language of section 6(c)

of the Act requires the initial distribution and all subsequent distributions to be made "at the end of each three months of the fiscal year." The reference to "after completion of the roll" serves only to signal the end of the trust period and the beginning of the time when the quarterly distributions are to begin. The two-week interval between completion of the roll and the end of the first fiscal quarter in which a distribution may be made (December 18, 1973, to December 31, 1973), may be regarded as a winding-up period for the tribal trust fund. Therefore, any funds presently invested and drawing interest need not be withdrawn before the end of the fiscal quarter.

Sincerely yours,

R.F.KELLER

Deputy Comptroller General
of the United States