

PROVIDING FOR THE DISPOSITION OF A JUDGMENT AGAINST THE UNITED STATES RECOVERED BY THE CONFEDERATED SALISH AND KOOTENAI TRIBES OF INDIANS OF THE FLATHEAD RESERVATION IN MONTANA

APRIL 11, 1967.—Ordered to be printed

MR. HALEY, from the Committee on Interior and Insular Affairs, submitted the following

REPORT

[To accompany H.R. 7345]

The Committee on Interior and Insular Affairs, to whom was referred the bill (H.R. 7345) to provide for the disposition of a judgment against the United States recovered by the Confederated Salish and Kootenai Tribes of Indians of the Flathead Reservation in Montana, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE

The bill, H.R. 7345, introduced by Representative Olsen, provides for the disposition of judgment funds recovered under Indian Claims Commission docket No. 61 by the Confederated Salish and Kootenai Tribes of Indians of the Flathead Reservation in Montana. Amounting to \$4,431,622.18, the judgment represents fair payment for 12,050,000 acres of land in Montana which were ceded to the United States as a result of the treaty of July 16, 1855 (12 Stat. 975).

An identical bill, S. 1177, was considered concurrently with H.R. 7345.

NEED

The Supplemental Appropriation Act of October 27, 1966 (Public Law 89-697, 80 Stat. 1065), appropriated funds to satisfy the judgment involved in docket No. 61; however, legislation is usually considered with respect to the distribution of the funds after the tribes develop their plans and programs for the utilization of these funds. Provisos contained in the annual appropriation acts for the Department of the Interior (which prohibit advances on judgments awarded to Indian tribes by the Indian Claims Commission or the Court of Claims until

specific legislation has been enacted indicating the purposes for which such funds may be used) may be applicable.

Enactment of H.R. 7345 would hasten the distribution of the judgment funds and enhance their utilization in accordance with the claims legislation report for the Confederated Salish and Kootenai Tribes. The tribes have formulated an approved family improvement plan which will enable them to use the money to provide maximum benefit to tribal members. Witnesses, representing the tribes, appeared in support of the legislation.

The bill contains the usual provisions exempting the funds distributed to tribal members from Federal and State income taxes.

COST

No additional expenditures of Federal funds are contemplated under the terms of H.R. 7345.

DEPARTMENTAL REPORTS

The report of the Department of the Interior dated March 30, 1967, is set forth below:

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., March 30, 1967.

HON. WAYNE N. ASPINALL,
*Chairman, Committee on Interior and Insular Affairs,
House of Representatives,
Washington, D.C.*

DEAR MR. ASPINALL: Your committee has requested a report on H.R. 7345, a bill to provide for the disposition of a judgment against the United States recovered by the Confederated Salish and Kootenai Tribes of Indians of the Flathead Reservation in Montana.

In the opinion of our Solicitor, the enactment of the bill is not necessary because specific legislation now on the books with respect to these Indian tribes provides adequate authority to use the judgment money. The Comptroller General concurred in this conclusion in a letter dated September 30, 1966, to Congressman Olsen. A copy of this letter is enclosed.

We have no objection, however, to the enactment of the bill. It provides substantially the same authority that presently exists for this group. It also parallels the legislation enacted in the 89th Congress for six tribes that did not have adequate authority to spend their judgment funds.

The bill provides that the judgment funds awarded the Confederated Salish and Kootenai Tribes of the Flathead Reservation by the Indian Claims Commission in docket No. 61 may be used as authorized by the tribal governing body and approved by the Secretary of the Interior. It also exempts from Federal and State income taxes any funds distributed to tribal members.

The judgment funds appropriated by the act of October 27, 1966 (80 Stat. 1065), are on deposit in the U.S. Treasury to the credit of the tribes in an interest-bearing account. This bill authorizes the use of both the principal and the interest. The judgment was for

\$4,431,622.18, and the payment of attorney fees and expenses will reduce the figure to about \$4 million. The interest earned to December 31, 1966, amounts to \$24,768.52.

The general authority which this bill gives to the Secretary to approve tribal programs for the use of judgment funds is consistent with the authority granted by the 89th Congress in connection with awards to the Quinaielt Tribe (Public Law 89-28), the Quileute Tribe (Public Law 89-655), the Miami Tribe of Oklahoma (Public Law 89-659), the Otoe and Missouri Tribes (Public Law 89-661), the Skokomish Tribe (Public Law 89-663), and the Omaha Tribe (Public Law 89-717).

The socioeconomic data which we normally submit are not included in this report. We expect to be able to submit it to the committee shortly.

The Bureau of the Budget has advised that there is no objection to the presentation of this report from the standpoint of the administration's program.

Sincerely yours,

STEWART L. UDALL,
Secretary of the Interior.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., September 30, 1966.

B-150731

HON. ARNOLD OLSEN,
House of Representatives.

DEAR MR. OLSEN: Further reference is made to your letter of July 14, 1966, asking whether additional legislation would be needed before disbursement properly could be made of funds anticipated in satisfaction of a judgment which the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Mont., recently obtained against the United States in the sum of \$4,431,622.18.

In the absence of any law to the contrary Indian tribal funds may not be expended without specific appropriation by the Congress. See 25 U.S.C. 123 and 124. However, with respect to the confederated tribes here involved, the act of June 24, 1946, 60 Stat. 302, provides in part that " * * * Notwithstanding any other provision of existing law, the tribal funds now on deposit or hereafter placed to the credit of the Confederated Salish and Kootenai Tribes of Indians of the Flathead Reservation in Montana, in the United States Treasury, shall be available for such purposes as may be designated by the tribal council of said tribe and approved by the Secretary of the Interior: *Provided*, That any expenditures so designated and approved shall be in accordance with the provisions of the tribal constitution and charter."

Accordingly, tribal funds of the confederated tribes, including the proceeds of the judgment, ordinarily would be available for expenditure by the confederated tribes in accordance with the act of June 24, 1946. However, question concerning the proceeds of the judgment arises because the Department of the Interior appropriation act for 1963 and annual appropriations since then have contained a provision that tribal funds derived from appropriations in satisfaction of awards of the Indian Claims Commission and the Court of Claims shall, with

minor exceptions, not be available until the Congress has approved the purposes for which the funds are to be used. The provision, as contained in the appropriation acts for fiscal years 1963 and 1964 (76 Stat. 337 and 77 Stat. 100), reads as follows:

"* * * *Provided*, That in addition to the amount appropriated herein, tribal funds may be advanced to Indian tribes during the current fiscal year for such purposes as may be designated by the governing body of the particular tribe involved and approved by the Secretary, except that tribal funds derived from appropriations in satisfaction of awards of the Indian Claims Commission and the Court of Claims shall not be further appropriated until a report of the purposes for which the funds are to be used has been submitted to the Senate and House Committees on Interior and Insular Affairs and those purposes either have been approved by resolution of each of said committees or have not been disapproved by resolution of either of said committees within sixty calendar days from the date the report is submitted. * * *"

Beginning with the appropriation act for fiscal year 1965 and continuing down to the present the format of the provision was changed to that of a separate proviso (hereinafter set forth) and the language was changed so as to preclude the use of judgment funds until legislation has been enacted specifying the purposes for which the funds can be used.

As stated in our letter of August 4, we asked the Secretary of the Interior for his views with regard to this matter. Such report now has been received and the Secretary has reported that, in his opinion, the provision in the recent annual appropriation acts affects only tribal funds which are not subject to special statutes such as the 1946 act. Consequently, he concludes that if the confederated tribes wish to use their anticipated judgment award funds in accordance with the 1946 act, the proviso in question does not require further legislation to permit such use.

In reaching such conclusion, the Secretary points out that there are a number of special statutes similar to the 1946 act, which authorize other tribes to use their tribal funds in specified ways. Tribal funds made available under such special statutes are described, in discussions of the provisions of the Department's appropriation acts, as being available or programed under "permanent authorization." See, for example, pages 465-470 of the House hearings on the Department of the Interior and Related Agencies Appropriations for 1963. He then points out that the use of tribal funds under special permanent authorization statutes, unlike use of tribal funds under annual appropriation acts, does not require annual approval by Congress, although use of tribal funds under all authorizations is reported in budget schedules.

The Secretary then explains that—

"Completely apart from such special statutes permanently authorizing use of tribal funds for various tribes are the provisions in the Department's annual appropriation acts under a paragraph entitled 'Tribal Funds' which for many years has consistently contained two additional, separate authorizations to use Indian tribal funds; namely, (1) annual authorizations and (2) indefinite authorizations. The provisions in appropriation acts since 1963 which have prohibited the use of tribal funds from Indian Claims Commission and Court of Claims awards until Congress has approved such use have been

enacted as an exception to and a limitation on the indefinite authorization under the 'Tribal Funds' paragraph in the respective appropriation acts. The context and the language of the provision prohibiting the use of tribal funds from judgment awards until Congress has approved the uses, and the legislative history of the provision warrant the conclusion that the provision does not modify or repeal special permanent authorizations like the 1946 act but instead is a limitation on the authority of this Department to advance judgment award funds under the indefinite authorization in appropriation acts.

"The 'Tribal Funds' paragraph in the departmental appropriation act for fiscal 1967 (act of May 31, 1966, 80 Stat. 170, 172), will illustrate our conclusion that, in the context, the language prohibiting use of judgment awards funds until Congress has approved cannot reasonably be read as repealing special permanent authorizations to use tribal funds. Except for the second proviso (and minor exceptions not here material) the form and the language of the 'Tribal Funds' paragraph has been substantially the same in appropriation acts since 1951. The paragraph in the appropriation act of May 31, 1966, is as follows:

" 'TRIBAL FUNDS

" 'In addition to the tribal funds authorized to be expended by existing law, there is hereby appropriated \$3,000,000 from tribal funds not otherwise available for expenditure for the benefit of Indians and Indian tribes, including pay and travel expenses of employees; care, tuition, and other assistance to Indian children attending public and private schools (which may be paid in advance or from date of admission); purchase of land and improvements on land, title to which shall be taken in the name of the United States in trust for the tribe for which purchased; lease of lands and water rights; compensation and expenses of attorneys and other persons employed by Indian tribes under approved contracts; pay, travel, and other expenses of tribal officers, councils, and committees thereof, or other tribal organizations, including mileage for use of privately owned automobiles and per diem in lieu of subsistence at rates established administratively but not to exceed those applicable to civilian employees of the Government; relief of Indians, without regard to section 7 of the act of May 27, 1930 (46 Stat. 391), including cash grants; and employment of a curator for the Osage Museum, who shall be appointed with the approval of the Osage Tribal Council and without regard to the classification laws: *Provided*, That in addition to the amount appropriated herein, tribal funds may be advanced to Indian tribes during the current fiscal year for such purposes as may be designated by the governing body of the particular tribe involved and approved by the Secretary: *Provided further*, That funds derived from appropriations in satisfaction of awards of the Indian Claims Commission and the Court of Claims shall not be available for advances, except for such amounts as may be necessary to pay attorney fees, expenses of litigation, and expenses of program planning, until after legislation has been enacted that sets forth the purposes for which said funds will be used: *Provided, however*, That no part of this appropriation or other tribal funds shall be used for the acquisition of land or water rights within the States of Nevada, Oregon, and

Washington, either inside or outside the boundaries of existing Indian reservations, if such acquisition results in the property being exempted from local taxation, except as provided for by the Act of July 24, 1956 (70 Stat. 627).'

"Since 1951, the beginning statement in the 'Tribal Funds' paragraph of appropriation acts has been identical: 'In addition to the tribal funds authorized to be expended by existing law, there is hereby appropriated * * *.' The introductory clause is almost certainly recognition of the existence of permanent specific statutes like the 1946 act which authorize expenditure of tribal funds completely outside the purview of the annual appropriation acts. The 'Tribal Funds' paragraph consists principally of the annual authorization of a designated amount for specified purposes immediately following the introductory clause. The first proviso, which is expressly in addition to the annual authorization, is referred to as the 'indefinite authorization, under which an indefinite amount of tribal funds may be advanced for purposes designated by the governing body of the particular tribe and approved by the Secretary. We understand that prior to fiscal year 1963, the Bureau made judgment award funds, along with other tribal funds, available to tribes under the indefinite authorization in the first proviso.

"Tribal funds which may be advanced during the current fiscal year are the subject matter of the first proviso of the paragraph. Tribal funds which shall not be available for advances until Congress acts are the subject matter of the paragraph's second proviso. When the substance of the second proviso was first added to the departmental appropriation act for fiscal year 1963, it was written as an exception to the first proviso and obviously limited only the indefinite authorization in the first proviso. This was followed in fiscal year 1964. In the 'Tribal Funds' paragraph of the appropriation act of July 7, 1964, 78 Stat. 273, 275, the except clause was changed to the second proviso, in which form it has since continued. However, its function as an exception to and a limitation on the indefinite authorization in the first proviso was not changed * * *.

"If the second proviso of the 'Tribal Funds' paragraph, or its earlier version in the 1962 and 1963 acts, had been intended to affect special statutes which permanently authorize use of particular tribal funds like the 1946 act, thus extending operation of the proviso beyond the 'Tribal Funds' paragraph, it would have been unreasonable to write the provision as an exception to the indefinite authorization contained in the first proviso of that paragraph. Furthermore, if Congress had any intention of modifying special permanent authorizations like the 1946 act, the reference in the introductory clause of the 'Tribal Funds' paragraph recognizing authority to expend tribal funds under existing law should have been deleted and the second proviso should have expressly repealed laws inconsistent with it. No such changes were made in the 'Tribal Funds' paragraph when the provision in question was first added in 1962 or when it was changed in 1964. Accordingly, we think that the language and the context of the second proviso clearly require that it be read as a limit only on the indefinite authorization in the first proviso.

"The Senate report on H.R. 10802 which became the Department's appropriation act for fiscal year 1963 (act of August 9, 1962, *supra*), substantiates this conclusion (S. Rept. No. 1490, 87th Cong., 2d

sess. 6 (1962)). The report states (p. 6) that the Committee on Appropriations recommended amendment of the bill to exempt judgment funds awarded by the Indian Claims Commission or the Court of Claims from advancement by the Secretary and that the amendment would require that this Department seek approval of Congress to use such judgment funds.

"Since the committee knew of existing special permanent authorizations like the 1946 act * * * and made no reference to them in discussing the proposal to limit the Department's authority under the indefinite appropriations proviso, the comment in the Senate report is a persuasive indication that the committee had no intention of modifying existing special statutes permanently authorizing the use of tribal funds.

"Moreover, the second proviso in the 'Tribal Funds' paragraph is an assertion of legislative control or supervision in the expenditure of judgment award funds. Under special statutes like the 1946 act permanently authorizing use of tribal funds, Congress had already directed, generally, the use which could be made of such funds. Consequently, the purpose of enacting the second proviso is inapplicable to special statutes permanently authorizing the expenditure of tribal funds."

In view of the matters set forth in that part of the Secretary's report quoted above and particularly since funds advanced pursuant to the first proviso of the current appropriation act are advanced only to Indian tribes not having special statutory authority to expend tribal funds and since the second proviso limits the advances that may be made from judgment awards, it seems apparent that the language of the second proviso was not intended to apply to judgments awarded to Indian tribes having special statutory authority to use tribal funds.

Accordingly, we agree with the Secretary's view that additional legislation referred to in the second proviso is not needed with respect to the judgment in favor of the confederated tribes.

A copy of the Secretary's letter is enclosed.

Sincerely yours,

FRANK H. WEITZEL,
Assistant Comptroller General of the United States.

COMMITTEE RECOMMENDATION

The Committee on Interior and Insular Affairs recommends enactment of H.R. 7345.

