

1. General Fund Control Policy

Indian tribes have complete authority over tribal property, including tribal funds, except where that authority has been restricted or altered by the Congress through legislation.

2. Scope of U. S. Control of Tribal Receipts

In general, the funds of Indian tribes that must be deposited in the Treasury of the United States are those reservation revenues, judgments, claims awards, and other payments to Indian tribes which are required under specific acts of the Congress to be so deposited. Reservation revenues controlled under such specific acts are primarily for rights-of-way over Indian lands, including telephone and pipelines, sale of timber, leasing of agency reserves for mining, and water power license rentals. Another important source of tribal income is from interest paid by the United States on the principal of tribal trust funds in the Treasury of the United States. Interest rates vary and are usually provided for by the act establishing the fund.

There are also those miscellaneous revenues from Indian reservations under currently effective statutes which do not specify the manner in which the receipts are to be handled, or for which there are no specific statutes, which must be deposited in the Treasury of the United States, when collected by officers or employees of the Department. Such revenues consist of grazing leases, farming leases, lease of irrigable land, mining leases (gas and oil and minerals) and leases for public, educational, recreational, residential, or business purposes. Whether or not Departmental employees or officers are to collect such revenues depends on whether or not the lease involved requires, as a condition to the Department's approval, payment of the consideration to an officer or an employee of the Department or to an appropriate tribal officer. This determination is based on whether the tribe is organized to handle its own funds and has demonstrated its ability to do so. Other revenues are available to Indian tribes arising from the sale of cattle from tribal herds, sale of hides and pelts, permits for fishing and hunting on tribal lands, tolls on messages over telephone lines constructed with tribal funds, and other miscellaneous sources. Where provision is made for their collection by officers and employees of the Department these revenues are also deposited in the Treasury. In those instances where a tribe is not organized so as to handle such funds, the Department is responsible for collecting them.

3. Scope of U. S. Control of Tribal Expenditures

The use or expenditure by the Department of tribal funds held in the Treasury of the United States is controlled by the Congress through appropriation acts relating to a particular fund or tribe, specific purpose, or under annual appropriation acts. See 25 U.S.C. 62a, 123a, 541, 613, and the annual appropriation act for the Department for the fiscal year 1959, Public Law 85-439, approved June 4, 1958. In many cases an act providing for the deposit of tribal funds in the Treasury of the United States will also prescribe the purposes for which the fund may be expended. In a few instances, the Congress has passed acts authorizing the general use of tribal funds for a specific purposes, such as the payment of insurance premiums on policies for the protection of tribal property. This authority of the Secretary of the Interior may arise from the necessary implication as well as from the express provisions of a statute. Under Section 16 of the Act of June 18, 1934 (48 Stat. 987, 25 U.S.C. 476) and Section 3 of the Act of June 25, 1936 (49 Stat. 1567, 25 U.S.C. 603), and constitutions adopted by the Indian tribes organized thereunder, an Indian tribe may have the authority to prevent the sale, disposition, lease or encumbrance of tribal lands, interest in tribal lands, or other tribal assets without the consent of the tribe. This includes the right to prevent the disbursement of tribal funds by Departmental officials where the tribe has not consented to such disbursements. Unless an act of Congress authorizing disbursements of tribal funds repeals relevant provisions of the Indian Reorganization Act, such appropriation legislation does not nullify the power of the tribe to prevent such expenditures, nor does it authorize tribal distribution of tribal funds contrary to tribal constitutions.

4. Scope of Direct Tribal Control over Receipts (Characteristic Revenue Sources)

Those tribal revenues which may be lawfully paid to the proper officers of an Indian tribe, as distinguished from payments to officers and employees of the Federal Government, are not required to be deposited in the Treasury of the United States. An Indian tribe has the right to collect and handle its funds in any situation where that right has not been limited under Federal law or Departmental regulations pursuant to law.

The most important of these revenues which tribes collect and disburse under their own responsibility, are derived from leases of tribal interests in land and from a variety of tribal businesses enterprises which are not subject to existing Federal legislation or

Departmental regulations. These generally include such things as soil and moisture conservation cooperative enterprises, operation of tribal sawmills, operation of tourist courts and recreational facilities, operation of mineral hot springs, arts and crafts guilds, tanning factories, trading posts, operation of motels and restaurants, leases to private parties for business purposes, etc. In addition there are those leases of interests in lands under contracts subject to approval of the Department, which specifically provide for payment of the consideration to proper tribal officials.

An Indian tribe has the authority to deposit funds under its control in any national or state bank or with a disbursing officer of the Department. Tribes are urged to use public banking facilities wherever possible. If such facilities are inaccessible, or the tribes' deposits exceed the insurance coverage of the Federal Deposit Insurance Corporation or for any other valid reason, tribes are permitted to deposit their funds with special disbursing agents of the Department. These deposits are carried to the credit of the tribes under an "Indian Money Account."

5. Scope and Conditions of Tribal Expenditure Control

In the case of those tribes organized under the Acts of June 16, 1934, and June 26, 1936, *supra*, their organization papers, corporate charters, and constitutions and bylaws, being subject to the approval of the Secretary of the Interior, the Department has insisted on the inclusion of certain restrictions to tribal powers which operate as indirect controls over the expenditure of tribal funds by tribal officials. For example, the corporate charters issued by the Secretary include such restrictions on corporate tribal powers as a specific limitation on the amount of money that may be paid under a single tribal contract during any one fiscal year, limitations as to time and amount of individual assignments of tribal chattels or future income, and certain specific limitations on the payment of corporate dividends to tribal members. These restrictions or limitations may not be exceeded without the approval of the Secretary of the Interior. Some tribes while not subject to the organization acts referred to herein are organized and have adopted constitutions and bylaws. The collection and expenditure of their funds is approached in practically the same manner as a tribe organized under such acts. In any event, it is necessary to look to the conditions and circumstances of each tribe to determine the extent of Departmental control to which they are subject. There are some tribes that do not have any form of formal organization. In such cases the Department must administer all functions relating to leases of land or other legally authorized functions that may result in tribal income, expenditures, etc. Otherwise than as outlined herein an Indian tribe may administer its funds without interference of the Department but subject only to applicable controls required by its

corporate charter or constitution and bylaws or both, which include provisions for adequate accounting, bookkeeping procedures, and reports.

Administrative procedures have been established under which Indian tribes are required to develop advance programs for their financial needs on a fiscal year basis. These are reflected in budget estimates furnished the Department for review and approval. This procedure is followed not only as a means for a practicable approach to the orderly administration of tribal finances but because many acts of Congress authorizing the use of tribal funds in the Treasury require that they may be used for purposes requested by the tribe and approved by the Secretary. Such procedure is also necessary to permit estimates of the need to include requests in annual appropriation acts for tribal funds in applicable cases when permanent legislative authority is not provided. Tribes are required, as a practicable matter, to include in their financial programs and budget estimates, the funds under their local control as well as their funds in the Treasury. Only then is the Department in a position to determine whether a tribal request for their Treasury funds is justified and to their best interests. If a tribe has sufficient funds under its local control to meet its financial program, in whole or in part, then its Treasury funds may be conserved for the interest income they earn. The legal authority for this lies in the fact that the Secretary, having the statutory responsibility of approving tribal requests for Treasury funds, may attach any reasonable condition to that approval and require any reasonable justification from the tribes to arrive at a decision on the tribal request. It is not possible to determine the adequacy of any tribal financial program without the knowledge of all of its assets and prospective revenues.

As indicated in the last paragraph under item 4 above, tribes may use the Bureau of Indian Affairs as a depository for tribal funds. Deposits are made with special disbursing agents and are credited to an appropriate "Indian Money Account". The funds handled in this manner are not trust funds subject to deposit in the United States Treasury and are not subject to Departmental control. In effect, the Bureau operates a form of banking service for the convenience of the tribes. No charge is made for this service. In disbursing funds so held the special disbursing agents of the Department act in a ministerial capacity. They are not required to accept responsibility for the integrity of the expenditure but only to see to it that the disbursement voucher is supported by proper documents executed by duly authorized tribal officials.

6. Accounting and Auditing Policy as to Funds under U. S. Control or Custody

Expenditures by the Department and accounting procedures and bookkeeping records applicable to tribal funds on deposit in the Treasury of the United States and those tribal funds for which the

Department acts as banker are subject to audit by the General Accounting Office. An office of audit is operated under the Bureau of Indian Affairs which makes independent appraisals and reviews of financial and accounting operations of the Bureau in connection with gratuity appropriations and tribal and individual trust funds (this includes tribal Indian Money accounts.) The audit of the accounting records of tribal organizations is performed by public accounting firms or auditors employed by the tribes under provisions of their organizational set up.

The Department knows at all times the amounts of the funds on deposit in the Treasury of the United States to the credit of Indian tribes. The records of the field agencies of the Bureau of Indian Affairs show the balances held to the credit of each tribe in Indian money accounts. No consolidated record of these balances in one account is maintained. The Department does not maintain any record of deposits of tribal funds by Indian tribes in public banks or other depositories. Each tribe is required when it submits its annual tribal budget estimates to include a statement of the balances of funds under its control whether in banks or Indian Money accounts, in order that a proper analysis and appraisal of its financial requirements may be studied.