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The Supreme Court, per Mr. Justice Van Devanter, said: 30

"* * * Our decisions, while recognizing that the government has power to control and manage the property and affairs of its Indian wards in good faith for their welfare, show that this power is subject to constitutional limitations and does not enable the government to give the lands of one tribe or band to another, or to deal with them as its own. * * *

Thus, while Congress has broad powers over tribal lands, the United States does not have complete immunity from liability for the actions of Congress. If Congress takes vested tribal land from the Indians without either their consent or the payment of compensation, the United States is liable under the Fifth Amendment to the United States Constitution for the payment of just compensation, 32 which must include payment for the minerals and timber. 33 But the right of the Indians to just compensation is legally imperfect unless Congress itself passes legislation permitting suit by the Indians against the United

Treaties with the tribe. McColloch, Admr. v. United States, 63 Ct. Cl. 79, 87 (1938). See Shoshone Tribe v. United States, 250 U. S. 470, 477 (1919), in which the Court said: "* * * Power to control and manage the property and affairs of Indians in good faith for their betterment and welfare may be exerted in many ways and at times in derogation of the provisions of a treaty."


32 The portion of this amendment which prohibits confiscation reads: "* * * nor shall private property be taken for public use without just compensation."

33 "* * * It is fundamental that tribal assets cannot be disposed of by the United States without the consent of the tribe or without compensation." Op. Sol. M. 29086, February 19, 1938, p. 7.

If vested rights are created in a tribe by a treaty or agreement, the Federal Government becomes liable for its violation. As the Supreme Court said in the case of United States v. Mille Lacs Indians, 229 U. S. 496 (1919):

"* * * That the wrongful disposal was in disobedience to directions given in two agreements between the United States and the Indians which do not make any the less a violation of the law."

The regulations, unlike the legislation sustained in Cherokee Nation v. Hitchcock, 187 U. S. 494, 497, and Lone Wolf v. Hitchcock, 187 U. S. 564, 565, were not adopted in the exercise of the administrative power of Congress over the property and affairs of dependent Indian wards, but were intended to assert, and did assert, an unqualified power of disposal over the lands as the absolute property of the Government. Doubtless that was because there was a misconception of the true relation of the Government to the lands, but that does not alter the result (pp. 508-510).


Typical jurisdictional acts provide for recovery by a tribe against the United States "* * * the United States Government has wrongfully appropriated any lands belonging to the said Indians" (act of May 25, 1920, sec. 3, 41 Stat. 625 (Klamath)); or for "misappropriation of any of the * * * lands of said tribe" (act of June 3, 1920, sec. 1, 41 Stat. 778) (Moccasins) or the exercise of said Indians' right of their tribe, title, or interest, arising from occupancy and use, in lands or other tribal or community property, without just compensation therefor, shall be held sufficient ground for relief" (act of June 19, 1935, 49 Stat. 836) (Tribe and Kalispel).


SCOPE OF FEDERAL POWER

The congressional control over tribal funds was defined by Justice Van Devanter in the case of Siu v. Bracy. 37

As in the case of lands, Congress cannot divert tribal funds from tribal purposes in the absence of Indian consent or corresponding benefit without being liable, when suit is brought, for the amount diverted. Thus, there has been occasion, not infrequently, for judicial analysis of the manner of disposition of tribal funds. On the whole States as the United States is not liable to suit without its consent. 39 Section 1505 of the present Judicial Code authorizes the Court of Claims to adjudicate Indian claims against the United States accruing after August 13, 1946. More will be said later about this in connection with various Indian claims.

b. Tribal Funds: The power of Congress over tribal funds is the same as its power over tribal lands, and is, historically speaking, a result of the latter power, since tribal funds arise principally from the use and disposition of tribal lands. It may authorize special uses of funds, such as to pay premiums on personal and property damage insurance 40 or, it may otherwise provide for their distribution. The extent of congressional power has been expressed by the Attorney General as follows: 41

Now, as these royalties are tribal funds, it cannot be seriously contended that Congress had not power to provide for their disbursement for such purposes as it might deem for the best interest of the tribe. That power resides in the Government as the guardian of the Indians, and the authority of the United States as such guardian is not to be narrowly defined, but on the contrary is plenary.

Examples of the exercise of such power over the tribal property of Indians, and decisions sustaining it, are found in many of the adjudicated cases, among them Cherokee Nation v. Hitchcock, 187 U. S. 294; Lone Wolf v. Hitchcock, 187 U. S. 553; Grits v. Fisher, 224 U. S. 640; Siu v. Bracy, 235 U. S. 441; Choate v. United States, decided April 11, 1921 (p. 63).

30 However, suits against officers of the United States based on alleged illegal acts require no such statutory authority. Lone v. Pueblo of Santa Rosa, 249 U. S. 110 (1918), wherein it was held that the Secretary of the Interior could be enjoined from disposing of certain Indian lands as public lands of the United States.


32 The exercise of congressional power over tribal funds has been evidenced largely through legislation directing the mode of collection, deposit, and disbursement of such funds. This will be dealt with more extensively in considering the scope of administrative power over tribal funds.

33. 43 Ct. Cl. 69 (1921). Also see the Cherokee Nation v. United States, 187 Ct. Cl. 91 (1928), cert. den 297 U. S. 444. Congress may appropriate tribal funds for the civilization and self-support of the Indian tribe. Lone v. Morrison, 249 U. S. 214 (1918).

34 235 U. S. 441 (1914).

that Federal administrative authorities have any control over such funds.  

A second class of funds—which may be called “tribal”—comprises those funds held in the Treasury of a tribe which has become incorporated under section 17 of the act of June 18, 1934, or organized under section 16 of that act. In both cases the scope of departmental power with respect to such funds is marked out by the provisions of tribal constitution or charter. Typically, departmental review is required where the financial transactions exceed a fixed level of magnitude or importance, but not in lesser matters. In the case of incorporated tribes, such departmental supervisory powers are generally temporary.

A third class of funds consists of moneys held in the Treasury of the United States in trust for an Indian tribe. Balances in excess of $500 bear simple interest at the rate of 4 percent unless otherwise specified by law. Funds specified to draw a certain rate of interest may not be transferred to accounts drawing a lower rate. This class of funds, which is customarily referred to under the phrase “tribal funds,” is of primary interest. These funds arise from two sources, in general:

1. Payments by the Federal Government to the tribe for lands ceded or other valuable consideration, usually arising out of a treaty, and

2. Payments made to Federal officials by lessees, land purchasers, or other private parties in exchange for some benefit, generally tribal land or interests therein.

In view of the fact that the tribal land was subject to a considerable measure of control, it was natural to find a similar control placed over the funds derived from such lands. Congress has, in general, reserved complete power over the disposition of these funds, requiring that each expenditure of such funds be made pursuant to an appropriation act, although this strict rule has been relaxed for certain purposes. Thus...
it has developed that administrative authority for any disbursement of "tribal funds," in the strict sense, must be derived from the language of some annual appropriation act or from those statutes which are, in effect, permanent appropriations of tribal funds for specified purposes. Ordinary administrative expenses covering items for agency buildings and repairs, miscellaneous agency expenses, pay for superintendents and agents, and transportation of supplies may not be charged against funds appropriated to fulfill treaty obligations. On the other hand, expenditure of tribal funds for the relief of destitute loyal Indians of other tribes, not in a state of hostility with the United States, does not necessarily create a liability on the part of the United States to restore those funds. Disbursements from trust funds for medical equipment and supplies, construction of a hospital, medical education, and construction of roads are proper, and tribal funds may be used to purchase insurance protecting tribal members and property.

Among the most important of the permanent authorizations for the disbursement of tribal funds are the various statutes providing for the division and apportionment of tribal funds among the members of the tribe. While any administrative control over these funds must be based on statutory authority, it is not necessary, nor is it indeed possible, that every detail of the expenditure shall be expressly covered by statute.

The Court of Claims in the case of Creek Nation v. United States 11 said:

... The Secretary of the Interior has only such authority over the funds of Indian tribes as is conferred in him by Congress. He cannot legally disburse and pay out Indian funds for purposes other than those authorized by law. This rule is the test by which the legal right of the Secretary of the Interior to make the disbursements involved must be determined. The contention, however, that the Secretary of the Interior could legally make only such disbursements as were expressly authorized by Congress cannot be conceded in the right of the precise questions presented, do not sustain it. The opinion of Attorney General Mitchell of October 5, 1929 (30 Op. Atty. Gen. 78-100), in fact, refutes the contention, and in effect lays down the rule that the authority of the Secretary of the Interior over Indian property may arise from the necessary implication as well as from the express provisions of a statute. We think this is the correct rule and will apply it in determining whether the Secretary of the Interior was authorized to make the payments in question. The authority of the Secretary of the Interior to make the payments, or his lack of authority to make them, must be found in the treaties between the United States and the Creek Nation, and the various acts of Congress dealing with Creek tribal affairs (p. 485).

On the other hand, the administrative obligation imposed in connection with the creation of a trust fund for Indians is not discharged necessarily by turning over the funds to the tribal council to distribute to members without supervision. 12

Quite apart from the necessity of finding some statutory source for authority to expend funds held in the United States Treasury in trust for an Indian tribe, there are certain positive statutory limitations upon the ways in which such funds may be disbursed. These statutes limit the administrative authority derived from appropriation acts construed in conjunction with section 17 of the act of June 30, 1834, 13 which gave the President power to "prescribe such rules and regulations as he may think fit, for carrying into effect the various provisions of this act, and of any other act relating to Indian affairs, and for the settlement of the accounts of the Indian department."

Perhaps the most important of these statutory limitations in effect today is that imposed by section 16 of the act of June 18, 1834, 14 which gives an organized tribe the right to prevent any disposition of its assets without the consent of the proper officers of the tribe. This includes the right to prevent disbursements of tribal funds by departmental officials, where the tribe has not consented to such disbursements.

10 The act of May 18, 1916, sec. 27, 39 Stat. 123, 158, 159; 25 U. S. C. 125, requires specific congressional appropriation for expenditure of tribal funds except as follows:

11 The Secretary of the Interior is authorized to "invest in a manner which shall be in his judgment most safe, and beneficial for the fund, all moneys that may be received under treaties containing stipulations for the payment to the Indians, annually, of interest upon the proceeds of the lands ceded by them; and he shall make no investment of such moneys, or of any portion, at a lower rate of interest than 5 per centum per annum" (25 U. S. C. 125, R. S. § 3104, derived from act of June 14, 1866, 5 Stat. 59, 47, as amended by act of January 9, 1897, sec. 4, 5 Stat. 106).

Another important example is the act of June 24, 1926, 42 Stat. 1037, 25 U. S. C. 162a, which authorized the Secretary of the Interior to invest in stocks and individual Indians, and to invest such funds in Government bonds. It repealed those provisions of an earlier act (May 25, 1918, 40 Stat. 591, 25 U. S. C. 162), under which the Secretary had been authorized to segregate tribal funds in the Treasury and credit them on an equal basis to each of the members of the tribe.

12 Beginning with the Department of the Interior Appropriation Act for 1951 (Sept. 6, 1950, 64 Stat. 805, 868), each annual appropriation act for the Department of the Interior contains an authorization under which tribal funds are available for advancement to the tribe upon application by the appropriate tribal officials and approval of the Secretary.

13 Reservation of Stipulated Tribal Funds in Indian Trusts. It is not the proper function of this Court for reviewing the legality of the disbursements, but it is our duty to determine whether the authority of the Secretary of the Interior to make the disbursements involved must be determined. The contention, however, that the Secretary of the Interior could legally make only such disbursements as were expressly authorized by Congress cannot be conceded. The Secretary of the Interior is not authorized to make the payments in question. The authority of the Secretary of the Interior to make the payments, or his lack of authority to make them, must be found in the treaties between the United States and the Creek Nation, and the various acts of Congress dealing with Creek tribal affairs (p. 485).

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15 78 Ct. Cl. 474 (1933). On the lack of power of the Secretary to restore to the Creek orphan fund the funds erroneously expended for general benefit of tribe, see 16 Op. A. G. 81 (1978).


18 49 Stat. 984.
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 expenditure. Nor does it authorize tribal distribution of tribal funds contrary to tribal constitutions.

There is a fourth category of funds which may be called "tribal funds" but which are subject neither to the uncontrolled tribal power pertaining to the first class of funds discussed; to the defined tribal power of the second class, nor to the detailed congressional control pertaining to the third class. This fourth category includes funds which have accrued to administrative officials as a result of various Indian activities not specially recognized or regulated by act of Congress. This fund is known by the title "Indian moneys, proceeds of labor."

The fund "Indian moneys, proceeds of labor" had its origin in the act of March 3, 1883, as amended by the act of March 2, 1887. Its amended form it reads:

That the Secretary of the Interior is hereby authorized to use the money which has been or may hereafter be covered into the Treasury under the provisions of the act approved March third, eighteen hundred and eighty-three, and which is carried on the books of that Department under the caption "Indian moneys, proceeds of labor," for the benefit of the several tribes on whose account said money was covered in, in such way and for such purposes as in his discretion he may think best, and shall make annually a detailed report thereof to Congress.

A practice developed over the years to deposit in "Indian moneys, proceeds of labor" the miscellaneous revenues of Indian reservations, agencies, and schools which were not otherwise required to be deposited.

The Comptroller General in a report on Indian funds dated February 28, 1929, stated:

* * * * The absolute control and almost indiscriminate use of these funds, through authority delegated to the several Indian agents by the Commissioner of Indian Affairs pursuant to section 463, Revised Statutes, is apparently causing complaint on the part of groups of Indians.

The report also contained some evidence justifying the discontent of the Indians:

* * * * "Indian moneys, proceeds of labor," were being used for such purposes as the purchase of adding machines and office equipment, furniture, rugs, draperies, etc., for employees' quarters, papering and painting the superintendent's house, and the purchase of automobiles for the field units.

The Comptroller General concluded that--

* * * This condition has through the years of practice brought about a very broad interpretation of what constitutes "the benefit" of the Indian.

The provision relating to "Indian moneys, proceeds of labor," as further amended, now reads:

All miscellaneous revenues derived from Indian reservations, agencies, and schools, except those of the Five Civilized Tribes and not the result of the labor of any member of such tribe, which are not required by existing law to be otherwise disposed of, shall be covered into the Treasury of the United States under the caption "Indian moneys, proceeds of labor," and are hereby made available for expenditure, in the discretion of the Secretary of the Interior, for the benefit of the Indian tribes, agencies, and schools on whose behalf they are collected, subject, however, to the limitations as to tribal funds, imposed by section 123 * * * of this title.

The Solicitor for the Department of the Interior has taken the position that the foregoing statutory provisions relating to the deposit of miscellaneous revenues of Indian tribes operate as limitations on the administrative power of Federal officials over tribal funds, but they do not prohibit the receipt of tribal funds by tribal officials in those situations where no provision of Federal law or departmental regulation deprives the tribe of uncontrolled authority over the funds. A clear distinction is drawn between those funds carried in the Treasury as "Indian moneys, proceeds of labor" which constitute the miscellaneous revenues of the Government from Indian agencies and schools and those which constitute the miscellaneous revenues of an Indian tribe.

Congress can create individual credits in connection with tribal funds and, in connection with termination of Federal supervision, Congress can vest shares of tribal funds in members as of a specified date. Where Congress specifies that the per capita share shall go to persons named on a certain roll, or to their heirs, a share of a deceased member passes according to this statutory designation and not by will.

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23 28 I. D. 680.
The individualization of tribal funds may occur through the segregation of funds in the United States Treasury or the per capita payment of annuities or other tribal moneys. A number of statutes provide for the exercise of administrative powers in connection with the individualization of specific tribal funds.

Legislation frequently provides for the individualization and per capita payment of judgments recovered by tribes in suits against the United States.

Statutes restricting the Indian in the use of his segregated or individual funds may provide for the investment of his funds under the direction of the Secretary of the Interior. The statute may specify certain investments or may be more general, giving the official selective powers. In any case, he is bound strictly by the authority granted in the statute.

A provision of a tribal charter may require approval by the Secretary for the distribution of funds to enrolled members. On the other hand, a tribal constitution may empower the tribal council to veto a per capita payment authorized by the Secretary.

If the Secretary of the Interior is empowered to handle the Indian's money, he cannot create trusts transferring such property from his authority to a private agency without the specific authority of Congress.

Footnote continued on p. 68.
by enabling it to apply them to the expenses of their Government, to the purpose of education, or to some object of general concern. When distributed to individuals, the amount is too small to be relied on as a support, yet sufficiently large to induce them to forgo the labor necessary to procure their supplies. And it is found that these are the most industrious and thrifty who have no such aid.

Individual payments were introduced probably with a view to induce emigration, by paying those who choose to emigrate their supposed share of the annuities. Whatever may have been the policy which gave rise to it, neither policy nor justice requires its continuance.

With a view to prevent frauds of another kind, in reference principally to the payment of goods, the President is authorized to appoint an officer of rank to superintend the payment of annuities. This, and the provision relating to the purchase of goods for the Indians, will place sufficient guards to prevent fraudulent payments.

The committee have reason to believe abuses have existed in relation to the supply of goods for presents at the making of treaties, or to fulfill treaty stipulations. Those for presents are at the loss of the Government. Those under treaty stipulations are at the loss of the Indians. The goods for presents have been usually furnished by the Indians; traders, and at an advance of from 60 to 100 per cent. This the Government has been obliged to submit to, or the trader will make use of this influence to prevent a treaty. Should this in future be attempted, the Government will now have a sufficient remedy by revoking the license. The goods furnished under treaties have been charged at (what has been represented as a moderate rate) and advance of 50 per cent, and at that rate delivered to the Indians. It is now provided that the goods in both cases are to be purchased by an agent of the Government; and where there is time (as in case of goods purchased under treaties) they are to be purchased on proposals based on previous notice. The objective of staff the Indian Service itself with Indians was embodied in a provision of section 9 of this act reading:

And in all cases of the appointments of interpreters or other persons employed for the benefit of the Indians, a preference shall be given to persons of Indian descent, if such can be found, who are properly qualified for the execution of the duties.

A related objective was to be achieved by the following provision in section 9, which is law to this day (except that the Secretary of the Interior has succeeded to the powers of the Secretary of War):

And where any of the tribes are, in the opinion of the Secretary of War, competent to direct the employment of their blacksmiths, mechanics, teachers, farmers, or other persons engaged for them, the direction of such persons may be given to the proper authority of the tribe.

The purpose behind these provisions is illuminated by a passage in the committee report which declares:

The education of the Indians is a subject of deep interest to them and to us. It is now proposed to allow them some direction in it, with the assent of the

President, under the superintendence of the Governor, so far as their annuities (K) are concerned; and that a preference should be given to educated youth, in all the employments of which they are capable, as traders, interpreters, schoolmasters, farmers, mechanics, etc.; and that the course of their education should be so directed as to render them capable of those employments. Why educate the Indians unless their education can be turned to some practical use? and why educate them even for a practical use, and yet refuse to employ them?

Other provisions of the act in question prohibit employees of the Indian Department from having "any interest or concern in any trade with the Indians, except for, and on account of, the United States." Provisions of earlier acts with respect to supplies and rations are reenacted (secs. 15 and 16). The latter provision is a reenactment of section 2 of the act of May 13, 1800, authorizing issuance of rations to Indians at military posts.

Section 17 centralizes responsibility for regulations authorized by law in the following terms:

That the President of the United States shall be, and he is hereby, authorized to prescribe such rules and regulations as he may think fit, for carrying into effect the various provisions of this act, and of any other act relating to Indian affairs, and for the settlement of the accounts of the Indian department. The purpose of this section is set forth in the following language of the committee report:

The President is authorized to make the necessary regulations for carrying into effect the several acts relating to Indian affairs. In 1826, such regulations having reference to the laws then in force, were reported to the House by Messrs. Clark and Cass, commissioners appointed for that purpose. They appear to have been drawn with great care, and, with such alterations as the bills reported require, would, in the opinion of the committee, be proper and efficient; and should the acts reported pass, it would be proper to have the regulations reported to Congress at the next session, when they can be adopted by an act of Congress, or go into operation under the general provision referred to.

The fifth important segment of the existing law on Indian affairs that took shape under legislation of the 1830's is that relating to payments made to tribes, by reason of treaty provisions, by the Federal Government from proceeds derived from the disposition of ceded Indian lands. The act of January 9, 1837, comprises three sections containing provisions of substantive law. The first section requires the deposit in the United States Treasury of moneys received from the sale of lands ceded to the United States by treaties providing either for the investment or for the payment of such proceeds to the Indians.
and regulations as he may deem just and proper specifying the kind and quantity of goods and the prices at which such goods shall be sold to the Indians.

During this period legislation was enacted requiring each agent having supplies to distribute—

...to make out, at the commencement of each fiscal year, rolls of the Indians entitled to supplies at the agency, with the names of the Indians and of the heads of families or lodges, with the number in each family or lodge, and to give out supplies to the heads of families, and not to the heads of tribes or bands, and not to give out supplies for a greater length of time than one week in advance.

While these successive grants of power were being made to the administrative officers of the Indian department, a series of complaints against the abuses of power was leading to the multiplication of specific prohibitions against various administrative practices. Most of these prohibitions are comparatively unimportant, but mention should be made of provisions prohibiting Government employees from having any personal interest in various types of Indian trade and commercial activities relating thereto.

10. Legislation From 1870 to 1880

The 1870's marked the first decade in which the growth of Federal Indian law was entirely a matter of legislation rather than of treaty. The decade is marked by a steady increase in the statutory powers vested in the officials of the Indian Service and by a steady increasing of control of Indians and Indian tribes. The termination of treaty-making was followed by legislative oversight or approval of agreements made by Congress with the Indians.

The Appropriation Act of March 3, 1871, provided not only for the termination of treaty-making with Indian tribes, but also (sec. 3), for the withdrawal from noncitizen Indians and from Indian tribes of power to make contracts involving the payment of money for services relative to Indian lands or claims against the United States, unless such contracts should be approved by the Commissioner of Indian Affairs and the Secretary of the Interior. Since many of the grievances of the Indians were grievances against these officers, the Indians were effectively deprived by this statute of one of the most basic rights known to the common law, the right to free choice of counsel for the redress of injuries. These prohibitions were amplified by the act of May 21, 1872.

A remarkable enactment of this period was that requiring Indian creditors of the United States to perform useful labor as a condition of receiving payments of money or goods which the United States was pledged to make. Such a provision, constituting permanent legislation, appears in section 3 of the Appropriation Act of June 22, 1874, and again in section 3 of the Appropriation Act of March 3, 1875.

An appropriation act of the following year consolidates power over Indian traders in the hands of the Commissioner of Indian Affairs, in the following terms:

And hereafter the Commissioner of Indian Affairs shall have the sole power and authority to appoint Traders to the Indian tribes and to make such rules 

11. Legislation From 1880 to 1890

The decade of the 1880's was marked by the rapid settlement and development of the West. As an incident to this process, legislation providing for acquisition of lands and resources from the Indians was demanded. If the Indian were civilized, he would not need so much land. The process of allotment and civilization was deemed as important for Indian welfare as for the welfare of non-Indians.

The first general statutory provision relating to disposition of Indian resources, other than land itself, is found in a paragraph of section 2 of the act of March 3, 1883, which declares:

The proceeds of all pasturage and sales of timber, coal, or other product of any Indian reservation, except those of the five civilized tribes, and not the result of the labor of any member of such tribe, shall be paid into the Treasury for the benefit of such tribe under such regulations as the Secretary of the Interior shall prescribe; and the Secretary shall report his action in detail to Congress at its next session.

For some peculiar reason, this fund came to be known as "Indian moneys, proceeds of labor."

A few years later this provision was supplemented by the act of February 16, 1889, authorizing the sale of dead timber on Indian

18 Stat. 450, 449.
legislation during the decade from 1910 through 1919 is found in appropriation acts.

The first such measure is found in a proviso of the Appropriation Act of April 4, 1910, which made specific the powers conferred upon the Secretary of the Interior the year before with regard to irrigation projects on Indian reservations.

The act of June 25, 1910, constituted what is probably the most important revision of the General Allotment Act that has been made. Based on 33 years of experience in the administration of the act, it sought to fill gaps and deficiencies brought to light in the course of that period. These related particularly (a) to the administration of estates of allottees, (b) to the making of leases and timber contracts for allotted lands, and (c) to the cancellation or relinquishment of trust patents.

Section 1 of this act set forth a comprehensive plan for the administration of allottees' estates, conferring plenary authority upon the Secretary of the Interior to administer such estates and to sell heirship lands. Section 2 authorized testamentary disposition of allotments with the approval of the Secretary of the Interior and the Commissioner of Indian Affairs. Section 3 permitted relinquishment of allotments by allottees in favor of unallotted children, who had been completely ignored in the original scheme of allotment to living Indians.

Section 4 permitted leasing of Indian allotments held by trust patent for periods not to exceed 5 years in accordance with regulations of the Secretary of the Interior, and conferred upon the Secretary power to supervise or expend for the Indians' benefit the rentals thereby received. Section 5 made it unlawful to induce an Indian to execute any conveyance of land held in trust, or interests therein. Section 6 contained various provisions for the protection of Indian timber against trespass and fire. Section 7 contained a general authorization for the sale of timber on unallotted lands under regulations prescribed by the Secretary of the Interior. Section 8 contained a similar authorization for timber sales on restricted allotted lands.

Section 13 of the act authorized the Secretary of the Interior to reserve from entry Indian power and reservoir sites, and the following section authorized the Secretary of the Interior to cancel patents covering such sites upon making allotment of other lands of equal value and reimbursing the Indian for improvements on the canceled allotment. Other sections contained minor amendments to the General Allotment Act and related legislation.

The provision of this act relating to testamentary disposition of allotments was amended and amplified by the act of February 14, 1913. As amplified, the privilege of testamentary disposition subject to departmental approval was extended not only to Indians possessed of allotments, but also to Indians having individual Indian moneys or other property held in trust by the United States.

The Appropriation Act of June 30, 1918, declared:

No contract made with any Indian, where such contract relates to the tribal funds or property in the hands of the United States, shall be valid, nor shall any payment for services rendered in relation thereto be made unless the consent of the United States has previously been given.

The Appropriation Act of August 1, 1914, contained provisions of substantive law authorizing quarantine of Indians afflicted with contagious diseases, and gave recognition to the existence of agency jails by requiring reports of confinements therein.

Included in the Appropriation Act of May 18, 1916, was a provision authorizing the leasing of allotted lands susceptible of irrigation, and the Secretary of the Interior, by reason of age or disability, could not personally occupy or improve the land.

The same appropriation act included a mandate to the Secretary of the Interior to make a comprehensive report of the use to which tribal funds had been put by administrative authorities. A proviso to this mandate which became an important part of existing Indian law declared that following the submission of such report, in December 1917—

no money shall be expended from Indian tribal funds without specific appropriation by Congress except as follows: Equalization of allotments, education of Indian children in accordance with existing law, per capita and other pay-
The Appropriation Act of May 25, 1918, contained a number of "economy" provisions, the most important of which was that prohibiting the use of appropriations, other than those made pursuant to treaties—

to educate children of less than one-fourth Indian blood whose parents are citizens of the United States and of the State wherein they lived and where there are adequate free school facilities provided.28

Another provision of this appropriation act contains a reminder of the recent admission of the States of New Mexico and Arizona to the Union, in the form of a prohibition against the executive creation of further Indian reservations in those two States.28

Section 28 of this act authorized the Secretary of the Interior to withdraw from the United States Treasury and segregate all tribal funds held in trust by the United States; apportioning a pro rata share of such funds to each member of the tribe. This provision for the dividing up of tribal funds required a final roll of persons entitled to participate in the division. Such authorization was conferred by the Appropriation Act of June 30, 1919.29

This same act included a comprehensive scheme for the granting of leases and prospecting permits on tribal lands of nine Far Western States by the Secretary of the Interior, under such regulations as he might prescribe.30 This statute, probably stimulated by wartime demand for minerals, made no provision for a tribal voice in the disposition of tribal property.

15. Legislation From 1920 to 1930

The decade from 1920 through 1929 marked a lull between the legislative activity in which the development of the allotment system was realized and the new trends toward corporate activity and the protection of Indian rights which were to take form in the following decade.

Seven statutes embodying permanent general legislation adopted during this decade deserve notice.

7. See H. Rept. 222, 66th Cong., 1st sess., February 22, 1926, on H. R. 6350, wherein the Committee on Indian Affairs said:

   "At the present time it is very difficult for an Indian to obtain citizenship without either being allotted and getting a patent to fee simple, or leaving the reservation and taking up his residence apart from any tribe of Indians. This legislation will bridge the present gap and provide means whereby an Indian may be given citizenship without reference to the question of land tenure or the place of his residence."}

The Senate amended the bill so as to eliminate all departmental discretion in its application. See S. Rept. 441, 68th Cong., 1st sess., April 21, 1924; and see 65 Congressional Record 8621—8622, 9203—9204.
By the act of May 26, 1918, Congress acted to regularize the handling of "Indian moneys, proceeds of labor," making such moneys available for expenditure, in the discretion of the Secretary of the Interior, for the benefit of the Indian tribes, agencies, and schools on whose behalf they are collected, subject, however, to the limitations as to tribal funds, imposed by section 27 of the Act of May 15, 1916 (30 Stat. L. 159). 6

The act of March 3, 1917, 16 was a comprehensive statute on oil and gas mining upon unallotted lands within Executive order reservations. Section 1 of this act 17 extended to Executive order reservations the leasing privileges already applicable to other reservations under the act of May 29, 1924, noted above. 18

Section 2 of this act 19 provided for the deposit of rentals, royalties, and bonuses in the Treasury of the United States to the credit of the Indian tribe concerned, such funds to be available for appropriation by Congress. This section contained a significant proviso indicating a new trend in Indian legislation:

"Provided, That said Indians, or their tribal councils, shall be consulted in regard to the expenditure of such money, but no per capita payment shall be made except by act of Congress.

Section 3 of the act 20 subjected proceeds and operations under the act to State taxation. Section 4 contained general legislation not restricted to the matter of oil and gas leases:

"* * *, hereafter changes in the boundaries of reservations created by Executive order, proclamation, or otherwise for the use and occupation of Indians shall not be made except by Act of Congress: Provided, That this shall not apply to temporary withdrawals by the Secretary of the Interior."

This limitation of a basic executive power in the field of Indian affairs is the precursor of a series of limitations upon executive authority enacted in the following decade.

The unfavorable comparisons drawn by the Meriam report 21 in 1926 between the service standards of the Indian Bureau and those of State agencies led to a series of statutes looking to the transfer of power over Indian affairs from the Interior Department to the States. A first step in this devolution of power was taken by the act of February 15, 1929, 22 which directed the Secretary of the Interior to per-

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7 See H. Rept. 297, 69th Cong., 1st sess., April 15, 1926, on H.R. 11171.
10 49 Stat. 264.
14 Meriam, Problem of Indian Administration (1926).
16 See H. Rept. 2155, 70th Cong., 2d sess., January 17, 1929, on H.R. 15028.
held by the Secretary of the Interior for an Indian tribe and stolen while in his custody, or to compensate for the defaults of States on State bonds. As has been already noted, the question of what individuals are entitled to share in tribal personal property does not differ essentially from the parallel question considered with respect to reality. The chief difficulties with respect to the proper distribution of tribal funds have arisen from connection with the amalgamation of distinct tribes, the splitting of single tribes, and the loss of membership by or adoption of individual members.

Where several tribes or bands are interested in a single fund, Congress has sometimes provided for distribution in accordance with respective numbers. The interest of the various groups of Cherokees in national funds has been a source of legislation and litigation for many years. Special statutes occasionally provide for the payment of shares of tribal funds to persons newly added to tribal rolls.

When tribal funds are held by the United States for the benefit of the tribe, the question frequently arises whether interest on such funds is due to the tribe and, if such be the case, what the proper rate of interest may be. Ordinarily this question must be answered by reference to the terms of the treaty, act of Congress, or agreement by which the fund in question was established.

The act of July 19, 1882, sec. 1, 11 Stat. 539, 540 (Kaskaskias, Peorias, Piankeshaws, and Wyandots); the act of March 3, 1845, 5 Stat. 766, 777, includes an appropriation "To make good the interest on investments in State stocks and bonds, for various Indian tribes, not yet paid by the States, to be reimbursed out of the interest when collected * * *" Act of August 19, 1844, 5 Stat. 576 (Wyandots).


See, e.g., treaty of July 19, 1868, with Cherokee Nation, 14 Stat. 789 (Incorporation of friendly tribes).


Act of June 2, 1854, 43 Stat. 253 (Cheyenne and Arapaho).


Under some treaties what amounted to interest payments were designated "annuities." The act of April 1, 1880, authorized the Secretary of the Interior to deposit such funds in the United States Treasury, in lieu of investment, with a provision that interest should be payable "semiannually * * * at the rate per annum stipulated by treaties or prescribed by law." The act of February 12, 1929, as amended by the act of June 13, 1930, provides for the payment of simple interest at the rate of 4 percent per annum on tribal funds, "upon which interest is not otherwise authorized by law." This general provision is inapplicable where another law specifies a higher rate of interest on a particular fund.

When tribal funds held by the United States were segregated for pro rata distribution and deposited in banks, section 28 of the act of May 25, 1918, required as a condition of the deposit that the bank agree to pay interest on such funds "at a reasonable rate." Subsequently, section 324 (c) of the Banking Act of 1933 prohibited payment of interest by member banks of the Federal Reserve System on demand deposits, and repealed "so much of existing law as requires the payment of interest with respect to any funds deposited by the United States * * * as is inconsistent with the provision of this section as amended." It was administratively determined that this statute superseded the requirement of payment on interest on demand deposit in such banks, and that such funds might lawfully be deposited in banks not paying interest thereon. This holding was limited to banks which are members of the Federal Reserve System, and had no application to tribal funds not segregated for pro rata distribution, as to which a fixed interest is due to the tribe.

The act of June 24, 1928, authorized the Secretary of the Interior to withdraw from the United States Treasury and deposit in banks...


6 Stat. 1164.

54 Stat. 1644.


Sec. 2 of this act fixes the same interest rate for "Indian Money, Proceeds of Labor" accounts over $500 (25 U. S. C. 101a). Secs. 3 and 4 relate to accounting and to deposit of accrued interest (25 U. S. C. 161c, 161d).

See Menominee Tribe of Indians v. United States, 69 F. Supp. 137 (1945). Following prompt deposit in the proper fund, see Menominee Tribe of Indians v. United States, 67 F. Supp. 972 (1946); and failure to pay interest at the rate agreed to in a treaty may form the basis for a claim against the United States though the reduction living due to the claim was ordered by a provision in an appropriation act. See Choctaw Nation v. United States, 91 Ct. Cl. 339 (1941).


The general rule is that tribal funds held by the United States will not be subjected to claims of third parties unless payment of such claims is clearly authorized by statute or treaty,\footnote{Claim of Board of Foreign Missions Under Treaty With the Cherokee, 5 Op. A. G. 208 (1855); the Cherokee Fund Not liable for Damages, etc., 5 Op. A. G. 481 (1859); Transfer of Stocks from the Chickasaw to the Choctaw Fund, 8 Op. A. G. 591 (1840).} or by lawful action of the tribe itself.\footnote{To the effect that a tribe may assume collective responsibility for debts incurred by individual members, and that the President, at the request of the tribe, may turn annuity funds over to the creditor, see: Contracts of the Potawatomi Indians, 6 Op. A. G. 49 (1853); Contracts of Indians, 6 Op. A. G. 62 (1854).}

23. Tribal Right To Receive Funds

The right of an Indian tribe to receive funds or other personal property from the United States or from third parties depends, of course, upon the language of the treaty, statute, or agreement, in which such promise of payment appears. In this section we shall attempt to determine the principal sources of tribal rights to income, and to analyze the manner in which such payments are handled.

a. Sources of Tribal Income.—The principal source of tribal income, at least since the Revolution, has been the sale of tribal resources—chiefly land, timber, minerals, and more recently, water power.\footnote{Since sale of such resources was, for more than a century, largely restricted to the United States, most of the tribal income received prior to 1891, when the first general leasing law was enacted, was paid to the tribe by the United States. Failure to appreciate the basis of such payments is said to have helped to create a popular misimpression that all payments made by the United States to Indians were matters of charity. An illustration of this sentiment is said to be found in section 3 of the act of June 22, 1874,\footnote{The License Litigated in Federal Power Commission v. Oregon, 249 U. S. 435 (1919), involved a power site partially on the Warm Springs Indian Reservation which will provide revenues for those Indians. The question of power revenues also has been a focal point in the controversy over condemning Indian lands for the construction of Tuleywall Dam. See Memo. Sol. M. 50963, March 26, 1946, partially overruled by M. 80890, March 22, 1957.} which provides that able-bodied male Indians receiving supplies pursuant to appropriation acts should perform useful labor “for the benefit of themselves or of the tribe, at a reasonable rate, to be fixed by the agent in charge, and to an amount equal in value to the supplies to be delivered.” A more rational view is that Congress thereby was seeking to foster in-}
to have presumed to satisfy its obligation by direct payment to the individual members of the tribe would have been a departure from the canons of international law to which the Federal Government was trying to assimilate its relationship with the Indian tribes. Furthermore, payments to tribal authorities saved the Federal Government from the necessity of making difficult adjudications that might lead to dissatisfaction. But such payments of trust funds to a general council where a treaty provided them for the benefit of individual Indians, did not necessarily discharge the obligation of the United States if it had knowledge of fraudulent or corrupt practices of the council in distributing the funds. Payments to tribal authorities thus sometimes led to worse dissipations on the part of individual members of the tribes who considered themselves discriminated against. This accounts for the practice of reserving to the United States, by treaty provision, the right to distribute to the members of the tribe the moneys or goods owing to the tribe. Occasionally the treaty provided that this distribution was to be made on the basis of an

Indians, 10 Stat 1013; treaty of September 30, 1854, with the Chippewa Indians of Lake Superior and the Mississippi, 10 Stat. 1109. In this connection, see Chittes v. United States, 138 F. Supp. 233 (1956), where in the Court of Claims has overruled the Indian, it has been held that we have allowed the Choctaw Nation to have under the Mississippi, 10 Stat. 1109, as of 2, 4; art. 5 of treaty of September 3, 1858, with Stockbridge and Munsee Indians, art. 3 of treaty of August 7, 1856, with Creek and Seminole Tribes. All treaties to March 18, 1856, with the Seminole Indians for the U. S. 541, applicable to the Klamath tribes. 7 See Seminole Nation v. United States, 816 U.S. 286 (1942), and the Seminole Treaty of March 21, 1868, 14 Stat. 768. For a recent law establishing individual credits, see the acts of March 30, 1944, 62 Stat. 92, 26 U.S. C. 544, applicable to the Klamath tribes.

At first these treaties provided simply that the United States might "divide the said annuity amongst the individuals of the said tribe," treaty of December 30, 1850, with the Blackfeet, 7 Stat. 210, per capita distribution is promised in order to remove "any discontent which may have arisen in the Choctaw Nation, in consequence of the large sums of their annuities having been appropriated annually, for sixteen years, by some of the chiefs, for the benefit of their schools." Other treaties promising equal distribution are: Treaty of October 4, 1842, with the Chippewa Indians of the Mississippi and Lake Superior, 7 Stat. 561; treaty of January 4, 1845, with the Creek and Seminole Tribes of Indians, 9 Stat. 821, treaty of March 17, 1842, with the Wyandott Nation of Indians, 11 Stat. 581. Later treaties generally reserved a more comprehensive right in the President of the United States to determine how moneys due to the Indian tribe should be paid to the members of the tribe or expended for their use and benefit. Treaty of March 18, 1854, with the Omaha Tribe of Indians, 10 Stat. 1043, treaty of May 6, 1854, with the Delaware Tribe of Indians, 10 Stat. 1048; treaty of June 5, 1854, with the Miami Tribe of Indians, 10 Stat. 1093; treaty of October 17, 1855, with the Blackfoot and other tribes of Indians, 11 Stat. 657, treaty of August 24, 1859, with the Jamestown and other tribes of Indians, 12 Stat. 595; treaty of July 1, 1855, with the Salt lake and Uinta Indians, 12 Stat. 912, treaty of January 31, 1855, with the Shakopee Indians of Chippewa Indians, 10 Stat. 1109. Other treaties emphasized this understanding, without making it explicit, by providing that the United States reserve the right to apportion annuities amongst the different bands or tribes with which a single treaty was made, but reserving no similar right to apportion funds to a band or tribe. Treaty of July 27, 1835, with the Comanche, Kiowa, and Apache Tribes or Nations of Footnote continued on p. 727.
agreement between the tribal authorities and the agents of the Federal Government. Gener-)

Generally such per capita payments comprised only a portion of the funds due to the tribe, the remainder of such funds being invested or expended in other ways. Occasionally an Indian treaty provided for complete per capita distribution of tribal funds. Since 1871, and particularly during the years following the General Allotment Act, when per capita distribution of property was looked upon as an effective means of terminating tribal organization, numerous statutes provided for per capita payment of tribal funds.

In recent decades compensation to Indian tribes for land or other property has generally taken the form of statutory provisions requiring that certain sums be placed "to the credit of" a given tribe.

See, for example: Treaty of September 29, 1837, with the Sioux Nation of Indians, 7 Stat. 588; treaty of October 15, 1848, with the Menominee Tribe of Indians, 9 Stat. 923; treaty of May 10, 1854, with the Shawnees, 10 Stat. 1053; treaty of June 19, 1855, with the Mandawaketon and Wahpakoota Bands of the Sioux Tribe of Indians, 12 Stat. 1031; treaty of June 19, 1855, with the Bissonet and Wahpato Bands of Sioux Tribe of Indians, 13 Stat. 1057.


Treaty of January 81, 1855, with Wyandott Tribe, 10 Stat. 1159.


quently specific provision is made covering the interest to be paid upon the fund and covering also the purposes for which and the manner in which the fund may be expended. Since 1847 there has been several different funds to its credit the statute, if clearly drafted, specifies the particular fund to which the sum in question is to be added. Some statutes merely provide that funds shall be deposited in the United States Treasury and be subject to appropriations by the Congress for a designated group or tribe of Indians. Since 1847 the President has been empowered, in his discretion, to pay over moneys due to Indian tribes to the members thereof, per capita, instead of to the officers or agents of the tribe. Questions of interpretation, however, continued to arise even after the 1847 statute.

Where the manner of payment is in issue it has been said that a requirement of execution of a receipt or release by the tribe indicates that payment to tribal officers rather than heads of families is intended.

Again, it has been said:

Ordinarily a debt due to a nation, by a treaty, ought to be paid to the constituted authorities of the nation; but where the treaty and the law appropriating the money both direct the payment to the individuals of the nation per capita, the treaty and the statute must prevail.

This was said more than 100 years ago, long before Indians generally had become citizens of the United States. International aspects of this problem no longer exist.

The statutes dealing with payments due from the United States to Indian tribes represented, until the end of the 19th century, the chief
source of tribal income, supplemented only sparsely by special statutes or treaties authorizing the leasing or sale of tribal lands to other Indian tribes \[^{23}\] or to non-Indians.

A further source of income of considerable importance during recent decades is constituted by judgment awards in suits against the United States.

In recent years, various judicial acts have at times provided that no part of the judgment that may be awarded pursuant to the act shall be paid out in per capita payments to the Indians. \[^{24}\]

This proviso represented a tendency to devote recoveries from judgments in claim cases to the rebuilding of the tribal estate rather than to temporary payments which were easily dissipated.

An important source of income due to Indian tribes from non-governmental sources developed with the building of railroads across Indian reservations.

Most of the statutes which grant rights-of-way to railroads or other transportation or communication companies provide for payment of compensation to the Indian tribe. A majority of the statutes relating to railroads contain the phrase "that the said railway company shall pay to the Secretary of the Interior, for the benefit of the particular nations or tribes through whose lands said line may be located," a specified sum, \[^{25}\] which was frequently fixed at $50 per mile of road.

In a few instances similar language referring to a definite tribe is used instead of the more general language above noted. \[^{26}\] A few statutes provide that the railway company shall pay the required sum to the Secretary of the Interior, for the benefit of the particular nations or tribes through whose lands said line may be located. \[^{27}\]


\[^{24}\] Act of April 25, 1896, 29 Stat. 109 ("deposited with the treasury of the tribe to which the lands belong").


\[^{27}\] Act of March 2, 1890, 30 Stat. 990, 992, sec. 5.

<table>
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<tr>
<th>U.S. C.</th>
<th>Source of same No.</th>
<th>Date of act</th>
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| 22.3a4 | Rights-of-way     | Mar. 5, 1899 | 30 Stat. 991... | "Payment to the Secretary of the Interior for the benefit of the tribe or the
|        |                   |             |                 | mandants Feb. |
| 22.3a8 | Rights-of-way for telephones, etc. | Mar. 5, 1891 | 31 Stat. 1008... | "Payment to the Secretary of the Interior, for the use and benefit of the Indians, such
|        |                   |             |                 | annual tax as he may designate."
| 22.221 | Right-of-way for | Mar. 11, 1904 | 33 Stat. 65, 29 | "Payment to the Secretary of the Interior, for the use and benefit of the Indians, such
|        |                   |             |                 | annual as he may designate."
|        |                   | Mar. 2, 1907 | 33 Stat. 70... | "Deposited in the Treasury of the United States to the credit of the tribe or the
|        |                   |             |                 | tribe or the..."
| 22.407 | Sale of timber... | June 5, 1910 | 36 Stat. 87... | "Shall be used for the benefit of the Indians in the manner as he [Secretary of the Interior]
|        |                   |             |                 | disposes of them." |
| 22.191 | Sale of agency... | Apr. 14, 1914 | 38 Stat. 98... | "Deposited in the Treasury of the United States to the credit of Indians owning the same." |
| 22.209a | Mining leases of agency reserves. | Apr. 17, 1926 | 44 Stat. 80... | "Deposited in the Treasury of the United States to the credit of the Indians, for the
|        |                   |             |                 | benefit of the
|        |                   |             |                 | Indians owning the same." |
| 22.235 | Sale of burnt timber on Public Domain. | Apr. 5, 1913 | 37 Stat. 1015... | "Transferred to the fund of such tribe or otherwise credited or distributed as by law provided." |
| 30.56 | Actions for surplus coal lands. | July 5, 1928 | 44 Stat. 951... | "Transferred to the Treasury of the United States to the credit of the same fund under the
|        |                   |             |                 | same conditions and limitations as was or are prescribed by law for the disposition of the
|        |                   |             |                 | proceeds arising from the disposal of coal lands upon surplus Indian reservations." |
| 18.575 | Water power... | June 16, 1920 | 41 Stat. 1003... | "Shall be placed to the credit of the
|        |                   |             |                 | Indians of such reservation." |

In addition to the foregoing specific provisions, there are other currently effective statutes relating to the leasing of Indian lands which do not specify the manner in which the receipts are to be handled.

The act of March 8, 1888, as amended, provided:

All miscellaneous revenues derived from Indian reservations, agencies, and schools, except those of the Five Civilized Tribes, and not the result of the labor of any member of such tribe, which are not required by existing law to be otherwise disposed of, shall be covered into the Treasury of the United States under the caption "Indian moneys, proceeds of labor", and are hereby made available for expenditure, in the discretion of the Secretary of the Interior, for the benefit of the Indian tribes, agencies, and schools on whose behalf they are collected, subject, however, to the limitations as to tribal funds imposed by section 27 of the Act of May 16, 1910 (Thirty-ninth Statutes at Large, page 159).

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"Article VIII, section 3 of the Constitution of the Cheyenne River Sioux Tribe, above referred to, provides that "Tribal lands may be leased by the tribal council, with the approval of the Secretary of the Interior, for such periods of time as are permitted by law.' Nothing is said in this section or in any other section of the

** Material in quotations is quoted by the Comptroller General from the Interior Department letter of submission.

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constitution is to whether rentals paid under such leases shall be paid to the
disposing agent of the reservation for deposit in the United States Treasury or
to the bonded treasurer of the tribe for deposit in the tribal treasury. Presumably
this is a left, like the other terms of the lease, to the discretion of the Tribal Council
and the Secretary of the Interior."

The additional powers granted in the new act do not expressly mention
the control by the tribe of their own finances, and there is, therefore, some
doubt whether such authorization was intended. However, in view of the
broad purposes of the act, as shown by its legislative history, to extend to
Indians the fundamental rights of political liberty and local self-government,
and to have been shown the fact that some of the power so granted by the
new act would require the use of tribal funds for their accomplishment—being
necessary incidentals of such powers—and the further fact that the act of June 25,
1888, 49 Stat. 1238, provides that section 20 of the Permanent Appropriation
Repeal Act, 48 Stat. 1238, shall not apply to funds held in trust for Individual
Indians, associations of Individual Indians, or for Indian corporations chartered
under the act of June 18, 1884, this office would not be required to object to the
procedures suggested in your memorandum for the handling of tribal funds of
Indian tribes organized pursuant to the said act of June 18, 1884.

Following this ruling by the Comptroller General, the Solicitor for
the Department of the Interior held that the provisions of title 25,
United States Code, section 155, relating to the deposit of miscellaneous revenues of Indian tribes, operate as limitations on the administrative
power of Federal officials but do not prohibit the receipt of tribal funds by tribal officials in those situations where no provision of Federal law, or departmental regulation, deprives the tribe of uncontrolled authority over the funds.

b. Manner of Making Payments to Tribe.—Although a good deal of
the foregoing discussion has dealt inevitably with the manner as
well as the source of payments made to an Indian tribe, it remains to
note the various general statutes which have regulated the manner of
making such payments. Generally such statutes have been limited to
details of payment not covered by the treaty or act under which the
payment is due. But in certain cases grave questions have arisen as to
the compatibility between the statutes creating the debt and the
statutes determining the manner of its discharge.

For the most part, these early statutes were designed to guard
against fraud and unfairness in the distribution of funds and supplies.
The act of June 30, 1884, contained two general provisions covering
the payment of Indian annuities:

Sec. 11. And be it further enacted, That the payment of all annuities or other
sums stipulated by treaty to be made to any Indian tribe, shall be made to the
chiefs of such tribe, or to such person as said tribe shall appoint; or if any tribe
shall appropriate their annuities to the purpose of education, or to any other
specific use, then to such person or persons as such tribe shall designate.

As subsequently amended, these provisions are embodied in the
United States Code in the following form:

§ 111. Payment of annuities and distribution of goods. The payment of all
money and the distribution of all goods stipulated to be furnished to any Indians,
tribe of Indians, and the provision made in one of the following ways, as the President
or the Secretary of the Interior may direct:

First. To the chiefs of a tribe, for the tribe.
Second. In cases where the interest of the tribe or the individuals
intended to be benefited, or any treaty stipulation, requires the intervention of an
agency, then to such person as the tribe shall appoint to receive such money or
goods; or if several persons be appointed, then upon the joint order or receipt of
such persons.

Third. To the heads of the families and to the individuals entitled to participa
tion in the moneys or goods.

Fourth. By consent of the tribe, such moneys or goods may be applied di-
rectly, under such regulations, not inconsistent with treaty stipulations, as
may be prescribed by the Secretary of the Interior, to such purposes as will best
promote the happiness and prosperity of the members of the tribe, and will encourage able-bodied Indians in the habits of industry and peace.

Various other early statutes still unrepealed required civil and
military officers to certify to the actual delivery of goods owing to Indians,
authorized the President to require that payments and
deliveries be made by the various superintendents permitted pay-
ment of annuities in coin, or goods (at the request of the tribe), authorized Indians 18 years of age or over to receive annuities,
required the Secretary of the Interior to designate disbursing officers
handling per capita payments, extended these safeguards to the payment of judgment moneys, required the presence of the “original package” when goods are distributed, and required reports as to the status of tribal fiscal affairs generally, reimbursable accounts, and

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**Footnotes:**

4 Stat. 785.

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The foregoing statutes are designed primarily to protect the Indians against lax or dishonest officials. A separate body of legislation is directed against immorality on the part of the Indians.

Section 8 of the act of March 3, 1847, as it appears today in title 25 of the United States Code, provides:

§ 189. Withholding of moneys or goods on account of intoxicating liquors. No annuities, or moneys, or goods shall be paid or distributed to Indians while they are under the influence of any description of intoxicating liquor, nor while there are good and sufficient reasons leading the officers or agents, whose duty it may be to make such payments or distribution, to believe that there is any species of intoxicating liquor within convenient reach of the Indians, nor until the chiefs and headmen of the tribe shall have pledged themselves to use all their influence and to make all proper exertions to prevent the introduction and sale of such liquor in their country.

The act of March 2, 1867, still unrepealed, forbade the payment of treaty funds to an Indian tribe which, since the last distribution of funds, had engaged in hostilities against the United States, or against its citizens. The act of April 10, 1869, also still unrepealed, forbade delivery of goods pursuant to treaty to chiefs who had violated a treaty.

We have already noted that the act of June 22, 1874, required the beneficiaries of obligations from the United States to perform useful labor in order to secure the sums or supplies owing them. At various times provisions were made that tribes at war with the United States should not receive annuities or appropriations. Thus, section 2 of the Appropriation Act of March 3, 1875, provided:

That none of the appropriations herein made, or of any appropriations made for the Indian service, shall be paid to any band of Indians or any portion of any band while at war with the United States or with the white citizens of any of the States or Territories (p. 449).

Section 1 of the same act, still carried in the United States Code as section 129 of title 25, provides:

The Secretary of the Interior is authorised to withhold, from any tribe of Indians who may hold any captives other than Indians, any moneys due them from the United States until said captives shall be surrendered to the lawful authorities of the United States.

Many of these laws while of historical interest now merely indicate a need for repealing obsolete laws and reclassifying those still important in Indian affairs.

A third type of statute governing Federal payments and distributions is concerned with the issue of tribal payments versus individual payments. During the allotment period a persistent effort was made to individualize annuities and funds, for somewhat the same reasons that created the desire to individualize land.

The Appropriation Act of March 3, 1877, contained a direction to each agent having supplies to distribute—

* * * to make out rolls of the Indians entitled to supplies at the agency, with the names of the Indians and of the heads of families or lodges, with the number in each family or lodge, and to give out supplies to the heads of families, and not the heads of tribes or bands, and not to give out supplies for a greater length of time than one week in advance: Provided, however, that the Commissioner of Indian Affairs may, in his discretion, issue supplies for a greater period than one week to such Indians as are peaceably located upon their reservation and engaged in agriculture.

The purpose of this provision was apparently to curtail the tribal control that chiefs might exercise through the distribution of food and clothing and to transfer control to the Indian agents.

The act of March 2, 1907, authorizes the Secretary of the Interior to apportion "tribal or trust funds on deposit in the Treasury of the United States" among the members of the tribe concerned.

General segregation and distribution of tribal funds to members appearing on "final rolls" made by the Secretary of the Interior was authorized by section 28 of the act of May 25, 1918, and section 1 of the act of June 30, 1919. The repeal of the distribution features of the latter statute by the act of June 24, 1938, parallels the termination of the allotment policy.

Other miscellaneous statutes relating to the handling of funds due from the United States to Indian tribes relate primarily to matters of accounting procedure and the enforcement of appropriation limitations.

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*Sec. 3, 19 Stat. 271, 293.

Footnote continued on p. 738.
States concerning expenditure of tribal funds. However, this does not necessarily preclude action on the part of the Federal Government commuting perpetual annuities due under treaty stipulations. This can be done with or without the consent of the tribe and notwithstanding the claim that authority is lacking to cut off the rights of future members of the tribe.\(^6\)

Judgment money awarded to the Blackfeet Indians by the Court of Claims have been made “available for disposition by the tribal council of said Indians, with the approval of the Secretary of the Interior, in accordance with the constitution and bylaws of the Blackfeet Tribe \(* * *\).” Other statutes provided for the expenditure of tribal funds for objects designated or approved by the tribal council concerned.\(^7\) Perhaps the earliest of such provisions is found in section 3 of the Appropriation Act of February 17, 1879,\(^8\) providing for the diversion of various appropriations to alternative uses “within the discretion of the President, and with the consent of said tribes, expressed in the usual manner.” This provision was repeated in subsequent appropriation acts\(^9\) and made permanent by the act of March 1, 1907.\(^1^1\)

There is an implied agreement between Federal and tribal authorities in acts authorizing the Secretary of the Interior to appropriate money for the expenses of tribal councils,\(^1^2\) tribal delegates,\(^1^3\) and tribal attorneys.\(^1^4\)

There are, of course, a great number of statutes authorizing the expenditure of tribal funds without express reference to the wishes of the tribe,\(^1^5\) and the problem of Federal power to expend tribal funds...
purposes in a manner that will avoid the redtape and delays of re-
appropriation. 26

Actual practice has usually been a compromise between these two principles. In section 27 of the act of May 18, 1916, 29 Congress provided:

No money shall be expended from Indian tribal funds without specific appro-

appropriation by Congress except as follows: Equalization of allotments, education of
Indian children in accordance with existing law, per capita and other pay-
ments, all of which are hereby continued in full force and effect: Provided fur-
ther, That this shall not change existing law with reference to the Five Civilized

Tribes.

To this list of purposes for which expenditures may be made from tribal funds by administrative authorities without specific congres-
sional appropriation, a specific addition was made by the act of April 13, 1926, 29 as amended, which declares:

The funds of any tribe of Indians under the control of the United States may
be used for payments of insurance premiums for protection of the property of
the tribe against fire, theft, tornado, hail, earthquake, or other elements and
forces of nature, and for protection against liability on account of injuries or
damages to persons or property and other like claims.

Interior Department appropriation acts often contain, in addition
to specific appropriations out of designated tribal funds for specific
purposes, general appropriations of the following form: 31

In addition to the tribal funds authorized to be expended by existing law, there is
hereby appropriated $3,100,000, 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 chil-
dren 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 com-

26 In other fields of Government, the public purpose corporation has been created to
facilitate businesslike handling of appropriations, and this same objective was a major
factor in the scheme of tribal incorporation established by the act of June 18, 1934, 48

29 Stat. 150, 25 U.S.C. 123. On the basis of this statute the Comptroller General has
held that contracts with attorneys for payment of fees out of tribal funds should not be
approved by the Secretary of the Interior in the absence of express statutory au-
thorization. Comptroller's Decisions A. 24031, November 8, 1928; A. 27759, July 1, 1929;
A. 29178, May 8, 1930; A. 34858, January 25, 1931; A. 45091, October 20, 1932; A. 81210,
December 2, 1932; A. 44259, October 11, 1933. The Interior Department took the posi-
tion that the Comptroller General's opinion of June 20, 1937, discussed supra, that
these decisions do not apply to funds in the treasury of an organized tribe. Memo. Sol. I. D.,
January 13, 1938. See also Memo. Sol. I. D., February 25, 1945, relating to the funds of
unorganized tribes.

31 Funds other than trust funds may be expended without such authorization.

26 Act of June 15, 1916, 40 Stat. 141. For an earlier example see the act of May 9,
themselves, 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.

Beginning with the Department of the Interior Appropriation Act for 1961, (September 6, 1960, 64 Stat. 595, 698), each annual appropriation act for the Department of the Interior has contained an authorization under which tribal funds are available for advancement to the tribes upon application by the appropriate tribal officials and approval of the Secretary.

Furthermore, as we have already noted, "miscellaneous revenues not the result of the labor of any member of such tribe" may be deposited in a fund peculiarly misnamed "Indian moneys, proceeds of labor," and thereafter such funds are available for expenditure "in the discretion of the Secretary of the Interior, for the benefit of the Indian tribes, agencies, and schools on whose behalf they were collected," subject to the limitations as to tribal funds imposed by section 27 of the act of May 18, 1916.

In view of the present state of the law, an Indian tribe seeking a particular disposition of "tribal funds" or "trust funds" in the Treasury of the United States, must request a specific congressional appropriation unless "Indian Moneys, Proceeds of Labor" are available or the purpose is one of the four purposes for which Congress has given the Secretary of the Interior permanent spending authority, or the purpose is one as to which the current Interior Department appropriation act vests temporary authority over disposition in that Department. Under any of these exceptions administrative authority rather than congressional appropriation must be obtained.

These limitations upon the power of an Indian tribe to dispose of funds or other personal property in which it has an equitable right do not extend to funds or personal property over which the tribe has full legal ownership, even though such funds or property are voluntarily deposited for safekeeping with a local superintendent and therefore technically under the Permanent Appropriation Repeal Act of June 26, 1934, within the Treasury of the United States. The act of June 25, 1936, specifically provides:

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**TRIBAL PROPERTY**

That section 20 of the Permanent Appropriation Repeal Act, approved June 26, 1934 (48 Stat. 1238), shall not be applicable to funds held in trust for individual Indians, associations of individual Indians, or for Indian corporations chartered under the Act of June 18, 1934 (48 Stat. 941).

Since funds so deposited by an incorporated tribe are not subject to congressional appropriation, it must be held a fortiori that funds so deposited but retained by the tribe are not ordinarily subject to congressional appropriations. Charters issued to incorporated tribes recognize that funds held in the treasury of an incorporated tribe are subject to disposition, in accordance with the limitations of the charter, by the corporation, and are not in any way subject to congressional appropriation. This conclusion may be based upon the narrow ground that section 17 of the act of June 18, 1934, expressly authorizes a chartered tribe to "dispose of property real and personal," but it seems more satisfactory to place the conclusion upon the broader ground that the various statutes relating to appropriations of "tribal funds" and "trust funds" use these words in a technical sense, as terms of art, to refer to a well-understood category of funds which are held in the Treasury of the United States to the credit of the tribe pursuant to some law or treaty, and that, therefore, these limitations are inapplicable to funds in the actual possession of the tribe itself.

This view is in accord with the historic fact that Congress has never presumed to interfere with the expenditure of funds held in tribal treasuries, even when the collection of such funds by tribal authorities is regulated by specific legislation requiring reports to Congress by a tribal treasurer.

The difference between the power of an Indian tribe to dispose of personal property and its power over real property may be summed up in a sentence: A tribe may not validly alienate realty except with the consent of the Federal Government, given by Congress or by an official duly authorized by Congress to consent to particular forms of alienation; on the other hand, a tribe has power of disposition over tribal personal property, except insofar as such property has been removed from its control and placed in the possession of the Federal Government pursuant to some law or treaty.

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The expenditure of a part of the funds of the Cherokee Nation for the relief of hostile Indians of other tribes during a period while the Cherokee were in a State of hostility to the United States, did not under relevant acts of Congress or the treaty of July 19, 1860, 14 Stat. 156, create any liability on the part of the United States to restore to the Cherokee fund the amounts so expended. *Cherokee Nation v. United States.* 102 Ct. Cl. 720 (1945).

45 Stat. 1224.

46 Stat. 1926.

Sec. 8 of the Southern Ute Tribe charter authorized a per capita distribution of profits of tribal corporate enterprises or income over or above sums necessary to defray corporate obligations. However, no such distribution to members in any one year could include more than one-half of the accrued surplus, without the approval of the Secretary of the Interior. Further, no distribution of the financial assets of the tribe could be made except as provided by the charter or as authorized by Congress. Accordingly, while current net income for any fiscal year could be distributed by the tribe without Secretary approval as well as up to one-half of the accrued surplus, approval would be required for distribution of more than these amounts. See Memo. Sol. M. 304165, November 14, 1932.

Among the limitations voluntarily assumed by Indian tribes with respect to the disposition of tribal moneys and other personality, we may briefly note:

(1) Limitations contained in tribal constitutions.
(2) Limitations contained in tribal charters.

See, for example, the following provisions of the constitution and bylaws of the Hualapai Tribe, approved December 17, 1928:

Art. IV, Section 1. The Hualapai Tribal Council shall have the following powers:

(a) To deposit all Tribal Council funds to the credit of the Hualapai Tribe in an individual Indian Moneys Account, Hualapai Tribe of the Trustee, State Depository, or such funds to be expended only upon the recommendation of the Tribal Council in accordance with a budget saving prior approval of the Secretary of the Interior.

Sec. 4. Treasurer. The Treasurer shall accept, receive, receipt for, preserve, and safeguard all funds in the custody of the Tribal Council. He shall deposit all funds in such depository as the Council shall direct and shall make and preserve a faithful record of such funds and shall report on all receipts and expenditures and the amount and nature of all funds in his possession and custody, at such times as requested by the Tribal Council. He shall not pay out or disburse any funds in his possession or custody, except in accordance with a resolution duly passed by the Council. The books and records of the Treasurer shall be audited at least once each year by a competent auditor employed by the Council and at such other times as the Secretary of the Commissioner of Indian Affairs may direct. The Treasurer shall be required to give a bond satisfactory to the Tribal Council and to the Commissioner of Indian Affairs. Until the Treasurer is bonded, the Tribal Council may make such provisions for the custody and disbursement of funds as shall guarantee their safety and proper disbursement and use.

5. The tribe, subject to any restrictions contained in the Constitution and laws of the United States, or in the constitution and bylaws of the said tribe, shall have the following corporate powers, in addition to all powers already conferred or guaranteed by the tribal constitution and bylaws:

(1) To purchase, take by gift, bequest, or otherwise own, hold, manage, operate and dispose of property of every description, real and personal, subject to the following limitations:

(a) No distribution of corporate property to members shall be made except out of net income.

(b) To borrow money from the corporate credit fund in accordance with the terms of the act of June 18, 1894 (48 Stat. 964), or from any other governmental agency, or from any member or association of members of the tribe, and to use such funds directly for productive tribal enterprises, or to loan money thus borrowed to individual members or associations of members of the tribe: Provided, That the amount of indebtedness to which the tribe may subject itself shall not exceed $100,000, except with the express approval of the Secretary of the Interior.

(c) To make and perform contracts and agreements of every description, not inconsistent with public policy or with any provisions of this charter, with any person, association, or corporation, with any municipality or any county, or with the United States or the State of Montana, including agreements with the United States or the State of Montana for the rendition of public services and including contracts with the United States or the State of Montana or any agency of either for the development of water-power sites within the reservation: Provided, That all contracts involving payment of money by the corporation in excess of $5,000 in any one fiscal year, or involving the development of water-power sites within the reservation, shall be subject to the approval of the Secretary of the Interior or his duly authorized representative.

5. The tribe, subject to any restrictions contained in the Constitution and laws of the United States, or in the constitution and bylaws of the said tribe, shall have the following corporate powers, in addition to all powers already conferred or guaranteed by the tribal constitution and bylaws:

(a) To purchase, take by gift, bequest, or otherwise own, hold, manage, operate and dispose of property of every description, real and personal, subject to the following limitations:

(b) No distribution of corporate property to members shall be made except out of net income.

(c) To borrow money from the corporate credit fund in accordance with the terms of the act of June 18, 1894 (48 Stat. 964), or from any other governmental agency, or from any member or association of members of the tribe, and to use such funds directly for productive tribal enterprises, or to loan money thus borrowed to individual members or associations of members of the tribe: Provided, That the amount of indebtedness to which the tribe may subject itself shall not exceed $100,000, except with the express approval of the Secretary of the Interior.

(d) To make and perform contracts and agreements of every description, not inconsistent with public policy or with any provisions of this charter, with any person, association, or corporation, with any municipality or any county, or with the United States or the State of Montana, including agreements with the United States or the State of Montana for the rendition of public services and including contracts with the United States or the State of Montana or any agency of either for the development of water-power sites within the reservation: Provided, That all contracts involving payment of money by the corporation in excess of $5,000 in any one fiscal year, or involving the development of water-power sites within the reservation, shall be subject to the approval of the Secretary of the Interior or his duly authorized representative.

The grant of funds to Indian tribes for particular uses, under the Emergency Appropriation Act of April 8, 1935, raised additional questions as to the powers of an Indian tribe in handling funds. In response to the question put by the Commissioner of Indian Affairs whether an Indian tribe might use the proceeds of rentals of land improved through rehabilitation grants to finance additional construction projects or to meet general tribal expenses or to make per capita payments, the Solicitor of the Interior Department ruled: 81

4. When money has been granted to an Indian tribe to be used for a particular purpose, e.g., the development of springs on tribal land or the construction of homes, the President's letter above set forth imposes no duty on the tribe when once the money has been properly expended. The fact that such expenditures may increase tribal income from the issuance of leases or permits on tribal land, or tribal income from other enterprises, does not subject a part of that income, or all of it, to any lien on the part of the Federal Government. Such income may, therefore, be received and disbursed by the Indian tribe in any manner not prohibited by Federal law or by the constitution, bylaws, or charter of the tribe, unless the tribe has specifically agreed to use such rentals or income for a specific purpose. It is, of course, within the power of a tribe to agree, through its representative council or other officers, that certain income available to the tribe shall be used only for designated purposes not inconsistent with law.

Following this determination, the Indian Office entered into trust agreements with various Indian tribes under which the Indian tribe became trustee of the funds granted and the proceeds thereof for the benefit of needy Indians entitled to the benefits of the act in question.
On the other hand, Congress may permit the leasing of allotted lands, subject to the approval of the Secretary of the Interior, but specifically providing that the allottees "shall have full control of the same, including the proceeds thereof." 22

A perusal of the acts cited indicates a general intent of Congress to retain, for a time, governmental control of the proceeds from the disposition of restricted allotted lands and to leave to the discretion of administrative officials the time and manner of distributing or expending such funds, subject to the qualification that they be used for the benefit of the Indian.

22 Osage Allotment Act of June 28, 1906, sec. 7, 34 Stat. 539, 545

4. Sources of Individual Personal Property—Individualization of Tribal Funds

A second important source of individual funds is the individualization of tribal funds. 23 Since tribal funds generally represent the income from disposition of tribal lands, the Federal Government has commonly extended the restrictions on the land to the proceeds therefrom. By a further extension, Congress has frequently imposed, as conditions to the right of the individual to participate in tribal funds, certain restrictions affecting his use of the funds after they have become individualized.

By the act of March 2, 1907, 24 Congress provided generally for the distribution of tribal funds among individuals. Those Indians whom the Secretary of the Interior believed capable of managing their affairs could have placed their credit upon the books of the United States Treasury their pro rata share of the tribal funds held in trust by the United States, and they could draw upon this credit without any further governmental control. 25 Section 2 of the act provided that the Secretary of the Interior might pay to disabled Indians their shares in tribal property, under such rules and conditions as he might prescribe. As later amended, 26 this section authorized the Secretary of the Interior upon application by an Indian "mentally or physically incapable of managing his or her own affairs," to withdraw the pro rata share of such Indian in the tribal funds, and to expend such sums on behalf of the Indian.

Section 28 of the Appropriation Act of May 28, 1918, 27 which specifically excluded from its scope the funds of the Five Civilized Tribes and the Osages, in Oklahoma, authorized the Secretary of the Interior to withdraw tribal funds from the Treasury of the United States and to credit recognized members of the tribe with equal shares. However, this authority was revoked by section 2 of the act of June 24, 1938. 28 Nevertheless, the Indian may still apply for funds as his pro rata share in tribal assets, under the act of 1907. 29 The granting of such applications is contrary to the general administrative policy of conserving tribal funds, but in special circumstances such pro rata distributions are still made. It has been held by the Interior Department that, under section 16 of the act of June 18, 1934, 30 such applications must receive the approval of the tribal council, if the tribe in question is organized under that act. 31

The individual may be awarded, by special statute, a specified sum from the tribal funds on deposit in the United States Treasury. A typical act is the act of February 12, 1932, 32 providing for payment of $25 to each enrolled Chippewa of Minnesota from tribal funds, under such regulations as the Secretary of the Interior may prescribe. 33

In the individualization of tribal funds, Congress has at various times laid down directions under which the Secretary of the Interior should expend the funds.

In the act of March 3, 1933, 34 Congress provided for the distribution of tribal funds of the Ute Indians. The shares of all were to be deposited as Indian money accounts 35 and subject to disbursement for the individual's benefit in the following ways: for improving lands, erecting homes, purchase of equipment, livestock, household goods and in other ways as will enable them to become self-supporting. The shares of the aged, infirm, and other incapacitated members were to be

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1 On regulations regarding moneys, tribal and individual, see 25 C. F. R. 221.1 et seq. Individualization of funds is provided for by, or will be a natural result of, the program of terminating federal supervision over Indian tribes (H. R. Rep. 109, 62d Cong., 1st sess.). In this connection see the act of June 17, 1904, 38 Stat. 550, as amended by act of July 14, 1905, 39 Stat. 549 (Menominee); act of August 12, 1904, 33 Stat. 718 (Klamath); act of August 10, 1904, 34 Stat. 704 (Grand Ronde); act of August 25, 1904, 38 Stat. 785 (Alabama and Coushatta); act of August 25, 1904, 38 Stat. 868 (Ute Tribe of Uintah and Ouray); act of September 1, 1904, 38 Stat. 709 (Siletz); act of August 1, 1905, 38 Stat. 898 (Wyandotte); act of August 2, 1905, 38 Stat. 916 (Peoria); act of August 25, 1905, 38 Stat. 913 (Ottawa). The closing of the final roll may affect a vesting of shares in the tribal property and assets. See Memo. Sol. M. 36288, June 23, 1955, relating to the Menominee Termination Act. See also 66 I. D. 669 re per capita shares of deceased members whose names appear on a specified roll, and 64 Stat. 188 relating to per capita payments to the Indians of California.


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6 52 Stat. 1037.

7 54 Stat. 1228.

8 83 Stat. 1904.


10 47 Stat. 49. Congress sometimes passes several such acts in a single Congress. See for example, 82 Stat. 192, 190, and 121.

11 See also 63 Stat. 60, authorizing per capita payments from the proceeds of sale of Chippewa timber.

12 47 Stat. 1499.

13 "Indian money accounts" are those accounts under the administrative control of superintendents or disbursing agents containing funds, regardless of derivation, belonging to individuals (25 C. F. R. 221.1 and 221.2).
be used for their support and maintenance. As for minors, their 
shares might be invested or spent in the same fashion as prescribed 
for adults, but when their funds were to be invested or expended, the 
consent of the parents and the approval of the Secretary of the Interior 
was necessary.14

Acts providing for the payment of judgments in favor of a tribe 
may limit the rights of the Indian in individualized tribal funds by 
the qualification that "the per-capita share due each member * * * 
be credited to the individual Indian money account of such member 
for expenditure in accordance with the individual Indian money 
regulations."15 Various resolutions authorizing the distribution of 
judgments rendered in favor of Indian tribes provide for per capita 
payments to each enrolled member, such distribution to be made under 
such rules and regulations as the Secretary of the Interior may 
prescribe.16

By virtue of these acts, Congress has given to the Secretary of the 
Interior authority over individual funds derived from the tribal 
property held in trust comparable to the authority over funds derived 
from the individual's restricted property.

5. Sources of Individual Personal Property—Payments From 
the Federal Government

A third source of individual personality comprises the various forms 
of direct payment to individual Indians from the Federal Government. 
In this connection a distinction must be drawn between obligations 
assumed by the Federal Government toward the various tribes, by 
reason of the sale of tribal lands or otherwise, and obligations running 
directly to the members of the tribes. Problems arising out of the 
former situation are dealt with earlier. For the present we are con-

15 Joint resolution, June 20, 1886, 49 Stat. 1689, authorizing distribution of judgment 
in favor of Gros Ventre Indians among enrolled members.
16 The joint resolution of June 20, 1886, 49 Stat. 1689, provides for a per capita pay-
ment of $85, and places the remainder of the fund awarded to the Blackfeet Tribe at the 
disposal of the tribal council and the Secretary of the Interior.

The joint resolution of April 20, 1929, 48 Stat. 260, the Secretary of the Interior 
is authorized to pay a judgment in favor of the Iowa Tribe to members of the tribe in pro 
data shares. The competent members receive their entire shares in cash; the shares 
of the others, including minors, are deposited to the individual credit of each and subject 
to existing laws governing Indian monies

The right of the Chippewa allottees on the Lac du Flambeau Reservation to the proceeds 
derived from the sale of tribal timber is controlled by the act of May 10, 1924, 43 Stat. 
132. After providing for the sale under rules and regulations prescribed by the Secretary 
of the Interior, the act states that the net proceeds are to be distributed per capita.

Those whom the Secretary shall deem competent to handle their own affairs shall receive 
their shares. As for the others, their shares are deposited to their individual credit and 
paid to them or used for their benefit under the Secretary's supervision.

And see 25 U. S. C 771, et seq (Tillamook and other tribes of Oregon).