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# Restoration of Appropriated Funds withdrawn by the Bureau of Indian Affairs under 31 U.S.C. Sec. 1555

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Matter of: Restoration of Appropriated Funds withdrawn by the Bureau of Indian Affairs under 31 U.S.C. Sec. 1555 File: B-256765 Date: January 19, 1995

In November 1991 the Bureau of Indian Affairs reported on its year-end closing statement (FMS Form 2108) a withdrawal of $1,956,498.64 from its no-year account "Bureau of Indian Affairs, Operation of Indian Programs" (Account No. 14X2100). Although the prior law applicable to the closing of no-year accounts, 31 U.S.C. Sec. 1555 (1988), permitted the withdrawal and restoration of budget authority, the law as amended in November 1990 and as applicable here no longer so permits. Pub. L. No. 101-510, 104 Stat. 1678, November 5, 1990. The amended account closing provisions applicable to no-year accounts permit account closing and the cancellation of budget authority therein under certain limited conditions. Since these conditions are not satisfied here, and since the Bureau at the time of its action lacked the authority to withdraw the funds in question, the withdrawal was without effect. Accordingly, the Department of the Treasury should adjust the account balance upward by $1,956,498.64.

## DECISION

The Assistant Director, Financial Management, Bureau of Indian Affairs, Department of the Interior, asks whether $1,956,498.64 of budget authority may be restored to the Bureau's Operation of Indian Programs appropriation after the Bureau attempted to withdraw that amount under 31 U.S.C. Sec. 1555. As explained in more detail below, because section 1555 authorizes the closing of accounts and not the withdrawal of budget authority from ongoing accounts, the Bureau's action was without effect. Therefore, the $1,956,498.64 of budget authority remains available for obligation.

## BACKGROUND

Congress appropriated $11,100,000 of no-year funds under the heading "Bureau of Indian Affairs, Operation of Indian Programs" for transfer to the State of Alaska "to assist in the basic operation and maintenance . . . of formerly Bureau-owned schools which had been transferred to the State." Pub. L. No. 97-257, 96 Stat. 818, 838-839 (1982). Congress subsequently provided an additional $18,700,000 of no-year funds to the Operation of Indian Programs account for transfer to the State of Alaska to assist in the operation and maintenance of Bureau-owned schools. Pub. L. No. 97-394, 96 Stat. 1966, 1974-1975 (1982); Pub. L. No. 98-63, 97 Stat. 301, 326 (1983).

The sums appropriated were in addition to assistance otherwise available under the Act of April 16, 1934 (48 Stat. 596), as amended (25 U.S.C. 452 et seq.),

which authorizes the Secretary of the Interior to enter into contracts with state educational agencies or school districts for "the construction, acquisition, or renovation of facilities (including all necessary equipment) in school districts on or adjacent to or in close proximity to any Indian reservation." 25 U.S.C. Sec. 458(a). Amounts appropriated for carrying out the purposes of 25 U.S.C. Sec. 458 are authorized to be available until expended. 25 U.S.C. Sec. 458(g).

To transfer the funds to the State of Alaska, as directed in the appropriations acts, the Bureau's Juneau area office executed a cooperative agreement with the Alaska State Department of Education in 1983, which the Bureau converted to a grant in a total amount of $30,533,828 in 1984. Under the terms of the grant agreement, as various projects under the grant proceeded, the State of Alaska periodically requested letter of credit draws from the Bureau, which, upon approval, paid out the amounts requested.

According to the Bureau, a new accounting and administrative payments system was being installed during 1991. In the preparation of the fiscal year 1991 year-end closing statement, the Bureau reviewed the obligational status of accounts to "minimize the conversion of old, incorrect and/or otherwise questionable balances" in the Bureau's general ledger. In the course of this review, the Bureau examined the grant to the State of Alaska and based on the limited activity in the account over the two to three years preceding the end of fiscal year 1991, determined that an unliquidated balance of $1,956,498.64 was no longer needed. [1] Thus, in November 1991, the Bureau reported on its year-end closing statement, FMS Form 2108, to the Department of the Treasury (Treasury) that it was withdrawing from its Operation of Indian Programs account an unobligated balance of $1,956,498.64. The State of Alaska continued work on renovating former Bureau schools, [2] and apparently was unaware that the Bureau had the budget authority withdrawn. In January 1994, the Bureau's Juneau office received a request from the State of Alaska for a payment in the amount of $1,929,945.35. On February 18, 1994, the Bureau contacted the Treasury to request restoration of the withdrawn budget authority but Treasury advised that it had no authority to restore the withdrawn budget authority. The Bureau now asks us whether it may obtain restoration of the $1,956,498.64 to its Operation of Indian Programs accounts.

ANALYSIS

Under the account closing laws in effect prior to November 1990, an agency head could withdraw unobligated balances from a no-year account under certain circumstances. 31 U.S.C. Sec. 1555(a) (1988). Consistent with the prior account closing scheme, applicable both to appropriation accounts available for definite and indefinite (no-year) periods, amounts withdrawn could be restored to adjust or liquidate obligations. 31 U.S.C. Secs. 1552(a)(2), and 1555(b) (1988). Informal discussions with officials of the Bureau and the Treasury indicate that the Bureau may have been relying on the language of section 1555(a) as it read prior to its amendment when it reported the withdrawal to Treasury. [3]

At the time of the Bureau's attempted withdrawal of the $1,956,498.64, namely November 7, 1991, the Bureau no longer had the authority to "withdraw" funds. Effective November 5, 1990, subject to certain transition provisions not relevant here, Congress modified the account closing provisions, significantly changing the law applicable to no-year accounts, as set forth in 31 U.S.C. Sec. 1555. As amended, that section reads:

An appropriation account available for obligation for an indefinite period shall be closed, and any remaining balance (whether obligated or unobligated) in that account shall be canceled and thereafter shall not be available for obligation or expenditure for any purpose, if-- (1) the head of the agency concerned or the President determines that the purposes for which the appropriation was made have been carried out; and (2) no disbursement has been made against the appropriation for two consecutive fiscal years.

31 U.S.C. Sec. 1555 (Supp. IV 1992).

The Bureau could not rely on section 1555, as amended, for authority to withdraw budget authority from the Operation of Indian Programs account unless they also closed the account. The language of section 1555 authorizes the withdrawal of funds, that is, the cancellation of budget authority, only upon the closing of an account. The legislative history also speaks in terms of closing an account which would not thereafter be available for obligation or expenditure. See H.R. Conf. Rep. No. 923, 101st Cong., 2d Sess. 663 (1990), reprinted in 1990 U.S.C.C.A.N. 3220. Although the statutory scheme was different, the goal of the predecessor of section 1555 also was the same, that is, the closing of inactive appropriations. 39 Comp.Gen. 244 (1959).

In this case, the Bureau sought to withdraw what it deemed an unneeded portion of the Operation of Indian Programs account without closing the account. The Bureau's choice was either to close the account pursuant to the authority contained in section 1555, as amended, or to propose a rescission of the "unneeded" amount under the Impoundment Control Act, 2 U.S.C. Sec. 683.[4] If the Bureau's intention was to close this account, we do not think that the two conditions imposed by section 1555 to permit cancellation of the balances were met. First, there is no indication in the record that the head of the agency determined that the purposes for which the appropriations were made had been carried out. Clearly, because school renovation work performed under the grant to the State of Alaska was ongoing, the purposes for which the appropriations were made had not been carried out.

The second condition of section 1555 was likewise unsatisfied. The State of Alaska had requested letter of credit draws against the appropriation at least yearly from 1983 through July of 1991. If the disbursements were made as requested, then only several months passed from the time of the last disbursement to the time the Bureau attempted to withdraw the funds under 31 U.S.C. Sec. 1555--not the required two years. Thus, the conditions necessary to trigger application of section 1555 had not been met.

Since section 1555 authorizes the closing of no-year accounts and not the withdrawal of budget authority from open accounts, the Bureau's action was without effect. Accordingly, the Treasury should adjust the account balance upward by $1,956,498.64. See 71 Comp.Gen. ___, (B-242666, Aug. 31, 1993). Once adjusted, the Bureau may transfer the funds to the State of Alaska pursuant to the grant agreement.

1. It does not appear that this amount was reported as a rescission under the Impoundment Control Act. See 2 U.S.C. Sec. 683 (1988). Furthermore, we are not aware of other amounts that the Bureau attempted to withdraw from this or other accounts as a result of this review.

2. The submission indicates several reasons for the delay in completing school

renovations, including remote locations, a short construction season, and actions that needed to be taken by the Alaska state legislature regarding the sites involved.

3. The former section 1555 stated that:

(a) An unobligated balance of an appropriation for an indefinite period shall be withdrawn in the way provided in section 1552(a)(2) of this title when the head of the agency concerned decided that the purposes for which the appropriation was made have been carried out or when no disbursement is made against the appropriation for 2 consecutive fiscal years.

(b) An amount of an appropriation withdrawn under this section may be restored to the applicable appropriation account to pay obligations and to settle accounts.

31 U.S.C. Sec. 1555 (1988). This provision would not have permitted a withdrawal of budget authority in this instance since the amount had been obligated and neither of the two statutory conditions had been met.

4. The cancellation of budget authority during its period of availability is constrained by the Impoundment Control Act of 1974, as amended. Pub. L. No. 93-344, title X, Sec. 1012, 88 Stat. 297, 333 (1974). Generally, whenever the President determines that all or part of an appropriation is not required to carry out a legislative purpose, he may propose a rescission to the Congress. 2 U.S.C. Sec. 683. There is no record that the President proposed, or that Congress enacted, a rescission of the amount in question.