Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Advisory Commission on Intergovernmental Relations: Use and Final Disposition of State Government Contributions

File: B-274855

Date: January 23, 1997

DIGEST

1. The United States Advisory Commission on Intergovernmental Relations (ACIR) has statutory authority to receive and expend contributions for carrying out its purposes. State contributions to generally support ACIR's authorized activities are unrestricted gifts. As unrestricted gifts, they are available for all ACIR activities authorized by Congress at the time of ACIR's expenditure and are not limited to the specific activities authorized by Congress, or contemplated by ACIR or the states at the time the contributions were made.

2. Effective October 1, 1996, ACIR's only statutorily authorized activity is to perform research under a contract as provided by the National Gambling Impact Study Commission Act. From October 1, 1996, until such time as ACIR receives the research contract, ACIR may use the unconditional state government contributions for the limited purpose of supporting activities preparatory to receiving the contract.

3. When unrestricted gifts are made to an agency of the United States, such gifts are in the final analysis for the benefit of the United States. After ACIR completes its activities under the National Gambling Impact Study Commission Act, it will terminate under current law. When ACIR terminates, it must deposit unexpended state contributions into the Treasury as miscellaneous receipts.

DECISION

The United States Advisory Commission on Intergovernmental Relations (ACIR) requests an advance decision on the use and final disposition of the unexpended balance of state government contributions. Specifically, ACIR asks whether it may use the unexpended state government contributions from October 1, 1996, when its authority to carry out the purposes stated in its authorizing legislation ceased, until it begins performing new duties under the National Gambling Impact Study Commission Act. ACIR furthers asks what the proper disposition is of any unexpended state government contributions remaining when it terminates. For the

reasons explained below, state contributions to ACIR are unconditional gifts that became the property of the federal government when received, and are available for any authorized purpose of the ACIR. As of October 1, 1996, ACIR's only authorized purpose is to do research under a contract to be awarded to it under the National Gambling Impact Study Commission Act. Accordingly, from October 1, 1996, until ACIR is awarded the contract, ACIR may use the unconditional state government contributions for the limited purpose of supporting activities preparatory to receiving the contract. Upon ACIR's final termination, it must deposit its remaining assets into the Treasury as miscellaneous receipts.

BACKGROUND

Congress created the ACIR as a 26-member bipartisan federal commission to give continuing attention to intergovernmental problems. Pub. L. No. 86-380, 73 Stat. 703 (1959)(codified at 42 U.S.C. § 4271, 4272 (1994)). As originally created, Congress authorized to be appropriated such sums as may be necessary to carry out the provisions of the Act. 42 U.S.C. § 4278 (1994). Subsequently, Congress authorized ACIR to receive funds through grants, contracts, and contributions from, among others, state governments, and to expend such funds only for authorized purposes. Pub. L. No. 89-733, 80 Stat. 1162 (1966)(codified at 42 U.S.C. § 4279 (1994)). ACIR advises that it has maintained its appropriated funds separately from contributions received from state governments.

The Treasury, Postal Service, and General Government Appropriations Act, 1996, Pub. L. No. 104-52, 109 Stat. 468, 480 (1995), terminated ACIR effective September 30, 1996. The appropriations act provided "for the necessary expenses of the ACIR, $784,000, of which $334,000 is to carry out the provisions of Public Law 104-4[1], and of which $450,000 shall be available only for the purposes of the prompt and orderly termination of the ACIR."

About 2 months before ACIR was to terminate, Congress gave ACIR a new responsibility. Section 7(a) of the National Gambling Impact Study Commission (Gambling Commission) Act, Pub. L. No. 104-169, 110 Stat. 1482, 1487 (1996), required the Gambling Commission to contract with ACIR to research and report its findings no later than 15 months after the date upon which the Gambling Commission first meets. However, Public Law 104-169 did not address ACIR's scheduled termination on September 30, 1996. Congress subsequently authorized ACIR to "continue in existence solely for the purpose of performing any contract entered into under section 7(a) of the National Gambling Impact Study Commission

[1]Title III of Public Law 104-4, the Unfunded Mandates Reform Act of 1995, required ACIR to complete during fiscal year 1996 studies and reports on issues relating to the effect of federal mandates on State, local, and tribal governments.

Act (Public Law 104-169; 110 Stat. 1487). The [ACIR] shall terminate on the date of the completion of such contract." Pub. L. No. 104-328, 110 Stat. 4004 (1996).

In the past, ACIR received funding from two distinct sources: federal appropriations and private contributions.[2] ACIR's fiscal year 1996 appropriation provided some funds for studies and reports on federal mandates and some for ACIR's prompt and orderly termination. ACIR did not receive any appropriations for fiscal year 1997. While Public Law 104-328 continued ACIR's existence beyond fiscal year 1996 for the limited purpose of providing research for the Gambling Commission, Congress appropriated no funds and, in fact, provided in Public Law 104-328 that ACIR shall make any required contribution for employee insurance, health, and retirement programs from funds received through its contracts with the Gambling Commission. As of January 8, 1997, ACIR does not have a contract with the Gambling Commission.

Because ACIR did not receive an appropriation for fiscal year 1997, ACIR asks whether it may use unexpended state contributions to maintain staff and otherwise continue its existence until the Gambling Commission awards ACIR a contract. ACIR also asks whether it must deposit the unexpended balance of the state contributions in the Treasury when it terminates or whether it may return unexpended amounts to its contributors (or their designees).

ANALYSIS

Use of State Contributions During ACIR's Existence

ACIR is authorized to receive and expend contributions from state governments only for carrying out the purposes of ACIR. 42 U.S.C. § 4279 (1994). ACIR's purpose is to give continuing attention to intergovernmental problems. 42 U.S.C. § 4272 (1994). The legislative history on the 1966 amendment authorizing ACIR to receive and expend contributions states that the purpose of the amendment was "to increase the participation of certain non-Federal agencies by allowing them to contribute to the support of the Commission's work." S. Rep. No. 1747, 89th Cong., 2d Sess. 4 (1966). Based on the materials and information provided by ACIR, ACIR solicited and received contributions from state governments to support its general purposes, namely, carrying out intergovernmental assistance and information services. We have not been advised that the state contributors have tied their contributions to a particular activity to the exclusion of all others. In addition, the contributions were voluntary for which no specific benefit was exchanged. In this

[2]Because ACIR informally advised us that the only unexpended private contributions it has are contributions from state governments, for ease of reference, we will refer to the private contributions as state contributions.

regard, the contributions had all the characteristics of an unrestricted gift in support of the general activities and operation of ACIR. Nothing in the materials ACIR provided supports a conclusion that the contributors explicitly retained a reversionary interest in their contributions, that ACIR held the contributions in trust for the contributors, or that the contributions were anything other than a donation to be used for the statutorily authorized purposes of ACIR.

Essentially, gifts or donations are gratuitous conveyances or transfers of ownership in property without any consideration. B-195492, March 18, 1980. The essential elements of a gift are donative intent, delivery and acceptance. In order to make a gift to a federal entity, all that is required is a simple letter to the appropriate agency head transmitting the funds for the stated purpose. B-157469, July 24, 1974.

Appropriated funds are not limited to those appropriated to agencies from the general fund of the Treasury. Rather, funds available to agencies are considered appropriated, regardless of their source, if they are made available for collection and expenditure pursuant to specific statutory authority. See B-215042, April 12, 1985. This means that although donated funds may not be subject to all the restrictions applicale to direct appropriations, they are still public funds. See B-197565, May 13, 1980.

Donations are accounted for as trust funds and must be deposited in the Treasury as such under 31 U.S.C. § 1323(c), to be disbursed in accordance with the terms of the trust and the scope of the agency's statutory authority. Although contributions to ACIR have been maintained separately from direct appropriations and held in a "trust fund account" to carry out authorized purposes, they are not "held in trust" as those words are commonly used to describe a fiduciary relationship to keep money for the benefit of another. There is a clearly defined and well recognized difference between a gift and a trust. To make a gift, the donor must part with possession and control, and delivery is essential, while in a trust, the legal title is retained by the donor, and only the equitable title vests in the trustee. 38A C.J.S. Gifts § 9. An absolute gift cannot be cut down by implication into a trust by events transpiring after it is made. Vickers v. Vickers, 65 S.E. 885, 133 Ga. 383.

The scope of ACIR's statutory authority to accept and expend these contributions is limited to the purposes of the Commission. 42 U.S.C. § 4279. The contributions were made to support ACIR's work. As suggested above, these contributions represent unconditional gifts. These state contributions were absolutely and irrevocably delivered to, and accepted by, ACIR without any explicit or specfic limitations. Upon acceptance of these contributions, the legal title passed to the United States for ACIR's use for the purposes authorized by Congress. Since ACIR is an agency of the United States subject to the sovereign power of the Congress to modify or adjust its activities, the fact that Congress significantly limited the scope of ACIR's activities is not relevant. In the final analyis, the contributions to ACIR

inure to the benefit of the United States and become the property of the United States.

With the enactment of Public Laws 104-169 and 104-328, ACIR's purpose is still related to intergovernmental problems, albeit now of a much more limited scope. The state contributions were given for the general purposes of ACIR. The fact that Congress narrowed ACIR's scope by legislation subsequent to when the contributions were donated does not divest ACIR of the authority to use the contributions. Further, these contributions are the only funds available to ACIR to support staff and pay other expenses incurred in discussing and negotiating the research contract with the Gambling Commission. Accordingly, from October 1, 1996, until such time as the Gambling Commission awards ACIR the contract, ACIR may use the unexpended balances of the unconditional state government contributions to support activities preparatory to receiving the gambling research contract. Our conclusion is not inconsistent with the purposes of the National Gambling Impact Study Commission Act[3] and will help ACIR, in the words of Public Law 104-328, "continue in existence" for purposes of performing the gambling research contract.

Use of State Contributions After ACIR's Termination

The same analysis that prompts us to conclude that ACIR may use unexpended state government contributions for activities preparatory to receiving the contract from the Gambling Commission also leads us to conclude that when ACIR terminates, it must transfer any remaining funds to the United States Treasury as miscellaneous receipts.

As discussed above, we view the state contributions as unconditional gifts. The fact that they are held in a trust fund account for budgetary and accounting purposes does not constitute or otherwise create a trust where one did not otherwise exist. The state contributors parted with both possession and control of the funds when they gave the money to ACIR to be used for the general purposes of the Commission. The State's have not retained any title or reversionary interest in the monies, nor have they tied their contributions to a particular activity to the exclusion of all others.

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[3]The purpose of requiring a gambling study by ACIR was "to use the expertise of the ACIR . . . so as to avoid duplicating work already done by the Government, reduce the cost of the [Gambling] Commission, and ensure that the States are not left out of the process." 142 Cong. Rec. S7974 (daily ed. July 17, 1996) (statement of Sen. Stevens).

When Congress authorized ACIR, as an instrumentality of the United States, to accept contributions to help finance ACIR's statutory purposes, the contributed monies became the property of the United States no different than the funds Congress appropriated to ACIR. Just like ACIR's appropriated funds, the state contributions may be used only for purposes Congress has authorized. As of October 1, 1996, ACIR is only authorized to conduct gambling research under a contract with the Gambling Commission. Under current law, when ACIR completes that contract, it will have no authorized purposes and must terminate.

We have not objected to a federal commission transferring before its termination donated funds to a private organization to complete activities the commission had begun and was authorized to conduct at the time of the transfer even though the private organization would not expend the funds before the commission's termination. 36 Comp. Gen. 771 (1957). However, the situation before us is not analogous to that in 36 Comp. Gen. 771. The intended effect of ACIR's proposal to transfer unexpended state contributions to an entity designated by the contributors is to enable the transferee entity to use those contributions for activities that ACIR is no longer authorized by Congress to conduct. This would be an improper use of ACIR funds. The only remaining disposition of unexpended state contributions when ACIR terminates is to deposit them in the United States Treasury as miscellaneous receipts.

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