

BEFORE THE INDIAN CLAIMS COMMISSION

THE NAVAJO TRIBE OF INDIANS,)	
)	
Plaintiff,)	
)	
v.)	Docket Nos. 69, 299, and 353
)	(Accounting Claims)
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: September 1, 1976

Appearances:

William C. Schaab of Rodney, Dickason,
Sloan, Akin & Robb, Attorney for the
Plaintiff.

Dean K. Dunsmore, with whom was
Assistant Attorney General Wallace H.
Johnson, Attorneys for the Defendant.

OPINION OF THE COMMISSION

Kuykendall, Chairman, delivered the opinion of the Commission.

The Commission has before it defendant's motion in these dockets for partial summary judgment concerning its accountability for certain tribal organization funds.

We will briefly outline the background of defendant's motion in this accounting action. In Volume IV of the General Accounting Office Report in these dockets, certified March 9, 1961 (hereinafter the GAO Report), defendant provided information concerning 84 "Tribal Organization Funds." Plaintiff's exceptions (a) and (b) to defendant's accounting report in these dockets complained that defendant failed to account for approximately \$6 million in revenues and disbursements of plaintiff's tribal organization funds.

Plaintiff filed a motion requesting a complete accounting which would supply the missing data. We concluded that defendant had an obligation to supply the requested data, and issued an order requiring defendant to do so. 31 Ind. Cl. Comm. 40, 43-46 (1973). Defendant then filed a motion for rehearing and clarification, in response to which we issued an order to make it clear that "defendant is not required to account for tribal organization funds which have been transferred to plaintiff, but that defendant has the burden of showing such transfer." 34 Ind. Cl. Comm. 432, 434 (1974). Following a motion for rehearing by plaintiff, this order was reaffirmed. 35 Ind. Cl. Comm. 313 (1975).

Defendant submitted its supplemental accounting report on tribal organization funds, certified June 9, 1975 (hereinafter the TOF Report). On July 3, 1975, defendant filed its instant motion. On December 11, 1975, plaintiff filed a lengthy response to defendant's motion, with 12 appendices, and defendant filed a reply thereto on March 1, 1976. In the course of these proceedings, defendant has filed 102 exhibits, including the GAO and TOF reports.

Defendant's TOF Report does not contain data concerning 35 funds wherein the earliest date of activity occurred after August 13, 1946. The remaining 49 funds, plus ten additional "enterprise" Individual Indian Money (IIM) accounts not included in the GAO Report, are included in the TOF Report.

The introduction to the TOF Report contains the following pertinent passage:

* * * No clear documentation exists showing "transfer of control" per se. Instead the records reviewed by this office and included as exhibits accompanying this report reflect the extent of control exerted by the Navajo Tribe from the inception of the funds to August 13, 1946. * * * All of the funds listed within this report were utilized to channel relief monies to needy Indians, develop community projects, and, in a very few instances, to create what might be more commonly thought of as an enterprise. Of the fifty-nine funds listed, only the sawmill, arts and crafts, flour mill, livestock dispositions, and ram pastures would probably be considered true enterprises. Of these, only the sawmill utilized tribal resources (timber).

The Navajo enterprises listed * * * derived their funds from three principal sources: gratuity funds from the relief and rehabilitation acts of the 1930's, direct loans available under "Industry Among Indians" appropriations, and/or tribal trust funds. ***

The TOF report accordingly is organized into sections corresponding to the source of the funds involved. The issue now before the Commission is whether the Government shall be required to account for any of the Tribal Organization Funds. On the basis of the evidence presented by the parties, we have made separate findings concerning questions of fact which are pertinent to a decision on certain issues before us.

I.

The first substantive portion of the TOF report, section II (A), lists 24 funds "without receipts." These are funds containing moneys received solely from emergency relief appropriation acts of the 1930's. Defendant asserts that these funds were gratuitously appropriated, and that therefore it has no duty to account for them.

Plaintiff first contends that there is no evidence to support the statement in the TOF report that the funds involved received only monies from emergency relief and rehabilitation acts. However, accounting

reports prepared by the Government's accounting personnel are, if uncontradicted, prima facie evidence of the statements and evidence presented therein. See, Minnesota Chippewa Tribe v. United State, Docket 18-C, 32 Ind. Cl. Comm. 192, 197 (1973), Blackfeet and Gros Ventre Tribes v. United States, Dockets 279-C and 250-A, 32 Ind. Cl. Comm. 65, 105-06 (1973). As plaintiff has presented no contradictory evidence,¹ nor made any allegations of fact to refute the report, we reject this argument of plaintiff.

Plaintiff also argues, however, that, regardless of whether these funds were gratuitously appropriated, the Government is accountable for all tribal funds administered by the Government as trustee. We agree.

The Government's trust responsibility is analogous to that of a private trustee. See Blackfeet, supra. In private trust law, a donor or settlor who is a trustee has the same fiduciary responsibilities as any other trustee. See A. Scott, Law of Trusts, Sec. 100 (3d Ed., 1967).

The Government maintains, however, that it was not trustee over the tribal organization funds, and therefore, had no fiduciary obligations concerning them. Defendant cites its exhibits 4 through 9, by which it alleges individual Navajo Indians, or the Navajo Tribal Council, accepted these funds as trustees. Plaintiff responds that the so-called trust agreements did not in fact relieve the Government of its trust responsibility. Plaintiff also stresses the argument that these funds were maintained in IIM accounts by the Government, and that the Government considered the IIM accounts to be trust funds.

The evidence in the record is ample to enable us to examine this matter. We start with the statement in the TOF report quoted hereinabove that

"no clear documentation exists showing 'transfer of control' per se. Instead the records reviewed ... reflect the extent of control exerted by the Navajo Tribe ..." (Emphasis added.) The evidence supports this statement. There was no transfer of control, although the tribal leadership was given a limited role in determining the use of the funds.

For example, defendant's exhibit 9 is a form entitled "Trust Agreement for Relief and Rehabilitation Grant to Unorganized Tribe." Compare Dept. of Interior, Federal Indian Law 290 (1958). The agreement states that the Emergency Relief Appropriation Act had made funds available to the Office of Indian Affairs for projects to provide relief for Indian tribes for persons in need, and \$35,000 had been allocated to the Navajo Agency for the benefit of plaintiff tribe, with the Chairman and Vice-Chairman of the Navajo Tribal Council to act as trustees for and on behalf of the tribe.

The agreement then specified that the trustees accepted the grant "in conformity with a program approved by the Office of Indian Affairs"; that any improvements would be "constructed under the direction and supervision of the Superintendent of the Agency from plans furnished or approved by the Office of Indian Affairs, and under regulations established by that office"; and, that the fund would be "deposited by the Trustees as a voluntary deposit with the Special Disbursing Agent. . . for credit to an Individual Indian Money Account, captioned 1939 Navajo Tribe Rehabilitation Trust Fund."

The remaining provisions are of the same tenor, that is, the Government was to select projects, to supervise and direct them, and was to sign all contracts, and control all disbursements. The manuals of instruction issued by the Department of Interior for use in implementation of the emergency relief acts spell out in detail how the Government was to direct and administer virtually all aspects of the projects. A variety of government documents submitted by plaintiff as appendices to its reply to defendant's motion further support the determination that tribal projects using the funds in question were administered and managed by the Government.

Inasmuch as the normal method of disposing of Indian funds, including treaty funds, was by common consent of the tribe and the Government (see Department of Interior, Federal Indian Law, supra, p. 738), the provisions for involvement of the Indian "trustees" appear to have been designed simply to maintain normal practice. The impression that is suggested by the evidence is that the limited role of the Indian "trustees" was instituted to give tribal leaders recognition, and some understanding of and experience in management, in order that at a later date they might exercise significant responsibility and autonomy. This would accord with the Indian policy of the Government, as described in Federal Indian Law (supra, pp. 261, 263; cf. p. 65), and in the Manual of Instructions issued for use by the Indian Service in administration of Emergency Relief Act funds (finding 2, infra, re "tribal cooperation").

Moreover, the fact that the relief and rehabilitation funds were held by defendant in IIM tribal accounts indicates that the funds were held by

defendant in trust for the tribe. Pertinent legislation and Indian Service accounting practices unmistakably provide that IIM accounts are funds held in trust for Indian tribes and groups, as well as individuals, by the Government. Gila River Pima-Maricopa Indian Community v. United States, Docket 236-E, 38 Ind. Cl. Comm. 1, 21 (1976).

We therefore conclude that defendant is accountable for the tribal organization funds "without receipts" listed in section II(A) of defendant's TOF report.

II.

The second substantive portion of the TOF report, section II(B), lists 19 funds "with receipts." These include 17 funds which contain monies received under Emergency Relief Appropriation Acts, plus income from the enterprises established with the initial funds, or transfers from other enterprise accounts, and two funds consisting solely of enterprise income or transfer funds.

Defendant relies on the arguments advanced concerning the previous section for the proposition that control was transferred to Indian "trustees" as to these funds.

For the same reasons that defendant's arguments above were rejected, they must be rejected here. Furthermore, to the extent that these funds include income generated by business enterprises operated by the Government for the benefit of the tribe, they are subject to our ruling in Blackfeet, supra, at 99, that the Government has an obligation to account for such enterprises.

We therefore conclude that defendant is accountable for the tribal

organization funds "with receipts" listed in section II(B) of defendant's TOF report.

III.

Section III of the TOF report lists nine IIM enterprise funds. These are funds which received money from government loans, or generated revenue without the aid of rehabilitation grants.

In the case of the loans, the tribe formally accepted the funds and pledged other tribal funds, including trust funds, as security for repayment of the loans. The projects involved were labelled livestock disposition, ram pastures, alfalfa planting, sawmill, flour mill, and arts and crafts. The largest enterprise was the sawmill project, which generated receipts in excess of \$4 million, mostly from the sale of lumber.

Resolutions required by defendant were passed by the Tribal Council, providing that the agency superintendent receive loan proceeds, deposit the money to the credit of the tribe in an IIM account, and expend from this account all funds received in the operation of the enterprise according to the plan of operation prepared and submitted by defendant and adopted by the tribe. The documents, all prepared by defendant, stated that the enterprise would be under the supervision of the superintendent "for and in behalf of the Navajo Tribe." Later documents, in the 1950's, speak of transferring responsibility for management of Navajo loan fund enterprises to plaintiff.

Defendant argues that pursuant to the resolutions of plaintiff, the General Superintendent became the agent of the tribe for the various

loan projects, and that plaintiff as principal retained "ultimate control" over the projects and the accounts involved.

Plaintiff replies that the evidence shows that in fact the projects were the responsibility of the General Superintendent, and that the tribe did not have the capacity to exercise control. Plaintiff maintains that the Tribal Council in 1938 had only been recently created with "but limited, advisory powers." The 1938 resolution noted that no Tribal Treasurer was available, and the 1939 resolution did not designate the superintendent as the tribe's agent. Finally, the plaintiff points out that there is no evidence that the tribe administered or participated in any way in the administration of these projects.

The evidence suggests that the situation concerning the loan projects parallels that described above with respect to emergency relief funds projects. The loan fund projects using the funds in question were administered and managed by the Government. The documents which the tribal leaders signed in order to obtain the loan funds were designed to give the tribal leadership some recognition and exposure to management in order that at a future date they might be prepared to assume real responsibility for and control over administration and accounts for these projects.

Further refutation to the argument that the Government no longer stood in a fiduciary relationship to plaintiff is shown in the fact that the Government maintained these funds in IIM accounts which were designated by the Government as tribal trust accounts for the Indians.

We therefore conclude that defendant is accountable for the tribal organization funds listed in section III of defendant's TOF report.

IV.

The final portion of defendant's TOF report, section IV, contains data concerning seven funds consisting of monies which were received from sources other than the Emergency Relief Appropriation acts of the 1930's or direct loans. The funds were labelled court fund, revolving cattle project, sheep dipping, fruitland, fencing, nursery stock, and tribal fair.

The Government's motion deals only with the revolving cattle project. This originated as a plan of the extension division of the Bureau of Indian Affairs in conjunction with the Federal Surplus Relief Corporation. The TOF report, and accompanying exhibits (57 through 59), show that this was a government, not a tribal fund. Defendant was not in a fiduciary relationship as to this fund, and is not required to account for it.

We have examined the TOF report and accompanying exhibits concerning the remaining accounts in section IV to determine whether further accounting by defendant is required.

The court fund apparently was a tribal fund, and the TOF report does not provide an adequate accounting as to the fund. Defendant will be required to provide a full accounting as to that fund.

The sheep dip fund, however, was to benefit individual Indians, and was not a tribal account. No further accounting is required as to that fund.

The remaining four funds, the fruitland project, and the fencing, nursery stock, and tribal fair funds, were very small. The

TOF report contains data concerning all disbursements from these accounts adequate for plaintiff to make exceptions, if it has any. No further accounting will be required as to these accounts.

V.

We are left with the question of the status of the funds listed in the GAO report (pp. 879-971), wherein the earliest date of activity occurred after the jurisdictional cut-off date of August 13, 1946. Defendant argues that because of the jurisdictional cut-off date, it may not be held accountable as to such funds, and asks for partial summary judgment as to them. (For reasons which are not explained, defendant's motion specifically refers to only 24 of the 35 such funds.)

Plaintiff argues in response that wrongdoings may have occurred prior to August 13, 1946, which continued thereafter and affected the funds in question.

This identical question as to these same funds was raised by an earlier motion for partial summary judgment by defendant. The Commission, by order of June 11, 1975, 36 Ind. Cl. Comm. 181, 182, determined that:

Until a course of wrongful action is established which was still going on at the cutoff date, consideration of any post-1946 accounting matters, including the accounts which are the subject of defendant's motion, is premature.

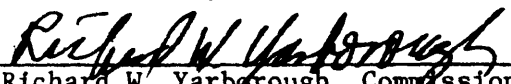
We therefore denied defendant's motion without prejudice.

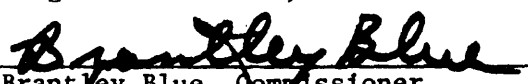
Inasmuch as the issue of a course of continuing wrongful action in this docket has yet to be decided, the reasoning behind our earlier

order stands. Defendant's renewed motion as to these funds will again be denied, without prejudice.


Jerome K. Kuykendall, Chairman

We concur:

John T. Vance, Commissioner

Richard W. Yarborough, Commissioner

Margaret H. Pierce, Commissioner

Brantley Blue, Commissioner