

BEFORE THE INDIAN CLAIMS COMMISSION

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

FINDINGS OF FACT

Both parties have filed copies of documents in support of their views concerning the issue of accountability of the Government for certain tribal organization funds. On the basis of these documents, we have made the following findings of facts concerning transfer of control over tribal organization funds listed in sections II and III of the 1975 supplemental accounting report submitted by the defendant.

1. Emergency Relief Appropriation Acts. The Congress passed emergency relief appropriation acts including provisions for Indians in the 1930's. Four acts were the subject of defendant's report, as follows: Act of June 29, 1937, ch. 401, 50 Stat. 352; Act of June 21, 1938, ch. 554, 52 Stat. 809; Act of June 30, 1939, ch. 252, 53 Stat. 927; and, Act of June 26, 1940, Ch. 432, 54 Stat. 611.

The 1939 act, supra, provided, among other things, "appropriations for work relief and relief" in the United States, and specifically, provided for the welfare of Indians, as follows:

Indian Service

Sec. 5 (a) In order to continue to provide relief and rural rehabilitation for needy Indians in the United States, there is hereby appropriated to the Bureau of Indian Affairs, Department of the Interior out of any money in the Treasury not otherwise appropriated, for the fiscal year ending June 30, 1940, \$1,350,000.

(b) The funds provided in this section shall be available for (1) administration, not to exceed \$67,500; (2) loans; (3) relief; (4) the prosecution of projects approved by the President for the Farm Security Administration for the benefit of Indians under the provisions of the Emergency Relief Appropriation Act of 1938; and (5) subject to the approval of the President, for projects involving rural rehabilitation of needy Indians.

The 1940 act contained similar provisions. The 1937 and 1938 acts did not specify the amounts allocated for the Bureau of Indian Affairs. Funds for those years were presumably included in the amounts specified for the Department of Interior.

2. Manual of Instructions. Defendant submitted as exhibits copies of Manuals of Instructions issued by the Department of Interior for the 1937, 1938 and 1939 acts for use in connection with the Indian Relief and Rehabilitation Fund. The following excerpts and summary are from the 1938 Manual. Paragraph 1(a) made the following statement concerning the source of the funds:

(a) Pursuant to the President's Letter, No. 2179, dated July 7, 1938, funds appropriated by the Emergency Relief Appropriation Act of 1938 have been made available to the Office of Indian Affairs for the prosecution of projects involving Direct Relief and Rehabilitation for needy Indians.

The manual contains the following instructions concerning "direction" in section 3(E):

(b) The Superintendent of an Agency receiving funds will be the responsible officer in charge of the expenditure of the money placed at his disposal. In the conduct of the Rehabilitation program, Superintendents will be guided by instructions from Washington issued through the Director of Rehabilitation.

(c) In the conduct of some of the larger projects, the appointment of project managers, senior and junior foremen, and clerical employees will be authorized. In general, Superintendents will be expected to use the services of members of their regular staffs, and they will be assisted and guided by the various supervisory field employees of the regular Indian Service.

The manual contains the following suggestions concerning "tribal cooperation" in section 3(1):

(a) In order to grant increased recognition to tribal officials of Organized or Unorganized Tribes, it is preferred that all transactions under this program be conducted under Trust Agreements executed with Unorganized Tribes, or under Grant Agreements executed with Organized Tribes. This procedure has the added advantage of allowing any receipts resulting from this program to be retained in the Tribal Trust Funds for the continuation of the Rehabilitation work beyond the expiration of the appropriation under which these funds are provided.

* * * *

(c) Since it is desired that the tribal organization be given every possible recognition, Rehabilitation programs should be worked out in conjunction with the tribal officers and they should have a voice in the selection of the individuals for whom new houses are to be constructed, those for whom houses are to be repaired, and in the determination as to improvements of a community nature. They should also play as important a part as possible in the selection of tribal members who are to occupy new houses which may be built.

The section of the manual describing self-help projects urges that such projects be set up as so-called "tribal projects" rather than "federal projects," in order that any proceeds return to the Tribal

Trust Fund, where they become available for the continuation of the project.

The manual prescribes the types of trust agreements to be used by the tribes participating in the program, the types of resolutions to be used by the tribe in appointing trustees, and supplementary agreements that might be required in case of change.

The manual contains, in addition, detailed instructions concerning labor and wages, accounting, purchase and procurement, employees' compensation, safety regulations, travel, and required reports. The accounting section clearly specifies procedures to be followed for Individual Indian Money (IIM) account transactions, and contains the following statement:

When, because of relief or rehabilitation grants to tribes, groups, or individuals, it is necessary to set up an Individual Indian Moneys account for the handling of the funds, the account so established shall be separate from any other Individual Indian Moneys account which may be maintained for the tribe, group, or individual, and shall be designated as a relief and rehabilitation Individual Indian Moneys account. Such designation shall be preceded by the name of the trust fund in the case of a tribe

3. Tribal Resolutions. In order to obtain funds under the emergency relief acts, the tribe was required to pass resolutions authorizing acceptance of the programs and to designate one or more members of the tribe to serve as trustee or trustees.

One such resolution passed by the executive committee of the Navajo Tribal Council introduced as an exhibit (No. 4) by defendant contained the following language:

THEREFORE, BE IT RESOLVED, by the Executive Committee of the Navajo Tribal Council that in consideration of the allotment of the above grant, we hereby authorize the Chairman of the Navajo Tribal Council to sign the Trust Agreement accepting the Grant of THIRTY SEVEN THOUSAND DOLLARS (\$37,000.00) on behalf of the Navajo Tribe; the funds to be expended under the supervision and direction of the Superintendent of the Navajo Agency for the projects listed in the Agreement.

The 1939 resolution by the Navajo Tribal Council (defendant's exhibit 6) authorizing the Council Chairman to execute the agreement stated that " * * * the funds [are] to be expended by and under the supervision and direction of the Superintendent of the Navajo Agency * * *."

4. Tribal Trust Agreements. After the aforesaid resolutions were enacted, the trustees were required to execute a Tribal Trust Agreement in order for the tribe to receive the emergency relief act monies. The agreements provided that the funds were to be spent for certain designated rehabilitation projects which would be under the control and direction of the Superintendent of the Navajo Agency. This governmental control is exemplified by the following pertinent provisions of the trust agreements:

that the said sum shall be deposited by the Trustees as a voluntary deposit with the Special Disbursing Agent of the said Agency for credit to an Individual Indian Money Account, captioned Navajo Tribe 1938 Rehabilitation Trust Fund.

* * *

that any improvements made with funds granted hereby shall be constructed under the direction and supervision of the Superintendent of the Agency (hereinafter referred to as the Superintendent) from plans furnished or approved by the Office of Indian Affairs, and under regulations established by that Office.

* * *

that the Tribe shall maintain and operate the community improvements provided under this grant to the satisfaction of the Superintendent of the Agency.

* * *

All contracts of employment, purchase, sale, or rental, or other contracts, relating to the use of the said Trust Fund, shall be signed by the Superintendent of the Navajo Agency and approved by the Trustees or their designated Agent.

* * *

[t]he use of community self-help project buildings and other structures and improvements constructed with funds allotted under this agreement shall be under the general supervision of the Superintendent. If the said Trust Fund should be inadequate to maintain properly, repair, and operate such improvements, the Superintendent is authorized to make such expenditures as may be necessary for this purpose, using other funds which may be available in order that the improvements may be preserved.

* * *

In the event that any portion of the said Trust Fund is misapplied by members of the Tribe, the Commissioner may pursue any or all of the following remedies:

- (a) Take possession of funds misapplied or of chattels purchased with such funds;
- (b) Bring suit against such members of the Tribe to impose personal liability for the sums misapplied;
- (c) Take such other action, civil or criminal, as the facts may warrant.

5. Loan Funds. The initial sources of revenue for certain other IIM funds were obtained by government loans, or revenues generated therefrom without the aid of rehabilitation grants. The procedures for obtaining loan funds were similar to those involved in getting emergency relief funds.

The tribal council authorized tribal officers to seek the loan and to obligate tribal funds as security therefor. The executive committee of the Tribal Council passed a resolution authorizing a loan application. The 1938 resolution contained the following language:

BE IT FURTHER RESOLVED: That, as a consideration of this loan, the General Superintendent is authorized and empowered to act as representative and agent and treasurer for the tribe, until such time as a treasurer is elected by the Tribal Council, to receive the proceeds of this loan, to execute the necessary vouchers for the advance of the money under this agreement, to endorse the checks covering such advances and deposit the funds to the credit of the tribe in an individual Indian Money account, and to expend from this deposit the funds necessary in the operation of the enterprise according to the plan of operation; provided, however, that the General Superintendent shall set up a set of records and accounts for the enterprise and keep the Tribal Council fully informed of the activities of the enterprise.

The loan application itself provided that the enterprise to be carried out with the loan funds would be "conducted under the supervision of the Indian Service officials" until the loan was repaid.

The various plans of operation similarly reflect defendant's control over the operations. For example, the livestock purchase project plan of operation stated:

In accordance with the resolution of the Navajo Tribal Council, the responsibility for the operation of this project shall be placed on the General Superintendent of the Navajo reservation. However, it is recognized that to be successful, this project will require the undivided attention of a person or persons working under the direction of the General Superintendent, who are expert in purchasing, livestock feeding and marketing.

The plan of operations for the livestock improvement project, which was part of the loan program, contained the following provisions:

III ACCOUNTING AND DISBURSEMENTS

1. An adequate accounting system will be maintained for the enterprise, under the direction and supervision of the General Superintendent, or his authorized representative, in accordance with instructions and regulations promulgated by the Commissioner of Indian Affairs.

2. The General Superintendent, or his authorized representative, is authorized to sign all necessary purchases and sales contracts, accounting documents, and any and all other contracts and documents necessary in connection with the enterprise, for and in behalf of the Navajo Tribe.

* * *

5. All disbursements and receipts shall be handled by the special disbursing agent of the Navajo Agency under the supervision of the General Superintendent or his authorized representative.

All expenditures from the \$20,000 covered by this request shall be made on vouchers certified and submitted to the Regional Disbursing Office for payment. The Indian Service regulations governing the procedure of making purchases and advertising shall be followed.

Other indicia of control by defendant include the following information from "Policies and Plans of Management" of the loan fund Sawmill Project:

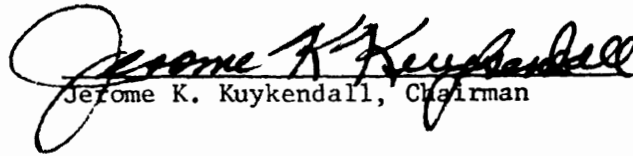
In accordance with the resolution of the Navajo Tribal Council, May 18th, 1939, the responsibility for the operation of the Navajo Tribal Sawmill shall be placed in the General Superintendent of the Navajo Reservation, or his representative. Under the direction of the superintendent, a Sawmill Manager shall be employed who shall supervise all activities in connection with the sawmill enterprise, to whom will be given the widest practical latitude for independent action. It is understood that the ranking Forest Officer of the Navajo Service collaborate, assist and advise with the Sawmill Manager, particularly as affects the harvesting of the timber in accordance with the approved Timber Management Plan and the General Timber Sale Regulations (or Stipulations) of the Indian Service. The Sawmill Manager is authorized, after consultation with the Superintendent, to employ such personnel as is deemed necessary to satisfactorily carry on the work in a proper and efficient manner in behalf of the Enterprise.

The above documents are representative of those submitted into evidence by defendant concerning the projects funded by reimbursable loans. There has been no evidence submitted in this matter which would indicate that defendant surrendered control of the funds, accounts or enterprises to any tribal official, or that the tribe in fact exercised control.

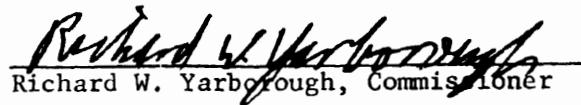
Documents attached as appendices to plaintiffs' response to defendant's motion support the same conclusion. These documents refer to the desirability of transferring management control of various loan fund enterprises to the Tribe in the 1940's, and state that prior to that time the government exercised responsibility and control over the projects.

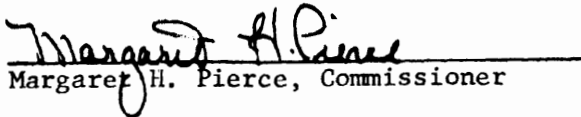
6. Conclusion. We have reviewed the evidence submitted by the parties pursuant to defendant's motion for partial summary judgment concerning defendant's accountability for certain tribal organization funds. On the basis of the evidence, we conclude that the transfer of control

effected by defendant, if any, was limited and nominal, and that effective control over and responsibility for the subject tribal organization funds remained with defendant during the period through August 13, 1946, covered by the accounting report herein.


Jerome K. Kuykendall, Chairman

John T. Vance, Commissioner


Richard W. Yarborough, Commissioner


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner