

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.⁶³ Occasionally an Indian treaty provided for complete per capita distribution of tribal funds.⁶⁴ 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 destroying tribal organization, numerous statutes provided for per capita payment of tribal funds.⁶⁵

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.⁶⁶ Frequently 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. Where a tribe has 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.⁶⁷

Menomonee Tribe of Indians, 9 Stat. 952; Treaty of May 10, 1854, with the Shawnees, 10 Stat. 1053; Treaty of June 19, 1858, with the Mendawakanton and Wahpakoota bands of the Sioux tribe of Indians, 12 Stat. 1031; Treaty of June 19, 1858, with the Sisseton and Wahpaton bands of Sioux tribe of Indians, 12 Stat. 1037.

⁶³ Treaty of January 14, 1837, with Sagawaw Chippewas, 7 Stat. 528; Treaty of October 21, 1837, with Sacs and Foxes, 7 Stat. 540; Treaty of October 19, 1838, with Ioways, 7 Stat. 568; Treaty of August 5, 1851, with Bands of Dakotas, 10 Stat. 954; Treaty of March 15, 1854, with Ottos and Missourias, 10 Stat. 1038; Treaty of May 10, 1854, with Bands of Shawnees, 10 Stat. 1053; Treaty of April 19, 1858, with Yancton Sioux, 11 Stat. 743.

⁶⁴ Treaty of January 31, 1855, with Wyandott Tribe, 10 Stat. 1159.
⁶⁵ Act of March 3, 1881, sec. 5, 21 Stat. 414, 433-434; Act of May 15, 1888, sec. 1, 25 Stat. 150 (Omahas); Act of July 4, 1888, 25 Stat. 240 (Winnabago Reservation); Act of October 19, 1888, 25 Stat. 608 (Cherokee); Act of June 6, 1900, sec. 1, 31 Stat. 672, 673 (Fort Hall Reservation); Act of March 1, 1901, 31 Stat. 848, 859 (Cherokee); Act of March 1, 1901, 31 Stat. 861, 870 (Creek); Act of June 30, 1902, 32 Stat. 500, 503 (Creek); Act of March 3, 1909, 35 Stat. 751 (Quapaw); Act of June 25, 1910, sec. 21, 36 Stat. 855, 861 (Sisseton and Wahpeton); Joint Resolution of August 22, 1911, 37 Stat. 44; Act of April 18, 1912, 37 Stat. 86 (Osage Tribe); Act of May 11, 1912, sec. 3, 37 Stat. 111 (Omaha Tribe); Act of June 4, 1920, sec. 11, 41 Stat. 751, 755 (Crow); Act of March 3, 1921, 41 Stat. 1249 (Osage); Act of June 4, 1924, 43 Stat. 376 (Eastern Band of Cherokees).

⁶⁶ Act of December 15, 1874, 18 Stat. 291, 292 (Eastern band of Shoshones); Act of April 10, 1876, sec. 3, 19 Stat. 28, 29 (Pawnee tribe); Act of April 25, 1876, sec. 2, 19 Stat. 37 (Menomonee Indians); Act of August 15, 1876, sec. 4, 19 Stat. 208 (Otoe and Missouri and Sac and Fox of the Missouri tribes); Act of June 28, 1879, 21 Stat. 40, 41 (Osage Indians); Act of March 3, 1881, sec. 4, 21 Stat. 380, 381 (Otoe and Missouri Tribes); Act of March 3, 1885, sec. 3, 23 Stat. 340, 343 (Cayuse, Walla-Walla, and Umatilla Indians); Act of March 3, 1885, sec. 4, 23 Stat. 351, 352 (Sac and Fox and Iowa Indians); Act of September 1, 1888, sec. 6, 25 Stat. 452, 455 (Shoshone and Bannack tribes); Act of January 14, 1889, sec. 7, 25 Stat. 642, 645 (Chippewas); Act of June 12, 1890, sec. 3, 26 Stat. 146, 147 (Menomonees); Act of October 1, 1890, sec. 4, 26 Stat. 658, 659 (Round Valley Indian Reservation); Act of March 3, 1901, 31 Stat. 1455 (Chippewa Indians); Act of June 13, 1902, 32 Stat. 384 (Ute Indian Reservation); Act of August 17, 1911, 37 Stat. 21 (Rosebud Indian Reservation); Act of July 1, 1912, 37 Stat. 186 (Umatilla Indian Reservation); Act of July 10, 1912, 37 Stat. 192 (Flathead Indians); Act of February 14, 1913, sec. 6, 37 Stat. 675, 677 (Standing Rock Indian Reservation); Act of August 22, 1914, sec. 1, 38 Stat. 704 (Quinalt Reservation); Act of March 2, 1917, sec. 2, 39 Stat. 994, 995 (Fort Peck Indians); Act of March 3, 1919, 40 Stat. 1320, 1321 (Rosebud Indians); Act of December 11, 1919, sec. 2, 41 Stat. 365, 366 (Fort Peck Indians); Act of May 31, 1924, sec. 1, 43 Stat. 247 (Quinalt Reservation); Act of February 28, 1925, 43 Stat. 1052 (Chippewa Indians); Act of August 25, 1937, sec. 3, 50 Stat. 811 (Agua Caliente or Palm Springs Band).

⁶⁷ Act of June 7, 1924, sec. 1, 43 Stat. 596 (Pyramid Lake Indian Reservation).

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.⁶⁸ 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.⁶⁹

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 all the individuals of the nation per capita, the treaty and the statute must prevail.⁷⁰

The statutes dealing with payments due from the United States to Indian tribes represented, until the end of the nineteenth century, the chief source of tribal income, supplemented only sporadically by special statutes or treaties authorizing the leasing or sale of tribal lands to other Indian tribes⁷¹ 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 jurisdictional acts have 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 concerned.⁷²

This proviso represents a well-established tendency to devote recoveries from judgments in claim cases to the rebuilding of the entire tribal estate rather than to temporary payments which are easily dissipated.

An important source of income due to Indian tribes from non-governmental sources developed with the building of railroads across Indian reservations.⁷³

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

⁶⁸ Act of March 3, 1847, sec. 3, 9 Stat. 203, amending Act of June 30, 1834, sec. 11, 4 Stat. 735, 737. The 1847 provision was subsequently embodied, with other material, in R. S. § 2086 and 25 U. S. C. 111.

⁶⁹ "The direction that the money shall be paid to the Creek nation is not decisive, because payment to the heads of families is a mode of making payment to the nation. But the condition that a release of all claim for the whole sum shall first be executed by the Creek nation, is not equivocal, because such a release could not be executed by the heads of families or by individuals. And when the act directs that the payment shall be made to the Creek nation, and that the release shall be executed by the Creek nation, the inference would seem to be very strong against a distribution per capita. But when the act goes one step further, and requires that the persons to whom the money shall be paid shall make satisfactory proof that they have full power and authority to receive and receipt for the same, the inference becomes irresistible against a distribution and payment to heads of families, which would be entirely irreconcilable with this provision." (Pp. 48-49.) *Payment of Certain Moneys to the Creeks*, 5 Op. A. G. 46, 48-49 (1848). The later portion of this opinion, apparently inconsistent with the above quotation, was revised in 5 Op. A. G. 98 (1849). Cf. *Payment of Certain Moneys to the Cherokees*, 5 Op. A. G. 320 (1851).

⁷⁰ *Payment of Certain Moneys to the Cherokees*, 5 Op. A. G. 320 (1851). Accord: *Miami Indians*, 6 Op. A. G. 440 (1854) (treaty provision; ambiguous, superseded by statute).

⁷¹ Various early statutes provided for payment by one Indian tribe to another in connection with intertribal land transference. See, for example, Act of June 5, 1872, 17 Stat. 228 (payment by Kansas Tribe to Osage Tribe).

⁷² See, for example, Act of March 3, 1931, 46 Stat. 1487 (Pillager Bands of Chippewa Indians). And see Chapter 9, sec. 6, fn. 145.

⁷³ See secs. 18-20, *supra*.

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,⁶²⁴ which is 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.⁶²⁵ 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 or individuals through whose lands said line may be located."⁶²⁶ A few such statutes provide simply for payment directly to the tribe concerned.⁶²⁷ Other statutes provide for payment without specifying the manner of such payment.⁶²⁸

In 1899 the matter of railroad rights-of-way, hitherto dealt with in piecemeal legislation, was covered by a general statute⁶²⁹ which provided:

Sec. 5. That where a railroad is constructed under the provisions of this Act through the Indian Territory there shall be paid by the railroad company to the Secretary of the Interior, for the benefit of the particular nation or tribe through whose lands the road may be located, such an annual charge as may be prescribed by the Secretary of the Interior, not less than fifteen dollars for each mile of road; the same to be paid so long as said land shall be owned and occupied by such nation or tribe, which payment shall be in addition to the compensation otherwise required herein.

The various general statutes authorizing the leasing of Indian lands, and other forms of disposition of Indian tribal property which have been analyzed in earlier sections of this chapter, generally provide that the proceeds from such transactions shall be deposited to the credit of the tribe concerned.

The following table shows the various general statutes directing that specified forms of tribal income be deposited to the credit of the tribe.⁶³⁰

⁶²⁴ Act of July 4, 1884, 23 Stat. 69, 71; Act of July 4, 1884, 23 Stat. 73, 74; Act of February 18, 1888, 25 Stat. 35, 37; Act of May 14, 1888, 25 Stat. 140, 142; Act of May 30, 1888, 25 Stat. 162, 163; Act of June 26, 1888, 25 Stat. 205, 207; Act of June 21, 1890, 26 Stat. 170, 171; Act of June 30, 1890, 26 Stat. 184, 185-186; Act of September 26, 1890, 26 Stat. 485, 467; Act of February 24, 1891, 26 Stat. 783, 785; Act of March 3, 1891, 26 Stat. 844, 846; Act of February 27, 1893, 27 Stat. 487, 489; Act of February 27, 1893, 27 Stat. 492, 493; Act of March 1, 1893, 27 Stat. 524, 525-526; Act of December 21, 1893, 28 Stat. 22, 24; Act of August 4, 1894, 28 Stat. 229, 231; Act of April 6, 1896, 29 Stat. 87, 89; Act of January 29, 1897, 29 Stat. 502, 504; Act of March 23, 1898, 30 Stat. 341, 342. The provision in question is found in sec. 5 of each of the foregoing statutes.

⁶²⁵ Act of January 16, 1889, sec. 5, 25 Stat. 647, 649 (White Earth band of Chippewas); Act of February 23, 1889, sec. 5, 25 Stat. 684, 685 (Yankton Indian Reservation); Act of March 2, 1896, sec. 5, 29 Stat. 40, 41 (Choctaw).

⁶²⁶ Act of March 18, 1896, sec. 5, 29 Stat. 69, 71; Act of March 30, 1896, sec. 5, 29 Stat. 80, 82; Act of February 28, 1899, sec. 4, 30 Stat. 912, 913.

⁶²⁷ Act of April 25, 1896, 29 Stat. 109 ("deposit with the treasury of the tribe to which the lands belong")

⁶²⁸ Act of April 24, 1888, sec. 4, 25 Stat. 90, 91; Act of July 26, 1888, sec. 3, 25 Stat. 350, 351 (Puyallup); Act of March 2, 1889, sec. 2, 25 Stat. 1010 (Leech Lake and White Earth Indian Reservations); Act of February 20, 1893, 27 Stat. 468 (Puyallup); Act of July 18, 1894, sec. 2, 28 Stat. 112 (White Earth, Leech Lake, Chippewa, and Fond du Lac Reservations); Act of August 23, 1894, sec. 2, 28 Stat. 489 (Leech Lake, Chippewa, and Winnebagoish Reservations); Act of March 28, 1896, 29 Stat. 77.

⁶²⁹ Act of March 2, 1899, 30 Stat. 990, 992.

⁶³⁰ Special acts applying to particular tribes make similar provisions for depositing proceeds of leases, etc., in the United States Treasury to the credit of the designated tribe. Act of April 15, 1912, 37 Stat. 85 (homesteaders' payments on Coeur d'Alene Reservation); Act of August 9, 1916, 39 Stat. 445 (sale of Kiowa town-site reserve); Act of May 23, 1908, 35 Stat. 268 (sale of Chippewa timber); Act of May 29, 1908, 35 Stat. 458 (sale of Spokane surplus lands). Cf. Act of February 18, 1909, 35 Stat. 636 (Kiowa, Comanche, and Apache); Act of June 17, 1910, 36 Stat. 533 (Cheyenne-Arapahoe).

U.S.C. sec. No.	Source of Income	Date of act	Statute citation	Provision
25:314	Rights-of-way	Mar. 2, 1899 sec. 3, amended Feb. 28 1902.	30 stat. 991.	"Payment to the Secretary of the Interior for the benefit of the tribe or nation."
25:319	Rights-of-way for telephone, etc.	Mar. 3, 1901 sec. 3.	31 stat. 1063.	"Pay to the Secretary of the Interior, for the use and benefit of the Indians, such annual tax as he may designate."
25:321	Right-of-way for pipe lines.	Mar. 11, 1904, amended Mat. 2, 1917 sec. 1.	33 Stat. 65, 31 Stat. 973.	"Pay to the Secretary of the Interior, for the use and benefit of the Indians, such annual tax as he may designate."
25:320	Acquisition of lands by railroads for materials and reservoirs.	Mar. 3, 1909.	35 Stat. 781.	"Deposited in the Treasury of the United States to the credit of the tribe or tribes."
25:407	Sale of timber	June 25, 1910 sec. 7.	36 Stat. 857.	"Shall be used for the benefit of the Indians of the reservation in such manner as the [Secretary of the Interior] may direct."
25:190	Sale of agency tracts, etc.	Apr. 12, 1924.	43 Stat. 93.	"Deposited in the Treasury of the United States to the credit of the Indians owning the same."
25:400a	Mining lease of agency reserves.	Apr. 17, 1926.	44 stat. 300.	"Deposited in the Treasury of the United States to the credit of the Indians for whose benefit the lands are reserved subject to appropriation by Congress for educational work among the Indians or in paying expenses of administration of agencies."
16:615	Sale of burnt timber on "Public Domain."	Mar. 4, 1913, amended July 3, 1926	37 Stat. 1015, amended 44 Stat. 891	"Transferred to the fund of such tribe or otherwise credited or distributed as by law provided."
30:86	Agricultural entries on surplus coal lands.	Feb. 27, 1917, sec. 4.	39 Stat. 944, 945.	"Shall be paid into the Treasury of the United States to the credit of the same fund under the same conditions and limitations as are or may be prescribed by law for the disposition of the proceeds arising from the disposal of other surplus land in such Indian reservation."
16:810	Water power license rentals.	June 10, 1920 sec. 17.	41 stat. 1063 1072.	"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.⁶³¹

The Act of March 3, 1883, as amended,⁶³² provides:

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, how-

⁶³¹ Act of February 28, 1891, sec. 3, 26 Stat. 795, 25 U. S. C. 397 (grazing leases); Act of August 15, 1894, sec. 1, 28 Stat. 305, 25 U. S. C. 402 (farming leases); Act of July 3, 1936, 44 Stat. 894, 25 U. S. C. 402a (lease of irrigable land); Act of May 11, 1938, 52 Stat. 347, 25 U. S. C. 306a (mining leases).

⁶³² Sec. 1, 22 Stat. 590, as amended by Act of March 2, 1887, 24 Stat. 463; Act of May 17, 1926, sec. 1, 44 Stat. 560; Act of May 29, 1928, sec. 1, 45 Stat. 986, 991, 25 U. S. C. A. 155 (Supp.).

ever, to the limitations as to tribal funds imposed by section 27 of the Act of May 18, 1916 (Thirty-ninth Statutes at Large, page 159).⁶³²

That this act does not limit the power of an Indian tribe to receive payments based on use of tribal land was the view taken by the Department of the Interior in holding that tribes organized under section 16 of the Act of June 18, 1934, but not incorporated under section 17, might deposit such receipts in their own treasury. This conclusion was concurred in by the Comptroller General. The position of the Interior Department and of the Comptroller General is set forth in an Opinion of the Comptroller General dated June 30, 1937,⁶³⁴ from which the following excerpts are taken:

"* * * the act of May 27, 1926 (44 Stat. 560), amending the act of March 3, 1883 (22 Stat. 590), governs the use of revenues received by officials or employees of the Interior Department, and has no application to such payments as may lawfully be made to tribal officers under the provisions of the act of June 18, 1934, and constitutions adopted thereunder and approved by the Secretary of the Interior. The legislative history of the act of 1883 and the act of 1926 shows that these statutes were designed to control and regularize departmental receipts and accounts. They were not intended to regulate or to prohibit payments made directly to tribal officers."⁶³³ * * *

"The question of whether an organized tribe may enter into negotiations and agreements respecting the use of tribal land and requiring payment to a regularly bounded tribal officer, by virtue of such agreements, is primarily an administrative question to be determined by the Secretary of the Interior in consideration of such factors as the experience of the Indian tribe in handling funds, the amount of the funds involved, the extent of the activity undertaken by tribal officers or other members of the tribe in developing sources of tribal revenue, and similar factors.

"Under Article IX, section 3 of the Constitution of the Gila River Pima-Maricopa Indian Community, those community lands which are not assigned to particular individuals for their private benefit or to groups of individuals operating as districts may be used by the community or may be leased by the council to members of the community, rentals to accrue to the community treasury to be used for the support of the helpless or other public purposes. This provision supersedes prior administrative regulations requiring all leases to be approved by the superintendent of the agency and further requiring that all payments made on the leases should be deposited in the United States Treasury. Under the present constitutional provisions the receipts in question are not revenues or receipts of the United States, the agreements from which they arise are not agreements approved by the superintendent and consequently such receipts are not affected by the act of May 17, 1926, or regulations issued thereunder, with respect to the accounting and deposit of tribal trust funds."

CASE NO. 3

"Article VIII, section 3 of the Constitution of the Cheyenne River Sioux Tribe, above referred to, provides '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 constitution as to whether rentals paid under such leases shall be paid to the disbursing 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 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 here is, therefore, some doubt whether such authorization was intended. However, having in view 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 there having 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 incidents of such powers—and the further fact that the act of June 25, 1936, 49 Stat. 1928, provides that section 20 of the Permanent Appropriation Repeal Act, 48 Stat. 1233, 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, 1934, 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, 1934.

Whether the conclusion in which the Secretary of the Interior and the Comptroller General agreed, in the case of an organized tribe, applies equally to an unorganized tribe remains uncertain. Implicit in this problem is the question of whether legislation such as the 1883 act has any application to funds in the possession of an Indian tribe. To this question we shall return in the final section of this chapter.

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 statutes are designed to guard against fraud and unfairness in the distribution of funds and supplies. The Act of June 30, 1834,⁶³⁵ 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.

SEC. 12. And be it further enacted, That it shall be lawful for the President of the United States, at the request of any Indian tribe to which any annuity shall be payable in money, to cause the same to be paid in goods, purchased as provided in the next section of this act. (P. 737.)

As subsequently amended,⁶³⁷ 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 moneys and the distribution of all goods stipulated to be furnished to any Indians, or tribe of Indians, shall be 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 imperious 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 moneys or goods; or if several persons be appointed, then upon the joint order or receipt of such persons.

⁶³² In its code form, the reference is to "secs. 123 and 142 of this title."

⁶³⁴ A-86599.

⁶³⁵ Material in quotations is quoted by the Comptroller General from the Interior Department letter of submission.

⁶³⁶ 4 stat. 735.

⁶³⁷ Act of March 3, 1847, sec. 3, 9 Stat. 203; Act of August 30, 1852, sec. 3, 10 Stat. 41, 36; Act of July 15, 1870, secs. 2 and 3, 16 Stat. 335, 360, 25 U. S. C. 111.

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

Fourth. By consent of the tribe, such moneys or goods may be applied directly, 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 in force require civil and military officers to certify to the actual delivery of goods owing to Indians,⁶³⁸ authorize the President to require that payments and deliveries be made by the various superintendents,⁶³⁹ permit payment of annuities in coin,⁶⁴⁰ or goods (at the request of the tribe)⁶⁴¹ authorize Indians 18 years of age or over to receive annuities,⁶⁴² require the Secretary of the Interior to designate disbursing officers handling per capita payments,⁶⁴³ extend these safeguards to the payment of judgment moneys,⁶⁴⁴ require the presence of the "original package" when goods are distributed,⁶⁴⁵ and require reports as to the status of tribal fiscal affairs generally,⁶⁴⁶ reimbursable accounts,⁶⁴⁷ and attendance records for the occasions when goods are distributed.⁶⁴⁸

The foregoing statutes are designed primarily to protect the Indians against tax or dishonest officialdom. A separate body of legislation is directed against immorality on the Part of the Indians.

Section 3 of the Act of March 3, 1847,⁶⁴⁹ as it appears today in title 25 of the United States Code, provides:

§ 130. 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, 1867,⁶⁵⁰ still in force, forbids the payment of treaty funds to an Indian tribe which, since the last distribution of funds, "has engaged in hostilities against the United States, or against its citizens . . ." The Act of April 10, 1869, also still in effect, forbids delivery of goods pursuant to treaty to chiefs who have violated a treaty.⁶⁵¹

We have already noted that the Act of June 22, 1874,⁶⁵² required

⁶³⁸ Act of June 30, 1934. 4 Stat. 735, 737, R. S. § 2088. 25 U. S. C. 112.

⁶³⁹ Act of March 3, 1857. sec. 1, 11 Stat. 169, R. S. § 2089. 25 U. S. C. 113.

⁶⁴⁰ Act of March 3, 1865. sec. 3, 13 Stat. 541, 561, R. S. § 2081. 25 U. S. C. 114.

⁶⁴¹ Act of June 30, 1834, sec. 12. 4 Stat. 735, 737, R. S. § 2082. 25 U. S. C. 115.

⁶⁴² Act of March 1, 1899. sec. 8, 30 Stat. 924, 947. 25 U. S. C. 116.

⁶⁴³ Act of June 10, 1896. sec. 1, 29 Stat. 321, 336. 25 U. S. C. 117.

⁶⁴⁴ Act of March 3, 1911. sec. 28, 36 Stat. 1058, 1077. 25 U. S. C. 118.

⁶⁴⁵ Act of April 10, 1869. 16 Stat. 13, 39. R. S. § 2090. 25 U. S. C. 132.

⁶⁴⁶ Act of March 3, 1911. sec. 27, 36 Stat. 1058, 1077. 25 U. S. C. 143.

⁶⁴⁷ Act of April 4, 1910. sec. 1, 36 Stat. 269, 270, amended June 10, 1921, sec. 304, 42 Stat. 20, 24; 25 U. S. C. 145.

⁶⁴⁸ Act of February 14, 1873. 17 Stat. 437, 463. R. S. § 2109. 25 U. S. C. 146.

⁶⁴⁹ 9 Stat. 203. R. S. § 2087, 25 U. S. C. 130.

⁶⁵⁰ 14 Stat. 492, 515. R. S. § 2100. 25 U. S. C. 127.

⁶⁵¹ 16 Stat. 13, 39. R. S. § 2101. 25 U. S. C. 138.

⁶⁵² 18 Stat. 146; made permanent by Act of March 3, 1875, sec. 3, 18 Stat. 449; 25 U. S. C. 137.

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, 1875,⁶⁵³ 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, now embodied in the United States Code as section 129 of title 25, provides:

The Secretary of the Interior is authorized 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.

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 approximately the same reasons that created the desire to individualize land.

The Appropriation Act of March 3, 1877,⁶⁵⁴ 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 break down the tribal control that chiefs might exercise through the distribution of food and clothing and to transfer the prestige attached to such offices to the Indian agents.

The Act of March 2, 1907,⁶⁵⁵ 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.⁶⁵⁶

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, 1918,⁶⁵⁷ and section 1 of the Act of June 30, 1919.⁶⁵⁸ The repeal of the distribution features of the latter statute by the Act of June 24, 1938,⁶⁵⁹ parallels the termination of the allotment policy.

⁶⁵³ 18 Stat. 420.

⁶⁵⁴ Sec. 2, 19 Stat. 271, 293.

⁶⁵⁵ 34 Stat. 1221. 25 U. S. C. 119. See Chapter 4. sec. 13; Chapter 10. sec. 4.

⁶⁵⁶ Sec. 2 of this act provides for payments to helpless Indians. 35 Stat. 1221, amended by Act of May 18, 1916, 39 Stat. 128; 25 U. S. C. 121.

⁶⁵⁷ 40 Stat. 561, 591, 25 U. S. C. 162 (segregation of funds). To the effect that the preparation of a "final roll" under congressional direction cannot, in the nature of the case, prevent a later Congress from authorizing a new roll, see Op. Sol. I. D., M.27759, January 22, 1935 (Creek). And see Chapter 4, sec. 14; Chapter 10, sec. 4.

⁶⁵⁸ 41 Stat. 3, 9, 25 U. S. C. 163 (enrollment).

⁶⁵⁹ 52 Stat. 1037, 25 U. S. C. 162, 162a. See Chapter 4. sec. 16; Chapter 10. sec. 4.

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.⁶⁰⁰

⁶⁰⁰ R. S. § 2097, 25 U. S. C. 122 (Limitation on application of tribal funds); Act of May 18, 1916, sec. 27, 39 Stat. 123, 158, 25 U. S. C. A. 123 (Expenditure from tribal funds without specific appropriations); Act of April 13, 1926, 44 Stat. 242, 25 U. S. C. A. 123a (Supp.) (Tribal funds use to purchase insurance for protection of tribal property); Act of May 9, 1938, sec. 1, 52 Stat. 291, 315, 25 U. S. C. A. 123b (Supp.) (Tribal funds for traveling and other expenses); Act of May 24, 1922, 42 Stat. 552, 575, 25 U. S. C. 124 (Expenditures from tribal funds of Five Civilized Tribes without specific appropriations); Act of June 30, 1919, sec. 17, 41 Stat. 3, 20, 25 U. S. C. 125 (Expenditure of moneys of tribes of Quapaw Agency); R. S. § 2092, 25 U. S. C. 131 (Advances to disbursing officers);

Act of March 1, 1907, 34 Stat. 1015, 1016, 25 U. S. C. 134 (Appropriations for supplies available immediately); Act of March 3, 1875, 18 Stat. 420, 450, 25 U. S. C. 135 (Supplies distributed so as to prevent deficiencies); Act of July 1, 1898, sec. 7, 30 Stat. 571, 596, 25 U. S. C. 136 (Commutation of rations and other supplies); Act of March 1, 1907, 34 Stat. 1015, 1016, 25 U. S. C. 139 (Appropriations for subsistence); Act of March 1, 1907, 34 Stat. 1015, 1016, 25 U. S. C. 140 (Diversion of appropriations for employees and supplies); Act of January 12, 1927, sec. 1, 44 Stat. 934, 939, 25 U. S. C. 148 (Supp.) (Appropriations for supplies; transfer to Indian Service supply fund; expenditure).

SECTION 24. TRIBAL RIGHT TO EXPEND FUNDS

Since the United States and the Indian tribe have each an interest in tribal funds held in the Treasury of the United States, the normal method of disposing of such funds has been by common consent of the tribe and the Federal Government. So far as treaty funds are concerned, treaty provisions, many of which are still in force, embodied a common agreement concerning the disposition of tribal money. Following the treaty period, agreements with Indian tribes, ratified by act of Congress, served a similar purpose. In recent years various new formulae have made their appearance embodying, in one way or another, the agreement of the tribe and the United States concerning expenditure of tribal funds.

Judgment moneys 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" ⁶⁶¹ Other statutes provided for the expenditure of tribal funds for objects designated or approved by the tribal council concerned.⁶⁶² Perhaps the earliest of such provisions is found in section 3 of the Appropriation Act of February 17, 1879,⁶⁶³ 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 acts⁶⁶⁴ and made permanent by the Act of March 1, 1907.⁶⁶⁵

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,⁶⁶⁶ tribal delegates,⁶⁶⁷ and tribal attorneys.⁶⁶⁸

There are, of course, a great number of statutes authorizing the expenditure of tribal funds without express reference to the wishes of the tribe,⁶⁶⁹ and the problem of federal power to expend

tribal funds without Indian consent is dealt with elsewhere.⁶⁷⁰

It may be noted, however, that the omission of express reference to tribal consent in appropriation provisions referring to tribal funds does not necessarily imply the absence of such consent. In fact, many provisions for the appropriation of tribal funds are sought at the request of the tribe concerned, although no reference to this fact appears on the face of the statute.

The present state of the law with respect to the power of an Indian tribe to expend funds or dispose of other personal property held by the United States in trust for the tribe is, that any such expenditure must be authorized by act of Congress.⁶⁷¹ The situation is analogous to that of a private trust, where the trustee must consent to expenditures by the beneficiary out of the trust fund. In the case of the trust funds of an Indian tribe, the power to determine the propriety of expenditures is vested in Congress and only in a very few cases has Congress delegated its power of decision to administrative authorities.⁶⁷²

The history of Indian appropriation legislation shows a continuous struggle between two principles: on the one hand, it is

June 28, 1906, 34 Stat. 547 (Menominee); Act of May 26, 1920, 41 Stat. 625 (Five Civilized Tribes).

Expenditure from tribal funds for a wide diversity of purposes considered beneficial to the tribe are authorized in a vast number of statutes. See, for example, Act of January 12, 1877, 19 Stat. 221 (Osage).

The cost of various improvements upon tribal lands has been met out of tribal funds, sometimes with a provision that the cost of the improvement shall be repaid to the tribe by the individual Indian benefited. Act of February 21, 1921, sec. 2, 41 Stat. 1105, 1106 (Red Lake Indian Reservation).

Federal appropriations for improvements upon tribal lands have frequently been made reimbursable obligations against future tribal funds or against such funds as might arise from disposal of the lands improved. Act of July 8, 1916, 39 Stat. 353 (Quinault Indian Reservation); Act of March 3, 1921, sec. 6, 41 Stat. 1355, 1357 (Fort Belknap); Act of February 14, 1923, 42 Stat. 1246 (Paiute); Act of February 9, 1925, 43 Stat. 819 (Chippewa).

Various other statutes authorize payments from tribal funds to individual members of the tribe who have particular claims upon tribal bounty. Act of April 29, 1902, 32 Stat. 177 (Choctaw-Chickasaw); Act of June 3, 1924, 43 Stat. 357 (Red Lake Indians); *cf.* Joint Resolution of February 11, 1890, 26 Stat. 669.

Certain tribal funds have been made available for loans to individual members of the tribe. Act of March 4, 1925, 43 Stat. 1301 (Crow); Act of May 15, 1935, 49 Stat. 244 (Crow).

Between 1916 and 1925 a number of statutes were enacted appropriating tribal funds or federal funds, to be reimbursed out of future tribal funds, for roads, bridges, public schools, and other public improvements. Act of June 26, 1916, 30 Stat. 237 (Ponca); Act of August 21, 1916, 39 Stat. 521 (Spokane); Act of February 20, 1917, 39 Stat. 926 (Navajo); Act of June 7, 1924, 43 Stat. 607 (Navajo); Act of February 26, 1925, 43 Stat. 994 (Navajo).

⁶⁷⁰ See Chapter 5, sec. 5B, 10.

⁶⁷¹ Funds other than trust funds may be expended without such authorization. See Chapter 5, sec. 10.

⁶⁷² *Cf.* 25 U. S. C. 139, 140.

⁶⁶¹ Joint Resolution of June 20, 1936, 49 Stat. 1568. Accord: Act of March 2, 1889, 25 Stat. 1012 (Yankton).

⁶⁶² Act of June 20, 1936, 49 Stat. 1543 (Crow); Act of March 1, 1929, 45 Stat. 1439 (Klamath); Act of May 31, 1933, sec. 1, 48 Stat. 108 (Pueblos).

⁶⁶³ 20 Stat. 295, 315.

⁶⁶⁴ See, for example, Act of May 11, 1880, sec. 5, 21 Stat. 114, 133.

⁶⁶⁵ 34 Stat. 1015, 1016, 25 U. S. C. 140.

⁶⁶⁶ Act of March 2, 1929, 45 Stat. 1496 (Crow); Act of June 1, 1938, 52 Stat. 605 (Klamath).

⁶⁶⁷ Act of March 3, 1881, 21 Stat. 435, 453 (Miami, Peoria, Wea, Kaskaskia, and Piankeshaw); Joint Resolution of June 7, 1924, 43 Stat. 667 (Fort Peck); Joint Resolution of May 10, 1926, 44 Stat. 498 (Fort Peck); Act of June 14, 1926, 44 Stat. 741 (Klamath).

⁶⁶⁸ Act of April 11, 1928, 45 Stat. 423 (Chippewa of Minnesota); Act of June 26, 1934, 48 Stat. 1216 (Nez Perce).

⁶⁶⁹ See, for example, Act of March 3, 1873, 17 Stat. 627 (Nez Perce); Act of June 27, 1902, 32 Stat. 400 (Chippewa of Minnesota); Act of

insisted that Congress, in which is vested constitutional power over appropriations, must retain full control of the subject; on the other hand, it is argued that continuity, prudent foresight in the expenditure of funds, and true economy require the setting aside of tribal funds for definite purposes in a manner that will avoid the red tape and delays of reappropriation.⁶⁷³

Actual practice has always been a compromise between these two principles. In section 27 of the Act of May 18, 1916,⁶⁷⁴ Congress provided:

§ 123. *Expenditure from tribal funds without specific appropriations.*—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 payments, all of which are hereby continued in full force and effect: *Provided further*, 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 congressional appropriation, a specific addition was made by the Act of April 13, 1926,⁶⁷⁵ which declares:

§ 123a. *Tribal funds; use to purchase insurance for protection of tribal property.*—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, and other elements and forces of nature.

Interior Department appropriation acts usually contain, in addition to specific appropriations out of designated tribal funds for specific purposes, general appropriations of the following form:⁶⁷⁶

Expenses of tribal councils or committees thereof (tribal funds): For traveling and other expenses of members of tribal councils, business committees, or other tribal organizations, when engaged on business of the tribes, including supplies and equipment, not to exceed \$5 per diem in lieu of subsistence, and, not to exceed five cents per mile for use of personally owned automobiles, and including not more than \$25,000 for visits to Washington, District of Columbia, when duly authorized or approved in advance by the Commissioner of Indian Affairs, \$50,000, payable from funds on deposit to the credit of the particular tribe interested.

Furthermore, as we have already noted, "miscellaneous revenues . . . not the result of the labor of any member of such tribe" are deposited in a fund peculiarly misnamed "Indian moneys, proceeds of labor," and are thereafter 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 to the limitations as to tribal funds imposed by section 27 of the Act of May 18, 1916.⁶⁷⁷

⁶⁷³ 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 Stat. 984, 25 U. S. C. 461 et seq.

⁶⁷⁴ 39 Stat. 123, 159, 25 U. S. C. A. 123 (Supp.) (incomplete in original edition). 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 authorization. Comptroller's Decisions A. 24931, November 8, 1928; A. 27759, July 1, 1929; A. 29173, May 8, 1930; A. 34858, January 26, 1931; A. 45091, October 20, 1932; A. 81210, December 2, 1936; A. 44289, October 11, 1932. The Interior Department takes the position, in view of the Comptroller General's Opinion of June 30, 1937, discussed *supra*, that these decisions do not apply to funds in the treasury of an organized tribe. Memo. Sol. I. D., January 18, 1938.

⁶⁷⁵ 44 Stat. 242, 25 U. S. C. A. 123a.

⁶⁷⁶ Act of May 9, 1938, 52 Stat. 291, 315.

⁶⁷⁷ 39 Stat. 123, 158, 25 U. S. C. A. 155 (Supp.). And see sec. 23, *supra*. See also Memo. Sol. I. D. January 24, 1936.

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 spending authority in that Department. Under any of these three 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 interest 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, 1934,⁶⁷⁸ within the Treasury of the United States. The Act of June 25, 1936,⁶⁷⁹ specifically provides:

That section 20 of the Permanent Appropriation Repeal Act, approved June 26, 1934 (48 Stat. 1233), 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. 984).

Since funds so deposited by an incorporated tribe are not subject to congressional appropriation, it must be held *a fortiori* that funds not so deposited but retained by the tribe are not subject to congressional appropriations. All 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 utterly 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.⁶⁸⁰

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 complete power of disposition over tribal personal property, except in so far as such property has been removed from its control and placed in the possession of the Federal Government pursuant to some law or treaty.

Among the limitations voluntarily assumed by Indian tribes

⁶⁷⁸ 48 Stat. 1224.

⁶⁷⁹ 49 Stat. 1923.

⁶⁸⁰ See, for example, Act of February 28, 1901, 31 Stat. 819 (Seneca lease rentals).

with respect to the disposition of tribal moneys and other personality, we may briefly note:

- (1) Limitations contained in tribal constitutions.⁶⁸¹
- (2) Limitations contained in tribal charters.⁶⁸²

⁶⁸¹ See, for example, the following provisions of the constitution and bylaws of the Hualapai tribe, approved December 17, 1938:

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

(e) To deposit all Tribal Council Funds to the credit of the Hualapai Tribe in an Individual Indian Moneys Account. Hualapai Tribe of the Truxton Canon Agency, such funds to be expended only upon the recommendation of the Tribal Council in accordance with a budget having prior approval of the Secretary of the Interior.

BYLAWS OF THE HUALAPAI TRIBE OF THE HUALAPAI RESERVATION, ARIZONA

ARTICLE 1-Duties of Officers.

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 Council or 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 provision for the custody and disbursement of funds as shall guarantee their safety and proper disbursement and use.

⁶⁸² See, for example, the following provisions from sec. 5 of the corporate charter of the Confederated Salish and Kootenai tribes of the Flathead Reservation, ratified April 25, 1936:

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:

(b) 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:

5. No distribution of corporate property to members shall be made except out of net income.

(d) To borrow money from the Indian credit fund in accordance with the terms of section 10 of the act of June 18, 1934 (48 Stat. 984), 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.

(f) To make and perform contracts and agreements of every description, not inconsistent with law 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 State of Montana for the rendition of public

- (3) Limitations contained in tribal loan agreements.⁶⁸³
- (4) Limitations contained in tribal trust agreements.⁶⁸⁴

The grant of funds to Indian tribes for particular uses, under the Emergency Appropriation Act of April 8, 1935,⁶⁸⁵ 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:⁶⁸⁶

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 houses, the Presidential 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.⁶⁸⁷

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.

(g) To pledge or assign chattels or future tribal income due or to become due to the tribe under any notes, leases, or other contracts, whether or not such notes, leases, or contracts are in existence at the time: *Provided*, That such agreements of pledge or assignment shall not extend more than 10 years from the date of execution and shall not cover more than one-half the net tribal income in any 1 year: *And provided further*, That any such agreement shall be subject to the approval of the Secretary of the Interior or his duly authorized representative.

(h) To deposit corporate funds, from whatever source derived, in any National or State bank to the extent that such funds are insured by the Federal Deposit Insurance Corporation, or secured by a surety bond, or other security, approved by the Secretary of the Interior; or to deposit such funds in the postal-savings bank or with a bonded disbursing officer of the United States to the credit of the tribe.

⁶⁸³ See Chapter 12, sec. 6.

⁶⁸⁴ See Chapter 12, sec. 6.

⁶⁸⁵ 49 Stat. 115.

⁶⁸⁶ Op. Sol. I. D., M.2S316, March 18, 1936.

⁶⁸⁷ See Chapter 12, sec. 6.