



# United States Department of the Interior

OFFICE OF THE SECRETARY  
Washington, D.C. 20240

## BEFORE THE ASSISTANT SECRETARY OF INDIAN AFFAIRS

SAC AND FOX NATION OF MISSOURI, )	) OPINION ON RECONSIDERATION
IOWA TRIBE OF KANSAS AND )	
NEBRASKA, PRAIRIE BAND OF )	
POTAWATOMI INDIANS, AND )	
GOVERNOR OF KANSAS, )	
_____ )	

The Bureau of Indian Affairs published in the *Federal Register* its determination that only Public Law 98-602 funds were used by the Wyandotte Tribe to purchase the Shriner Property in Kansas City, Kansas. This determination was the result of a remand order from the Federal District Court of Kansas. The Governor of Kansas and three Kansas Tribes requested reconsideration of the *Federal Register* determination, which the Assistant Secretary of Indian Affairs granted. After reviewing the briefs submitted by the parties and all information available in the record, the Assistant Secretary of Indian Affairs finds that only P.L. 98-602 funds were used to purchase the land known as the "Shriner Tract," thus pursuant to statute the United States must take the land into trust for the benefit of the Wyandotte Tribe. This opinion constitutes the formal reconsideration of the agency determination published in the Federal Register on March 11, 2002 and is final agency action.

### BACKGROUND

In October, 1984, Congress enacted Public Law 98-602 *codified at* 98 Stat. 3151 (1984), which distributed certain funds to the Wyandotte Indian Tribe pursuant to judgments issued by

the Indian Claims Commission. The judgments were issued as compensation for certain lands ceded to the United States by the Wyandotte Tribe during the 19th Century. A portion of the funds distributed by P.L. 98-602 were specifically designated for the purchase of real estate.

Section 105(b)(1) of P.L. 98-602 directs that \$100,000 of the settlement funds be used to purchase real property, which was to be taken into trust by the United States for the benefit of the tribe. Specifically, the pertinent section of the statute reads as follows:

Section 105

(b) Twenty percent of the funds allocated to the Wyandotte Tribe of Oklahoma pursuant to section 103(b) shall be used and distributed in accordance with the following general plan:

- (1) A sum of \$100,000 of such funds shall be used for the purchase of real property which shall be held in trust by the Secretary for the benefit of such Tribe.
- (2) The amount of such funds in excess of \$100,000 shall be held in trust by the Tribal Business Committee of such Tribe for the benefit of such tribe.
- (3) Any interest or investment income accruing on the funds described in paragraph (2) may be used by the Tribal Business Committee of such Tribe for any of the following purposes:
  - (A) Education of the members of such Tribe (including grants-in-aid or scholarships)
  - (B) Medical or health needs of the members of such Tribe (including prosthetics)
  - (C) Economic development for the benefit of Such Tribe.
  - (D) Land purchases for the use and benefit of such Tribe.
  - (E) Investments for the benefit of Such Tribe.
  - (F) Tribal cemetery maintenance.
  - (G) Tribal building maintenance.
  - (H) Tribal administration.

On June 12, 1996, the Secretary of the Interior announced through the *Federal Register* that the United States would take into trust .52 acres of land known as the "Shriner's Tract" in Kansas City, Kansas on behalf of the Wyandotte Tribe pursuant to P.L. 98-602.

The Governor of Kansas and four Kansas tribes challenged the Secretary's decision in the Federal District Court of Kansas. The District Court dismissed the plaintiffs action and they subsequently appealed to the 10th Circuit Court of Appeals. The 10th Circuit then issued its

opinion which, among other things, remanded to the Secretary the question of whether only P.L. 98-602 money was used in the purchase of the land in question, finding the Secretary had acted arbitrarily in making the determination that such funds were used for the purchase of the Shriner Tract. *Sac and Fox v. Gale Norton*, 240 F.3d 1250 (10th Cir. 2001).

In an attempt to satisfy that remand, the Bureau of Indian Affairs published in the *Federal Register* on March 11, 2002 a notice determining that “the funds used to purchase the Shriner’s Property in Kansas City, Kansas were from the section 602 settlement of specific land claims,” and thus the Secretary affirmed the trust status of the land. This *Federal Register* entry was later clarified and corrected through a subsequent May 8, 2002 *Federal Register* entry. This second notice clarified that the first notice was not meant to serve as a finding by the Secretary of the Interior that the Wyandotte Tribe could game on the Shriner Tract pursuant to the “settlement of a land claim’ exception to the gaming prohibition on land acquired...in Section 20 of the Indian Gaming Regulatory Act.” This determination has not been made and was not why the original *Federal Register* notice was published. The May 8, 2002 notice also corrected a typographical error in the first notice. After the Assistant Secretary for Indian Affairs granted the request for reconsideration, the parties briefed the remand issue concerning the P.L. 98-602 funds.

### **DISCUSSION**

In determining whether the money used to purchase the Shriner Tract was the original \$100,000 allotted by P.L. 98-602, the Wyandotte Tribe employed the services of accounting firm KPMG. After supplying the firm with all of the available financial records, KPMG issued a letter of its findings to the tribe, finding that the original \$100,000 issued to the tribe as part of the 1984 statute amounted to \$212,170 at the time the Wyandotte Tribe purchased the .52 acres

known as the Shriner Tract. The plaintiffs dispute the accuracy and legitimacy of the KPMG letter.

This dispute was addressed by a financial analyst in the Office of Indian Gaming Management. After reviewing the KPMG findings, the analyst determined, among other things:

- 1) The KPMG accounting firm hired by the Wyandotte Tribe used an “appropriate and accepted methodology.”
- 2) Contrary to plaintiffs’ assertion “[t]here is no evidence in the documents analyzed by the Department that the P.L. 98-602 funds lost money,” however, it is true that the money was invested and commingled.
- 3) Contrary to plaintiffs’ assertion, the Administrative Record shows that the property was purchased for \$180,000, not \$325,000.
- 4) Based on KPMG’s analysis, there was ample money to purchase the Shriner Tract.

According to the Administrative Record and the briefs of the respective parties, there is no definitive legislative history that guides whether the \$100,000 from Sec. 105(b)(1) had to be used alone, or could include any interest or investment income which it accrued prior to the mandatory real estate purchase. Therefore we look to the plain meaning of the statute to answer the question. The plaintiffs argue that Congress was clear that \$100,000 and \$100,000 alone could be spent on the land acquired pursuant to Sec. 105(b)(1), quite literally stating “[i]t did not give them [Wyandotte Tribe] anything but \$100,000.” Kansas Gov. Brief at 13 (Sept. 11, 2002). Since the “statute is clear on its face, no interpretation is required.” Id.

Reading the statute as clear on its face would imply the Wyandotte Tribe could only purchase a tract of land with the money from Sec. 105(b)(1) if the exact cost of the land were

\$100,000, otherwise the trust acquisition would be defeated. According to Singer on statutory construction, “[a]lthough many expressions favoring literal interpretation may be found in the cases, it is clear that if the literal import of the text of an act is inconsistent with the legislative meaning or intent, or such interpretation leads to absurd results, the words of the statute will be modified to agree with the intentions of the legislature.” Norman J. Singer, Statutes and Statutory Construction, §46:07 (Sixth Ed. 2000). A strict interpretation of the statute places the tribe in the position of seeking to buy a piece of real estate with a purchase price of exactly \$100,000, such a reading would be an absurd interpretation of the statute.

Section 105(b)(2) of P.L. 98-602 specifies that any funds in excess of the \$100,000 awarded in 105(b)(1) be held in trust by the Tribal Business Committee for the benefit of the tribe. The next paragraph lists the uses for which these funds, and any interest or investment income accruing from these funds, may be expended. The plaintiffs argue that since Sec. 105(b)(3) specifies that interest and investment income from the money provided to the Tribal Business Committee in Sec. 105 (b)(2) can be used for the purposes enumerated in that section, Congress could not have intended that any interest or investment income be used from the \$100,000 provided in paragraph 1 or they would have stated such in the statute. This argument mirrors the legal maxim *expressio unius est exclusio alterius* or “the expression of one is the exclusion of the other.” While this maxim still applies in certain circumstances, the Supreme Court made clear that when deciphering legislative intent, such rules are “subordinated to the doctrine that courts will construe the details of an act in conformity with its dominating general purpose, will read text in the light of context and will interpret the text so far as the meaning of the words fairly permits so as to carry out in particular cases the generally expressed intent.”

Securities and Exchange Commission v. C.M. Joiner Leasing Corporation, 320 U.S. 344, 350-51 (1942).

In keeping with the holding in Securities and Exchange Commission, P.L. 98-602 was enacted to benefit the tribe by paying settlements awarded by the Indian Claims Commission. There is no evidence, either in the legislative history or in the record of this case, that indicates Congress had any intention to prevent the interest or investment income accrued from the \$100,000 provided in Sec. 105(b)(1) to be added to the principle \$100,000. There is no language in the statute triggering the defeat of the trust purchase if more than the \$100,000 is used to purchase the real estate, when the additional funds were derived from the original Sec. 105(b)(1) award.

The Shriner Tract was purchased with the \$100,000 set aside by P.L. 98-602 plus interest and investment income derived from that principle. Since, as stated above, the statute does not act by its plain language to prevent the use of this extra money toward the purchase of the land designated in Sec. 105(b)(1), the basic canons of construction favoring Indians work to the benefit of the Wyandotte Tribe. The Supreme Court has repeatedly held that “[r]ules of statutory construction generally provide for a broad construction when the issue is whether Indian rights are reserved or established, and for a narrow construction when Indian rights are to be abrogated.” National Labor Relations Board v. Pueblo of San Juan, 276 F.3d 1186, 1194 (10th Cir. 2002) (quoting Felix Cohen, Handbook of Federal Indian Law 225 (1982)). The Court in National Labor Relations Board made clear that in construing statutes in favor of the Indians, “[a] canon of construction is not a license to disregard clear expressions of ...congressional intent.” Id. (quoting DeCoteau v. Dist. County Court, 420 U.S. 425, 447 (1975)). However, in this case it is

clear that this statute was designed to benefit the Wyandotte Tribe and that a piece of real property was to be purchased by them and taken into trust by the United States. Thus if an ambiguity does exist in the language of Sec. 105(b)(1), a resolution of the ambiguity should benefit the Wyandotte Tribe, unless it would be against the "clear expressions of...congressional intent," 276 F.3d at 1194. There is no evidence in this case that when it enacted P.L. 98-602 Congress intended anything other than to benefit the Wyandotte Tribe by paying the Tribe the money owed it from certain judgments of the Indian Claims Commission.

Upon reconsidering the March 11, 2002 determination published in the *Federal Register*, the Assistant Secretary for Indian Affairs finds that the funds used to purchase the Shriner Property in Kansas City, Kansas were from the settlement moneys granted pursuant to Sec. 105(b)(1) of P.L. 98-602. The trust status of the subject lands is affirmed and this is final agency action.

Aurene M. Martin

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Ms. Aurene Martin

Acting Assistant Secretary - Indian Affairs