

(e) Use and disposition of money or property held in trust by the United States by the Secretary; consent by competent Indian; determination of competency; applicability of administrative procedure under title 5; time and place of hearing; judicial review

Under such regulations as he shall provide, and with the consent of the individual Indian concerned, unless the Secretary determines such Indian to be incompetent by reason of minority or otherwise, in which case such consent shall not be required, the Secretary may use, advance, expend, exchange, deposit, dispose of, invest and reinvest, in any manner and for any purpose, any money or other property held by the United States in trust for such Indian. The Secretary shall make no determination that an adult Indian is incompetent except after accord- ing him an opportunity to be heard upon reason- able notice, in accordance with the provisions of subchapter II of chapter 5 of title 5. Unless the Indian otherwise agrees, the hearing shall be held in the State of California within sixty days of the date of notice. A person aggrieved by a deter- mination of incompetency made by the Sec- retary shall be entitled to judicial review of such determination in accordance with sections 701 to 706 of title 5.

(f) Authority of the Secretary under other provi- sions unaffected

Nothing herein shall be deemed to limit any authority possessed by the Secretary under any other provisions of law.

(Pub. L. 86-339, §4, Sept. 21, 1959, 73 Stat. 604; Pub. L. 90-597, Oct. 17, 1968, 82 Stat. 1164.)

REFERENCES IN TEXT

The effective date of this Act, referred to in subsec. (a), probably means the date of enactment of Pub. L. 86-339, which was approved Sept. 21, 1959.

CODIFICATION

In subsec. (e), "subchapter II of chapter 5 of title 5" substituted for "the Administrative Procedure Act" on authority of Pub. L. 89-554, §7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Govern- ment Organization and Employees.

AMENDMENTS

1968—Subsec. (a). Pub. L. 90-597 substituted provi- sions requiring Secretary to approve any guardian or other fiduciary appointed under State law for estate of any member of band or continued in office as guardian of estate, and provisions requiring Secretary to be given notice of State court proceedings involving es- tate of any member of band and power to appear in such proceedings, for provisions requiring Secretary to request appointment of a guardian of estate of minor allottees and adult allottees needing assistance.

Subsecs. (b) to (f). Pub. L. 90-597 added subsecs. (b) to (f).

§ 955. Tax exemption

(a) The right to an equalization allotment or to a cash payment in lieu thereof pursuant to section 953(d) of this title, shall be transferable by will or descent in the same manner as are trust payments under existing law and shall not be subject to State or Federal inheritance, es- tate, legacy, or succession taxes.

(b) A cash payment made in lieu of an equali- zation allotment pursuant to section 953(d) of

this title shall not be regarded as income or cap- ital gain for purposes of Federal or State income taxation and shall not, as long as it remains in the form of cash or a bank deposit in the owner- ship of the allottee, be subject to taxation as personal property. A payment and the income derived therefrom heretofore or hereafter made to an allottee as compensation for the acqui- sition of part or all of the allottee's allotment for a public purpose is—

(1) deemed a cash payment in lieu of an al- lotment for purposes of this subsection;

(2) deemed a right under subsection (a) of this section; and

(3) subject to sections 409a and 410 of this title.

(Pub. L. 86-339, §5, Sept. 21, 1959, 73 Stat. 604; Pub. L. 100-581, title II, §216, Nov. 1, 1988, 102 Stat. 2941.)

AMENDMENTS

1988—Subsec. (b). Pub. L. 100-581 inserted sentence at end relating to payment and income derived therefrom made as compensation for acquisition of part of all of allottee's allotment for public purpose.

§ 956. Claims against allotments

(a) Assignment, sale, hypothecation, attachment or levy void unless approved

Equalization allotments made pursuant to this subchapter shall not be subject to assign- ment, sale, or hypothecation or to any attach- ment or levy for claims or debts created before or after September 21, 1959, without the written approval of the Secretary, and any such assign- ment, sale, hypothecation, attachment, or levy that has not been so approved by the Secretary shall be absolutely null and void.

(b) Liens and lis pendens; legal services

No equalization allotment made pursuant to this subchapter, and no basic allotment made prior to this Act, shall be subject to an equi- table charging lien or other charge or lien or en- forced sale for any advantage or benefit which the allottee has received or will receive under or as a consequence of enactment of this sub- chapter, nor shall any lis pendens heretofore or hereafter filed upon such lands while in a re- stricted status be of any effect or constitute no- tice of any action. Whoever directly or indi- rectly accepts or receives any money or other form of compensation for legal services in con- nection with such restricted lands from any per- son who has not expressly employed him as his attorney shall be liable, in a civil action brought by the payor or his heirs or devisees or by the United States on his behalf, for twice the amount so accepted or received unless, prior to the time of acceptance or receipt of said com- pensation, the right to such compensation has been determined and the amount thereof fixed by a formal order of the Federal court having ju- risdiction to make such order. Nothing herein provided shall be construed to prevent any at- torney from petitioning the Federal court hav- ing jurisdiction to fix and determine the fees to which he is entitled and to pursue and enforce payment thereof in any lawful manner after the court has made such order.

(Pub. L. 86-339, §6, Sept. 21, 1959, 73 Stat. 604.)