

(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.)

REFERENCES IN TEXT

The words "prior to this Act", referred to in subsec. (b), mean prior to enactment of Act Sept. 21, 1959, Pub. L. 86-339.

§ 957. Allotments deemed full equalization

Allotments in accordance with the provisions of this subchapter shall be deemed complete and full equalization of allotments on the Agua Caliente Reservation.

(Pub. L. 86-339, §7, Sept. 21, 1959, 73 Stat. 605.)

§ 958. Organization and transfer of title to legal entity

The band may, at any time it wishes to do so, organize a legal entity under the laws of the State of California and request the Secretary to transfer to such legal entity title to the lands in the reserves established by section 953(b) of this title. The Secretary shall transfer an unrestricted title to such property if the organization of the legal entity and request for the transfer have been approved by a majority of the adult members of the band who are eligible to vote, and if in the judgment of the Secretary the legal entity is organized in a form and manner that is fair to all members of the band: *Provided, however,* That if the lands to which the proviso to the fourth item in section 953(b) of this title is applicable are transferred to such an entity, they shall be held by it subject to the terms provided in said proviso, and the rights and duties therein set forth shall be preserved and reflected in any distribution of securities of, or other evidences of participation in, said entity.

(Pub. L. 86-339, §8, Sept. 21, 1959, 73 Stat. 605.)

SUBCHAPTER XLV—OMAHA TRIBE:
DISTRIBUTION OF JUDGMENT FUND**§ 961. Membership roll; preparation; eligibility for enrollment; applications for enrollment; protests; finality of determination**

The Secretary of the Interior is authorized and directed, pursuant to such regulations as may be issued by him, to prepare a roll of Omaha Indians whose names appear on the Omaha allotment rolls finally approved pursuant to the Acts of Congress of August 7, 1882, (22 Stat. 341) and March 3, 1893 (27 Stat. 612), and who are living on September 14, 1961, and the descendants of such allottees who are born and living on September 14, 1961 and who possess Omaha blood of the degree of one-fourth or more regardless of whether such allottees are living or deceased: *Provided,* That no person who is enrolled with any other tribe of Indians or who has received an allotment of land on any other reservation shall be enrolled under the provisions of this subchapter unless the application for enrollment by such person is approved by a two-thirds vote of the governing body of the Omaha Tribe of Nebraska. Applications for enrollment must be filed with the area director of the Bureau of Indian Affairs, Aberdeen, South Dakota, within four months after September 14, 1961. For a period of three months thereafter, the Secretary shall permit the examination of the applications by the governing body of the Omaha Tribe of Nebraska for

the purpose of lodging protests against any application. The determination of the Secretary regarding the eligibility of an applicant shall be final.

(Pub. L. 87-235, §1, Sept. 14, 1961, 75 Stat. 508.)

REFERENCES IN TEXT

Acts of Congress of August 7, 1882, and March 3, 1893, referred to in text, are acts Aug. 7, 1882, ch. 434, 22 Stat. 341, and Mar. 3, 1893, ch. 209, 27 Stat. 612, respectively, which were not classified to the Code.

§ 962. Membership roll; enrollment of children born after September 14, 1961

The roll prepared pursuant to section 961 of this title shall constitute the membership roll of the Omaha Tribe of Nebraska as of September 14, 1961, notwithstanding the provisions of article II, section 1 of the tribal constitution, and children who are born after September 14, 1961, may be enrolled if they meet the requirements of section 1(b) of article II of the tribal constitution, applicable to children born after the date that amendment I to said constitution was approved, or any amendment thereof.

(Pub. L. 87-235, §2, Sept. 14, 1961, 75 Stat. 508.)

§ 963. Per capita distributions to tribal members; attorneys' fees and expenses; advances or expenditures from tribal funds; tax exemption

Of the funds on deposit in the Treasury of the United States to the credit of the Omaha Tribe of Nebraska that were appropriated to pay a judgment by the Indian Claims Commission dated February 11, 1960, and the interest thereon, after payment of attorneys' fees and expenses, the Secretary of the Interior shall make a per capita distribution of a sum up to a maximum of \$750, to the extent available, to each person whose name appears on the roll prepared pursuant to section 961 of this title; and the balance of such funds after making payment of or provision for such per capita distribution and accrued and accruing interest, if any, may be advanced or expended for any purpose that is authorized by the tribal governing body and approved in writing by the Secretary. The funds so distributed shall not be subject to Federal or State income taxes.

(Pub. L. 87-235, §3, Sept. 14, 1961, 75 Stat. 508.)

REFERENCES IN TEXT

The Indian Claims Commission, referred to in text, terminated Sept. 30, 1978. See Codification note set out under former section 70 et seq. of this title.

§ 964. Distribution of shares**(a) Payments to enrollees, next of kin, or legatees**

Except as provided in subsection (b) of this section, the Secretary shall distribute a per capita share payable to a living enrollee directly to such enrollee, and the Secretary shall distribute a per capita share payable to a deceased enrollee directly to his next of kin or legatees as determined by the laws of the place of domicile of the decedent upon proof of death and inheritance satisfactory to the Secretary, whose findings upon such proof shall be final and conclusive.