DECISION

THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

81

6009

FILE: B-118678

DATE: JUN 11 1976

98842

MATTER OF: Disposition of Receipts From Leases of Oil and Gas Rights Within the National Wildlife Refuge System--Reconsideration

DIGEST:

1. Upon reconsideration, decision in 55 Comp. Gen. 117 (1975) is affirmed. Receipts from oil and gas leases on lands within National Wildlife Refuge System, and administered by Fish and Wildlife Service, whether lands were made part of System by acquisition or by reservation from public domain, are required to be disposed of pursuant to 16 U.S.C. § 715s (1970) rather than pursuant to Mineral Leasing Act which generally prescribes disposition of receipts from leases of mineral rights in public lands.

2. Alaska Native Claims Settlement Act (ANCSA) of 1971 provides that mineral lease revenues are generally to be distributed as provided in Alaska Statehood Act. Alaska Statehood Act prescribes no specific scheme of distribution but merely refers to Alaska's share of revenues distributed under Mineral Leasing Act. ANCSA does not adopt scheme of distribution in effect under Mineral Leasing Act in 1959, when Alaska Statehood Act was enacted, and therefore does not repeal by implication portion of 16 U.S.C. § 715s which is apparently in conflict with Mineral Leasing Act.

The Attorney General of Alaska has asked that we reconsider our decision, Matter of Disposition of Receipts From Leases of Oil and Gas Rights Within National Wildlife Refuge System, 55 Comp. Gen. 117 (1975). In that decision, we concluded that receipts from oil and gas leases on wildlife refuges created by withdrawals of public lands are required to be distributed pursuant to 16 U.S.C. § 715s(c) (1970), rather than pursuant to the Mineral Leasing Act, 30 U.S.C. §§ 181 et seq. (1970). Upon consideration of the arguments of the Attorney General and the comments of the Solicitor of the Department of the Interior, we conclude that our decision must be affirmed.

Until it was amended in 1964, the Act of June 15, 1935, ch. 261, § 401, 49 Stat. 383, as amended, the statute which prescribed the disposition of receipts from "privileges" granted on national wildlife refuges, required that 25 percent of the receipts go to the counties in which the refuges were located. No distinction was made between refuges on land reserved from the public domain and refuges acquired by purchase. The remaining 75 percent of revenues was appropriated by a permanent indefinite appropriation for the management of the refuges. H.R. Rep. No. 1753, 88th Cong., 2d Sess. 2-3 (1964).

Although the statute originally spoke of the sale of various specified items and "other privileges," it did not mention minerals, oil, or gas, and it was not interpreted to include receipts from oil and gas leases. Mineral lease receipts were disposed of pursuant to section 35 of the Mineral Leasing Act, 30 U.S.C. § 191 (1970) even where the leases were of lands in wildlife refuges, and regardless of whether the lands were reserved from the public domain or acquired. Under that statute, 37-1/2 percent of lease receipts go to the State in which the land is located. Alaska receives an additional 52-1/2 percent which, in the case of the other States, goes to the Reclamation Fund established by 43 U.S.C. §§ 371 et seq. (1970).

This system was altered in 1947 by the enactment of the Mineral Leasing Act for Acquired Lands, 30 U.S.C. §§ 351 et seq. (1970. That Act provides for disposition of receipts from oil and gas leases on acquired lands "* * * in the same manner as prescribed for other receipts from the lands affected by the lease * * *." 30 U.S.C. § 355 (1970). Thus, after the enactment of the Mineral Leasing Act for Acquired Lands, oil and gas lease receipts from reserved wildlife refuge lands remained subject to distribution pursuant to the Mineral Leasing Act, but oil and gas lease receipts from acquired wildlife refuge lands were thereafter to be distributed in the same manner as other receipts from those lands, i.e., in the manner prescribed by the Act of June 15, 1935, which was codified as 16 U.S.C. § 715s.

The 1964 amendment to section 715s of title 16 (the Act of August 30, 1964, Pub. L. No. 88-523, 78 Stat. 701) established a new scheme of distribution for refuge receipts from acquired lands, and added "minerals" to the list in the statute of sources of refuge receipts. We held, in 55 Comp. Gen. 117, supra, that the addition of "minerals" meant that, thereafter, receipts from oil and gas leases on refuge lands, whether reserved or acquired, were required to be distributed pursuant to 16 U.S.C. § 715s, as amended, rather than pursuant to the Mineral Leasing Act. The effect of this interpretation with respect to mineral receipts from reserved lands in Alaska is that, instead of 90 percent of the receipts going to the State as was the case under the Mineral Leasing Act, 25 percent is to go to the counties in which the lands are located, with the remainder going to a National Wildlife Refuge Fund.

The Attorney General of Alaska now contends that our interpretation is not correct. Rather, he argues, "* * * Congress intended [by the 1964 amendment of 16 U.S.C. § 715s] to continue the scheme for disposition of funds which was in existence prior to the amendment * * *," and that the 1964 amendment was intended to apply only to wildlife refuges created from acquired lands.

The Attorney General states, and we agree, that prior to the 1964 amendment, oil and gas lease revenues were not included in the coverage of 16 U.S.C. § 715s, and that to the extent the counties benefitted from oil and gas lease revenues from wildlife refuges prior to 1964, it was only with respect to acquired lands, by virtue of 30 U.S.C. § 355, supra. The Attorney General then notes that the only specific discussion of oil and gas lease revenues in the legislative history of the 1964 amendment to 16 U.S.C. § 715s is in the context of revenues from refuges created on acquired lands. He continues:

> "In the light of the above, the question presented by the 1964 amendment to section 715s is whether by adding the term 'mineral' Congress intended to confirm the existing practice of distributing oil and gas revenues from wildlife refuges created from acquired lands pursuant to section 715s, and oil and gas revenues from wildlife refuges created from reserved public domain pursuant to the Mineral Leasing Act of 1920; or did Congress intend to change the prior practice, so that oil and gas revenues from all wildlife refuges, regardless of their manner of creation, would be distributed pursuant to section 715s.
>
> "Since distribution of revenues under the Mineral Leasing Act and under section 715s is substantially different, in one case payments being made to States and the Reclamation Fund and in the other to counties and the Wildlife Refuge Fund, it is highly unlikely that Congress would have intended to repeal the Mineral Leasing Act and replace it with section 715s without any discussion or comment by any of the parties affected. Yet, there is not one single acknowledgement in the legislative history of a change. Indeed, the legislative history makes clear beyond peradventure that none of the parties expected any change in the distribution of revenues from wildlife refuges reserved from the public domain.

"Certainly the Department of the Interior, which sponsored one of the bills which added the term 'minerals,' did not envision any change in the treatment of revenues from reserved wildlife refuges. The Secretary of the Interior testified that 'all of the revenues from refuge operations on acquired lands would be placed in a pool for equitable sharing by all the counties in which we have units of the national wildlife refuge system . . . As to reserved public lands, there would be no change in the present payment of 25 percent of net receipts from such lands' * * *."

The 1964 amendment to 16 U.S.C. § 715s reads in pertinent part as follows:

"(a) Beginning with the next full fiscal year and for each fiscal year thereafter all revenues received by the Secretary of the Interior from the sale or other disposition of animals, timber, hay, grass, or other products of the soil, minerals, shells, sand, or gravel, from other privileges, * * * during each fiscal year in connection with the operation and management of those areas of the National Wildlife Refuge System that are solely or primarily administered by him, through the United States Fish and Wildlife Service, shall be covered into the United States Treasury and be reserved in a separate fund for disposition as hereafter prescribed. * * * The National Wildlife Refuge System (hereafter referred to as the 'System') includes those lands and waters administered by the Secretary as wildlife refuges, wildlife ranges, game ranges, wildlife management areas, and waterfowl production areas established under any law, proclamation, Executive or public land order.

*　　*　　*　　*　　*　　*

"(c) The Secretary, at the end of each fiscal year, shall pay, out of the net receipts in the fund (after payment of necessary expenses) for such fiscal year, which funds shall be expended solely for the benefit of public schools and roads as follows:

"(1) to each county in which reserved public lands in an area of the System are situated, an amount equal to 25 per centum of the net receipts collected by the Secretary from such reserved public lands in that particular area of the System * * *; and

"(2) to each county in which areas in the System are situated that have been acquired in fee by the United States, either (A) three-fourths of 1 per centum of the cost of the areas, * * * or (B) 25 per centum of the net receipts collected by the Secretary from such acquired lands in that particular area of the System within such counties, whichever is greater. * * *

* * * * *

"(f) The disposition or sale of surplus animals, minerals, and other products, the grant of privileges, and the carrying out of any other activities that result in the collection of revenues within any areas of the System may be accomplished upon such terms, conditions, or regulations, including sale in the open markets, as the Secretary shall determine to be in the best interest of the United States * * *."

The Attorney General thus seeks to explain the addition to 16 U.S.C. § 715s of the reference to minerals as confirming "* * * the existing practice of distributing oil and gas revenues from wildlife refuges created from acquired lands pursuant to section 715s, and oil and gas revenues from wildlife refuges created from reserved public domain pursuant to the Mineral Leasing Act of 1920. * * *" The language of section 715s, as amended, compels a different conclusion. It adds revenues from minerals to the fund established by subsection (a), and provides for distribution of net receipts in the fund, according to the formulas prescribed in subsections (c)(1) and (c)(2), both to counties in which acquired refuges are situated and to those in which reserved refuges are situated. There is no way to read this provision as excepting oil and gas revenues from the fund, but only to the extent they derive from refuges on reserved lands, without doing violence to the plain meaning of the statute.

The Attorney General argues, in effect, that the Mineral Leasing Act, the Mineral Leasing Act for Acquired Lands, and the 1964 amendment to section 715s, can be interpreted consistently only by assuming that the addition to the list of refuge products in section 715s of "minerals" was intended only to confirm the existing scheme of distribution whereby oil and gas revenues from leases on acquired lands were distributed to the counties by virtue of the Mineral Leasing Act for Acquired Lands. However, this interpretation makes the addition of the term "minerals" in subsections 715s(a) and (f) mere surplusage. The Mineral Leasing Act for Acquired Lands provides that all receipts from leases on acquired lands are to be paid into the same funds and distributed in the same manner as prescribed for other receipts from the lands affected by the lease. Hence, the addition of "minerals" to 16 U.S.C. § 715s was not necessary to continue the existing scheme of distribution with respect to acquired lands.

That is, the Congress could far more clearly have confirmed the existing practice, if indeed that had been its intent, by omitting the reference to "minerals" when it amended section 715s, or by stating explicitly the purported distinction between mineral lease revenues from acquired lands and from reserved lands. Thus, as already noted, the Attorney General's interpretation requires a strained reading of the language of 16 U.S.C. § 715s.

The Attorney General cites several elements of the legislative history of the 1964 amendment to 16 U.S.C. § 715s which, he contends, are consistent with the view that the bills then under consideration to amend that section were understood at the time to be intended to affect revenues only on acquired lands. The Attorney General contends that the legislative history of the 1964 amendment permits no other conclusion.

The support for the Attorney General's position in the legislative history is neither explicit nor unambiguous. There are no statements in the legislative history to the effect that the addition of the word "minerals" was intended only to confirm the existing scheme of distribution. Rather, the Attorney General relies on statements to the effect that, for example, "* * * As to the reserved public lands within the system, there would be no change in the present payment of 25 percent of net receipts from such lands." H.R. Rep. No. 1753, 88th Cong., 2d Sess. 3 (1964). That statement, however, and other similar ones cited by the Attorney General, do not compel the conclusion that mineral lease receipts are not to be included in net receipts, with respect to reserved lands. The statements cited are consistent with the interpretation that, with respect to reserved lands, the 25 percent rate remains unchanged--in contrast to the situation with respect to acquired lands, where a new alternate rate was to be established--but that mineral receipts, formerly not part of the net receipts, are now to be included therein for both reserved and acquired lands.

In this connection, there are other statements in the legislative history which track the language of the statute:

"[16 U.S.C. § 715s(a)] provides that * * * all revenues collected by the Secretary of the Interior from the disposition of certain specified products [including minerals] * * * shall be covered into a special fund in the U.S. Treasury to be expended without further appropriation as prescribed in subsection (c) of this section. * * *"

* * * * *

"[16 U.S.C. § 715s(c)(1)] would provide for the payment out of net receipts in the fund to each county in which reserved public lands within the national wildlife refuge system are located, an amount equal to 25 percent of the net receipts collected by the Secretary from such reserved lands in that particular area, as is the case under the present law. * * *" H.R. Rep. No. 1753, supra, 11.

The reference, at the close of the quotation, to continuing the system in effect "under the present law," may reasonably be understood, as contended above, to refer solely to the preservation of the 25 percent rate applicable to reserved lands receipts, as opposed to the establishment of an alternate 3/4 of 1 percent rate applicable to receipts from acquired lands. On that assumption, this portion of the legislative history, and others to like effect, are fully consistent with the view that the amount payable to counties in which reserved wildlife refuge lands are located is to be 25 percent of net receipts in the fund, including receipts from mineral leases.

As the Attorney General points out, the table which appears in the legislative history to show the effect of the pending bill on refuge revenues, shows no change in payments to Alaska with respect to revenues from refuges on reserved lands, whereas at least one of those refuges produced substantial oil revenues at the time. S. Rep. No. 1096, 88th Cong., 2d Sess. 13-21 (1964). It is not clear to us that the table, inserted to illustrate the particular difficulties the Department was having with respect to acquired lands, necessarily supports the interpretation urged by the Attorney General. If it does, the legislative history is to that extent at odds with the plain language of the statute.

There was considerable discussion in their respective submissions, by the Attorney General and the Solicitor of the Department of the

Interior as to whether or not, in such circumstances, the "plain meaning" rule of statutory construction precludes consideration of the legislative history. In our view, even conceding that the legislative history is relevant, for the reasons discussed above, we do not find it to be so unequivocally supportive of the Attorney General's view as to justify us in ignoring the plain language of the statute.

The Attorney General argues further that the effect of the plain meaning rule, even if it were applicable, should in this case be overcome by the rule that implied repeals are disfavored. We said in our earlier decision that "* * * there is an apparent conflict between section 715s and the Mineral Leasing Act * * *," (55 Comp. Gen. at 119), and that the later enactment, section 715s, was controlling. The Attorney General describes this as a repeal by implication of section 35 of the Mineral Leasing Act, 30 U.S.C. § 191 (1970), and relies on the general rule that repeal by implication is disfavored, citing Morton v. Mancari, 417 U.S. 535 (1974) and Sutherland, Statutory Construction, §§ 23.09, 23.10 (4th ed. Sands 1972). He asserts that the construction of the 1964 amendment which he urges would avoid the disfavored implied repeal.

The Sutherland treatise on statutory construction, while it states the rule that there is a presumption against repeal by implication, is actually quite critical of the mechanical application of that presumption, pointing out that it runs counter to the real probability that the purpose of new legislation is to change prior law, and in doing so to displace or repeal some part of it. Sutherland, § 23.10. The treatise goes on to say that—

> "* * * It is spurious and question begging to approach the decision of issues as to whether and how much a new law may have repealed provisions of earlier ones with a bias in the form of a presumption which contradicts probability." Id.

As to the application of this rule, the treatise makes it clear that it is not an absolute rule but merely a presumption which can be overcome:

> "When a subsequent enactment covering a field of operation coterminous with a prior statute cannot by any reasonable construction be given effect while the prior law remains in operative existence because of irreconcilable conflict between the two acts,

the latest legislative expression prevails, and the prior law yields to the extent of the conflict.

"Conversely, if the inconsistency between a later act and an earlier one is not fatal to the operation of either, the two may stand together and no repeal will be effected." Id., § 23.09 (Footnotes omitted.)

In this case, it appears to us that the construction of the statute urged by the Attorney General is not a reasonable one, and therefore that the presumption against repeal by implication is overcome.

It should be noted that section 35 of the Mineral Leasing Act prescribes the disposition of all moneys received from sales, bonuses, royalties, and rental of public lands under the provisions of that act. Section 715s(f), as added in 1964, allows the Secretary to dispose of minerals on lands within the national wildlife refuge system "* * * upon such terms, conditions, or regulations * * * as the Secretary shall determine to be in the best interest of the United States * * *." Thus, the 1964 amendment to section 715s does not repeal section 35 of the Mineral Leasing Act in its entirety. Rather, its effect is to create an exception to the Mineral Leasing Act scheme of distribution of funds with respect to mineral rights on public domain lands withdrawn for wildlife refuge purposes, without affecting the application of the Mineral Leasing Act to other public domain lands.

The Attorney General argues, in the alternative, that if the Mineral Leasing Act was impliedly repealed by the 1964 amendment to section 715s, "* * * that repeal would itself have been impliedly repealed and the Mineral Leasing Act reinstated with respect to public lands in Alaska by the Alaska Native Claims Settlement Act of 1971. * * *"

Section 9(d) of the Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. §§ 1601-1624 (Supp. IV, 1974), provides as follows:

"All bonuses, rentals, and royalties received by the United States after December 18, 1971, from the disposition by it of such minerals in public lands in Alaska shall be distributed as provided in the Alaska

> Statehood Act, except that prior to calculating the shares of the State and the United States as set forth in such Act, (1) a royalty of 2 per centum upon the gross value of such minerals produced (as such gross value is determined for royalty purposes under the sale or lease), and (2) 2 per centum of all rentals and bonuses shall be deducted and paid into the Alaska Native Fund. The respective shares of the State and the United States shall be calculated on the remaining balance." 43 U.S.C. § 1603(d) (Supp. IV, 1974).

The Attorney General reads this as an adoption of the scheme of distribution in effect in 1959, when Alaska was admitted into the Union, and he asserts that this was the scheme of the Mineral Leasing Act, citing section 28(b) of the Statehood Act.

In response to this, the Solicitor states:

> "But the Alaska Statehood Act, §28(b), does not provide that all federal mineral receipts in Alaska are to be distributed under the Mineral Leasing Act. It merely amends the Mineral Leasing Act to refer to Alaska as a State rather than a Territory. Thus, the Alaska Statehood Act merely refers to Alaska's share of the revenues which are distributed under the Mineral Leasing Act; it does not make any provisions as to which revenues are so distributed. Therefore, there is no apparent conflict between the Alaska Native Claims Settlement Act and 16 U.S.C. § 715s due to the citation in ANCSA of the Alaska Statehood Act * * *" (Emphasis in original.)

We find the Solicitor's argument convincing. Section 28(b) of the Alaska Statehood Act, approved July 7, 1958, Pub. L. No. 85-508, 72 Stat. 339, appears to be merely a technical amendment, intended to conform the Mineral Leasing Act to the new status of Alaska as a State rather than a Territory, without substantive effect. We find no indication that the 1971 Act was intended to revert to the scheme of distribution of mineral lease receipts in effect in 1959. We agree with the Solicitor that section 9(d) of the ANCSA did not effect an implied repeal of the 1964 amendment to 16 U.S.C. § 715s with respect to Alaska.

We recognize that our decision operates to deprive the State of Alaska of revenues. Nevertheless, in view of the foregoing, we are compelled to conclude that the statute should be carried out according to its terms unless expressly modified by subsequent legislative action of the Congress.

(SIGNED)

Comptroller General
of the United States