



DIGEST : NO CIRCULATION (For 30 days: CONG.) - JGM 569

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

Released 3/24/83

In Reply
Refer To: B-203504

July 22, 1981

The Honorable John Paul Hammerschmidt
House of Representatives

Dear Mr. Hammerschmidt:

You requested our opinion concerning whether local governments are entitled to a share of the moneys derived from mineral leasing at nearby military installations. You refer to recent oil and gas leasing at Fort Chaffee, Arkansas, conducted by the Bureau of Land Management of the Department of the Interior. This was done with the consent of the Department of the Army in accord with a recent statutory change which permits such leasing on acquired lands of the United States used for military purposes. You indicate that the proceeds of approximately \$43 million are to be deposited as miscellaneous receipts in the General Fund of the U.S. Treasury. Apparently, this is the first of a number of similar leases to be awarded at military installations and may constitute an important precedent for future leases.

Additionally, you refer to legislation introduced by you in the House of Representatives (H.R. 2990) and by Senators Bumpers and Pryor in the Senate (S. 859) which would distribute the proceeds of leases on acquired lands in the same manner as is now done for lands in the United States' public domain.

The question of distribution of the proceeds of the Fort Chaffee lease relating to acquired lands is the subject of an action brought in the U.S. District Court for the Western District of Arkansas (C.A. 81-2097) by Fort Smith School District No. 100 and Greenwood School District No. 25 against the Secretaries of the Interior, Treasury and Defense. On June 26, 1981, the plaintiffs' motion for a preliminary injunction was denied. Although we understand that the court indicated doubt as to its eventual success, the suit was not dismissed.

Ordinarily our Office declines to consider questions which are the subject of pending litigation. In this case, however, the necessity for legislation allowing distribution of a portion of lease proceeds from acquired lands used for military or naval purposes to state and local governments depends on whether such distribution is allowed under present law. Therefore, to assist the Congress in its consideration of H.R. 2990 and S. 859, we will consider the question presented in your submission. However, a contrary decision on the merits in the pending litigation on the Fort Chaffee lease which is not appealed, would be controlling with respect to this case.

B-203504

As explained below, it is our opinion that oil and gas lease proceeds from acquired lands situated on military installations, including Fort Chaffee, are properly miscellaneous receipts to be deposited in the Treasury's General Fund. A statutory change as proposed in H.R. 2990 and S. 859, 97th Congress, 1st Session, would be necessary to authorize paying a part of the lease proceeds to states or to local governments.

Factual Background

We have been informally advised by the Department of the Interior that two leases were issued for Fort Chaffee, one for the acquired lands for which \$42,872,000 was received, and the other for 80 acres of public domain land for which \$128,000 was received. (Acquired lands are lands which have been granted or sold to the United States, as distinct from United States public domain lands, which usually have never been in state or private ownership. See Watt v. Alaska, ___ U.S. ___, 101 S. Ct. 1673, 1676 n. 7 (1981)). One half of the receipts from the public domain land will be distributed to local governments in accord with the provisions of the Mineral Leasing Act of 1920 (30 U.S.C. § 191). The acquired land proceeds were placed in a suspense account pending the outcome of the motion for a preliminary injunction.

We requested a report from the Secretary of the Army on this matter. In response to our request, the Chief Counsel of the Office of the Chief of Engineers concluded that the money rentals derived from mineral leasing at Fort Chaffee under the authority of the Mineral Leasing Act for Acquired Lands are to be deposited into the Treasury as miscellaneous receipts. Additionally, we have also received, informally, a copy of a memorandum opinion prepared by the Department of the Interior's Acting Associate Solicitor, Division of Energy and Resources, to the same effect.

Legal Background

Section 3 of the Mineral Leasing Act for Acquired Lands, as amended, 30 U.S.C. § 352, currently provides in pertinent part as follows:

"* * * all deposits of coal, phosphate, oil, oil shale, gas, sodium, potassium, and sulfur which are owned * * * by the United States and which are within the lands acquired by the United States * * * may be leased by the Secretary [of the Interior] under the same conditions as contained in the leasing provisions of the mineral leasing laws, subject to the provisions hereof. * * * No mineral deposit covered by this section shall be leased except with the consent of the

B-203504

head of the executive department * * * having jurisdiction over the lands containing such deposit * * * and subject to such conditions as that official may prescribe to insure the adequate utilization of the lands for the primary purposes for which they have been acquired or are being administered * * *."

P.L. 80-381

As originally enacted (61 Stat. 913, 1914, August 7, 1947) this section provided leasing authority except on certain lands, including lands "set apart for military or naval purposes". This exception was removed by section 12 of the Federal Coal Leasing Amendments Act of 1976, Pub. L. No. 94-377, 90 Stat. 1083, ~~1090~~. *30 U.S.C. 184 note*

Concerning the disposition of receipts, section 6 of the Act, 30 U.S.C. § 355, ~~provides~~ that:

"All receipts derived from leases issued under the authority of this Act shall be paid into the same funds or accounts in the Treasury and shall be distributed in the same manner as prescribed for other receipts from the lands affected by the lease, the intention of this provision being that this Act shall not affect the distribution of receipts pursuant to legislation applicable to such lands * * *."

Military leasing of property is the subject of 10 U.S.C. § 2667, which as pertinent to our consideration provides:

"(a) Whenever the Secretary of a military department considers it advantageous to the United States, he may lease to such lessee and upon such terms as he considers will promote the national defense or be in the public interest, real or personal property * * *."

* * * * *

"(d) Money rentals received by the United States directly from a lease under this section shall be covered into the Treasury as miscellaneous receipts * * *."

Analysis

The Mineral Leasing Act for Acquired Lands enacted in 1947 had as its purpose:

B-203504

"* * * to promote and encourage the development of the ore [oil], gas and other minerals * * * on a uniform basis under the jurisdiction of the Department of the Interior." H.R. Rep. No. 550, 80th Cong., 1st Sess. 2 (1947).

However, until the passage of the Federal Coal Leasing Amendments Act of 1976, the general authority for oil and gas leasing on acquired lands was limited to those lands controlled by civilian departments and agencies of the Federal Government. With the 1976 amendment of section 3 of the Act, acquired lands under military jurisdiction became eligible for oil and gas leasing.

Section 6 of the Act (30 U.S.C. § 355) states that all receipts from these leases are to be paid to the same Treasury accounts and distributed in the same manner as prescribed for other receipts from the lands affected by the particular lease. See B-118678, June 11, 1976. This was emphasized by the statement in section 6 that the Act was not intended to affect the normal distribution of receipts from the type of land in question. Thus, for example, if the leases are on acquired lands in a national wildlife refuge, the oil and gas revenues are to be distributed under the terms of the Wildlife Refuge Revenue Sharing Act, 49 Stat. 383, ~~as would any other~~ revenues produced by lands in the refuge. See *Watt v Alaska*, ___ U.S. ___, 101 S. Ct. 1673, 1679 (1981). Similarly, revenues from oil and gas leases on acquired lands located in a military installation must be distributed in the same manner as any other revenue from military lands. June 18, 1976
30 USC 355

Under 10 U.S.C. § 2667, the applicable legislation for the leasing of real or personal property under the jurisdiction of a military department, the "money rentals" received are to be covered into the Treasury as miscellaneous receipts. Accordingly, it is clear that by operation of section 6 of the Act the proceeds of oil and gas leasing on acquired lands under military control are to be paid into the same Treasury account as would other rental or lease income from military lands--the General Fund of the Treasury.

This result is similar to and consistent with that required by 31 U.S.C. § 487 which provides that all proceeds of sales of public property of any kind, with certain stated exceptions "shall be deposited and covered into the Treasury as miscellaneous receipts * * * and shall not be withdrawn or applied, except in consequence of a subsequent appropriation made by law * * *." There are specific exceptions to this rule in other statutes. The provision in the Mineral Leasing Act of 1920 (30 U.S.C. § 191) under which the states or local governments receive 50 percent of rents, bonuses and royalties from mineral leasing on public domain land is such an exception.

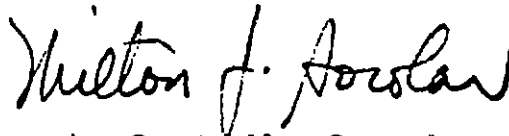
B-203504

Conclusion

It is our opinion that under current law oil and gas lease proceeds from acquired lands at Fort Chaffee, Arkansas, amounting to \$42,872,000 should be deposited in the Treasury's General Fund and no portion of those funds may be paid over to the State of Arkansas or to local governments in that state.

The proposed legislation to which you refer in your request, H.R. 2990 and S. 859, 97th Cong., 1st Sess., would amend 30 U.S.C. § 355 to provide that all receipts derived from leases on lands acquired for military or naval purposes, except the Naval Petroleum Reserves and National Oil Shale Reserves, would be disposed of in the same manner as receipts from sales, bonuses, royalties and rentals of public domain lands under the Mineral Leasing Act of 1920, 30 U.S.C. § 191. If enacted, this amendment would provide specific statutory approval for use by state and local governments of half of the receipts of the covered mineral leases for those leases entered into after January 1, 1981, which, of course, would include the recent leasing at Fort Chaffee.

Sincerely yours,



Acting Comptroller General
of the United States