

Secretary and made in accordance with such regulations as he shall provide—we believe it would be well to have the existence of such authority reiterated by Congress.

First, it will relieve doubts which might otherwise exist in the minds of title examiners and lending institutions that trust property may be disposed of under Secretarial regulations without the participation or affirmation of court-appointed guardians or conservators.

Second, while it would probably be possible under existing law to handle the disposition of trust property without the intervention of such guardians and conservators, and to pay the proceeds directly to the Indians concerned, their ability to function as free economic agents will be encumbered so long as they are apparently subject to court-established guardianships and conservatorships.

For example, without participation by his conservator, an Indian and the Bureau of Indian Affairs might successfully conclude a lease of some of the Indian's trust land to a third party, and require payment of rents to be made to the Bureau. The Bureau could then make the proceeds directly available to the Indian. But, because he was subject to a conservatorship under State law, the Indian's ability to utilize the money in any way involving the making of a formal contract would be greatly impaired. While he was subject to the conservatorship, it could be anticipated that any broker or banker with whom he attempted to open an account, or any merchant from whom he desired to purchase a major item of personalty, would insist that his conservator join in the transaction.

In our letter of April 2 we stated that:

"The Bureau of Indian Affairs will immediately assume sole and complete responsibility for the management of all trust properties. This means that all leases, sales and other dispositions of interests in trust lands are to be accomplished by Bureau of Indian Affairs personnel in consultation with the Indian owners and such business advisers and attorneys as may be retained, but with minimum involvement of guardians, conservators and their attorneys."

Because the Secretary is charged by law with the duty of supervising and approving transactions involving trust property, we believe that, except in situations where they can make real contributions, guardians and conservators appointed under State law should be precluded from participating in such transactions in order to relieve the Indians of the expense of such participation.

Subsection (c), proposed by both the band and the Department, authorizes the Secretary to require an accounting by court-appointed fiduciaries or by any other persons or entities having custody or possession of money or property belonging to any member of the band, and the return of such property to the United States to be held in trust for the individual Indian concerned. It provides a judicial remedy for failure to comply with these provisions. This subsection is comparable to subsection (c) of H.R. 13516, but is of broader scope. The latter is limited to trust property and income therefrom, and does not provide for return of money or property to the United States nor for a judicial remedy. The task force has found instances of faulty accounting for, and misuse of, nontrust funds. We think it would be unrealistic for Congress to limit remedies for the protection of the Agua Caliente Indians to situations involving trust property. The remedial powers granted the Secretary of this subsection are very similar to those which were provided by the Act of February 27, 1925 (43 Stat. 1008), for the protection of the Osage Indians.

Subsection (d), which has no counterpart in H.R. 13516, would confer broad power upon the Secretary to "use, advance, expend, exchange, deposit, dispose of, invest, and reinvest" money or property held in trust by the United States for individual Indians. Except for minors or incompetent adults, the consent of the Indian concerned would be required. Determinations of incompetency of adults would be made only after notice and hearing, and judicial review of such determinations would be afforded under the Administrative Procedure Act.

Present law narrowly restricts the authority of the Secretary to invest and otherwise employ trust funds of an individual Indian, even with his participation. This subsection would broaden the uses of such funds which could be made by the Indian owners and the Secretary acting together, while retaining the trust character of the funds. For example, it would permit trust agreements with financial institutions for management of funds. It would also enable the Secretary to make fiduciary arrangements for Indians in need of assistance in managing their affairs other than under State law.