

letter of 1963. The individual needs the assistance, if he has money with which to pay for it he will be charged accordingly, if he does not have money with which to pay for it, he may not be charged, or the charges may be referred. Unfortunately, in the case of an Indian when the only money he has is income it is illegal for the payments to be deferred because without the approval of the Bureau of Indian Affairs future income cannot be encumbered for present services. In virtually every instance when the Bureau has been requested to permit payment of fees from future income the Bureau has refused to give this permission thus resulting in a present award of fees immediately payable which, had the Bureau given consent would have been spread over a period of years.

The Bureau's attitude, therefore, has resulted in what is known as "front-loading". If a sixty-five (65) year lease is negotiated the fees attributal to that lease and the legal and other services attendant upon it would normally be payable out of income when, as and if it is received. The Bureau's refusal to permit this spreading of awarding of fees results in an Order for the immediate payment of fees which when compared to immediate income compares very unfavorably.

The Conservatorship Program is a Fiduciary one. A Fiduciary appointed under the laws of this State, or virtually any other State in the Union has the responsibility for managing the total assets of his Ward. This is true whether under the Conservatorship Program or under the Guardianship Program.

See Probate Code, Sections 1500 and 1852 of the California Probate Code.

An ordinary fee for a fiduciary is based upon the amount of assets for which the fiduciary is responsible during the Accounting Period in which the fees are awarded. If, for instance, an estate fiduciary is chargeable in one year with a \$100,000.00 estate and the next year that estate remains of the same size his fee for the succeeding year will be dependent upon the amount of money for which he is responsible, to-wit: \$100,000.00.

Based upon a public statement made by Secretary Udall on March 7th of this year the Audit covered by this Report averages eight (8) Accountings for each estate.

Looking then only to the funds upon which ordinary fees for fiduciaries are to be based, we find the following factual and monetary situations.

It is customary to base fiduciary fees of an ordinary nature on the total assets of the estate to be managed or developed during every Accounting Period. In order to arrive at accurate percentages for the eight Accounting periods now covered it is therefore necessary to take the total non-Trust estate of each Indian estate for every Accounting, add this sum and we arrive at the figure of \$35,747,486.94 being the total non-Trust estates administered by these fiduciaries over the entire period.

The total expenses, including attorney's fees, conservator's fees, guardian's fees, miscellaneous charges such as accounting fees, real estate broker's fees, fiduciary bonds and including extra-ordinary services of every kind and nature whatsoever, for the period of this fiduciary program has been \$1,018,660.93. The percentage of total expenses to total non-Trust estates is thus not 44% as suggested by the Report but is 5.20% for the entire period.

The fiduciaries of the Agua Caliente Band of Mission Indians are chargeable with the management and development of the Indian's Trust as well as non-Trust Estates. In a non-Indian Conservatorship or Guardianship the Ward would hold legal title to the real property but the fiduciary would be responsible for its management and control. The fiduciary would be compensated by way of ordinary fees, for the value of the estates thus held by the Ward. In these Indiana Conservatorships the United States Government holds title to the Trust property. The fiduciaries do not use the value of the Trust properties in computation of their ordinary fees but list as value of each parcel held by the Government but managed and developed by them at \$1.00 a parcel.

If the Indians had been treated on the same basis as non-Indians in these fiduciary matters of computation of ordinary fees, we would find that the total fees, not just ordinary fees, but all fees, would bear a relationship of not 44%, but .0653% of the total responsibility of the fiduciary.

This computation is supported by the figures already before this Committee on page 2 of the Reply of the Guardians and Conservator's Association, which Reply was forwarded to Congressman Tunney on April 17, 1968.

It is interesting to note in passing, that the dollar per parcel value listed by fiduciaries, rather than full market value, was a practice instituted by Judge