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COMPTROLLER GENERAL OF THE UNITED STATES

WASHINGTON, D.C. 20548

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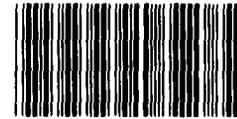
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RELEASED

B-197031

JANUARY 29, 1980

The Honorable Sidney R. Yates
 Chairman, Subcommittee on Interior
 and Related Agencies
 Committee on Appropriations 00306
 House of Representatives



111673

Dear Mr. Chairman:

Subject: [Review of Anti-Deficiency Act violations
 of the Navajo and Hopi Indian Relocation
 Commission] (FGMSD-80-17)

33 Your March 30, 1979, letter (see encl. II) asked us to
 (1) review whether the Navajo and Hopi Indian Relocation - Acco 864
 Commission had committed an Anti-Deficiency Act violation in
 August 1978 and (2) determine the extent and scope of serv-
 ices the Department of the Interior is obligated to provide
 the Commission without reimbursement. According to Interior
 accounting records, the Commission did commit a violation in
 August 1978 and committed violations during 6 of the 12 months
 in fiscal 1978. None of these violations was properly re-
 ported to the President and the Congress.

One violation occurred in late August 1978 when the Com-
 mission's recorded obligations for its operating expenses
 exceeded its available authority by about \$16,330. On
 September 8, 1978, the Commission's fiscal 1978 supplemental
 appropriation of \$123,000 became available for use. This
 amount was sufficient to cover the overobligation and a de-
 ficiency appropriation will not be required.

The August violation occurred after an Interior official
 decided against providing any further financial assistance.
 The decision was based on the financial manager's interpreta-
 tion of 31 U.S.C. 628 as precluding the use of Interior funds
 to assist the Commission. That law provides that appropria-
 tions must be expended only for the purpose for which they
 were appropriated.

Our review disclosed Interior's reluctance to provide
 the Commission administrative and housekeeping services on
 a nonreimbursable basis. For example, Interior initially
 refused to furnish legal services to the Commission, thereby
 necessitating the expenditure of the Commission's operation
 expense funds for contract legal services. The extent to

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which Interior is obligated to provide administrative and housekeeping services to the Commission pursuant to section 12(h) of Public Law 93-531 has been presented to our office for decision by Interior's financial manager and is presently under consideration.

Also, Commission officials have experienced problems with the financial services provided by Interior. The financial reports are usually late and incomplete, even though they are essential for the Commission to effectively and efficiently manage its funds. The Commission has apprised Interior officials of the problem, and some corrective action has been taken; however, more needs to be done.

Additionally, the Commission experienced delays in Interior's paying for space obtained for the Commission in a commercial building. From January 1977 through March 1979, Interior issued six purchase orders, or contracts, for the Commission's space without prior delegation of leasing authority, as required by law, from the Administrator of General Services. This was done because of General Services Administration delays in obtaining space for the Commission. Interior's financial manager withheld payment totaling about \$38,000 to the lessor in the absence of authority to enter into the lease. After this problem surfaced, General Services Administration officials negotiated a lease so that past-due payments could be properly made. However, payment was not made until 5 months after the Commission had moved into the offices.

S. 751, 96th Congress, first session, would amend section 12 of Public Law 93-531 to authorize the Commission to provide its own administrative and housekeeping services and to provide for independent legal counsel. Passage of this legislation would eliminate the need for Interior to consider the extent of administrative and housekeeping services it is obligated to provide on a nonreimbursable basis.

We are recommending that, unless S. 751 is enacted, the Secretary:

- Ascertain the financial services and reports needed by the Commission and promptly provide them.
- Provide the Commission with other nonreimbursable services consistent with our forthcoming decision on this matter.

We are further recommending that the Chairperson of the Commission prepare a report to the President and the Congress concerning the anti-deficiency violations, as required by 31 U.S.C. 665.

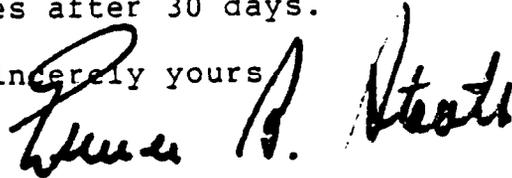
We received written comments from Interior. (See encl. III.) Interior agreed that an over-obligation of the Commission's appropriated funds had occurred but disagreed that financial services were provided ineffectively.

We also received written comments from the Commission. (See encl. IV.) The Commission generally agreed with our findings but is reluctant to comply with the recommendation that the Chairperson prepare an anti-deficiency report.

The agency comments did not provide evidence to warrant substantial revisions of our report. Our response to them is contained in enclosure I.

As your office agreed, we are forwarding copies of this report to the Secretary of the Interior; the Chairperson, Navajo and Hopi Indian Relocation Commission; the Director, Office of Management and Budget; and Senator Dennis DeConcini. Unless you publicly release this report earlier, we will send copies to other interested parties after 30 days.

Sincerely yours



Comptroller General
of the United States

Enclosures - 4

ANTI-DEFICIENCY VIOLATIONS AND RELATED PROBLEMSOF THE NAVAJO AND HOPI INDIAN RELOCATION COMMISSION

The Navajo and Hopi Indian Relocation Commission was established by Public Law 93-531, dated December 22, 1974. Its mission is to carry out activities associated with settling a land dispute between the Navajo and Hopi Indian Tribes. The Commission receives a no-year appropriation for its operating costs under which unobligated amounts at the end of one fiscal year do not expire but are carried forward into the next. In addition, section 12(h) of Public Law 93-531 states that:

"The Department of the Interior shall furnish, on a non-reimbursable basis, necessary administrative and housekeeping services for the Commission."

On March 30, 1979, the Chairman, Subcommittee on Interior and Related Agencies, House Committee on Appropriations, asked us to ascertain whether the Commission had exceeded the obligational authority available for its operating costs in fiscal 1978. The Chairman asked for our review to also include the extent and scope of services the Interior Department is obligated to provide the Commission on a nonreimbursable basis. Our findings follow.

ANTI-DEFICIENCY VIOLATIONS NOT REPORTED

Under agreements with the Commission, Interior maintains the accounting and fund control records for all appropriations made available to the Commission. Interior's records show that the Commission's obligations for its operating costs exceeded the available authority by about \$16,330 as of the end of August 1978, in violation of 31 U.S.C. 665 (the Anti-Deficiency Act). This violation was not reported by the head of the Commission as required by law because the Commission believed that Interior had reneged on its verbal assurances that needed financial assistance would be provided.

The Commission's unobligated balance for operating costs was \$130,787 at the beginning of fiscal 1978. This, coupled with an appropriation of \$500,000 and additional funding of \$59,000 from the Bureau of Indian Affairs, gave the Commission \$689,787 in total obligational authority for fiscal 1978 to operate the Commission. In early fiscal 1978, the Commission realized that it would need a \$405,000 supplemental appropriation for operating costs. The Commission started action to obtain the supplemental appropriation, but it did not become

available for use until September 8, 1978, almost the end of the fiscal year. Interior's records show that as of August 31, 1978, the Commission's valid obligations amounted to \$706,117, or about \$16,330 more than the available authority. This condition has been recognized by Interior and Commission officials as an apparent anti-deficiency violation, but they have not made a final decision on the violation.

The requirements for reporting the violation are defined in 31 U.S.C. 665. This law specifies that the agency head will furnish to the President, through the Director of the Office of Management and Budget, and to the Congress information on violations where an officer or employee of the United States has:

--Made or authorized an expenditure from or created or authorized an obligation under any appropriation or fund in excess of the amount available therein.

--Authorized or created an obligation or made an expenditure in excess of an apportionment or reapportionment.

Interior officials prepared a report on the violation and submitted it to the Commission head for distribution through channels. The Commissioner, however, refused to sign the letter because, according to Commission officials, Interior had reneged on its verbal assurances that needed financial assistance would be provided.

While we believe it was an invalid justification for not reporting the violation, Interior officials apparently made a commitment to assist the Commission with the unanticipated financial burden brought on by receiving about 1,000 more applications for relocation benefits than it had planned to process in fiscal 1978. This increased volume had not been considered in the fiscal 1978 appropriation for the Commission's operating costs. Therefore, a supplemental appropriation became necessary.

During hearings in February 1978 on the supplemental request before the Subcommittee on Interior and Related Agencies, House Committee on Appropriations, the Commission explained the financial crisis. It said all voluntary relocations of Indian people would be suspended by mid-April without additional resources and, in fact, a reduction in its work force was planned to alleviate the crisis. As this would have adversely affected the relocation efforts, the Subcommittee advised the Commission to seek assistance from the Bureau of Indian Affairs and the Office of the Secretary of the Interior.

After the hearings a series of actions took place showing that the Commission had received commitments to help finance its administrative costs until the supplemental appropriation was passed. The Bureau of Indian Affairs agreed to pay for population information the Commission was gathering. An agreement was signed in May 1978 between the two parties, and \$59,000 was transferred to the Commission to obtain the data. The agreement was made on the theory that population information to be developed by the Commission was also of benefit to the Bureau in carrying out its statutory responsibilities.

Commission officials also contend they talked with Interior officials about the types of costs that Interior would finance. This contention is supported by an agreement mailed to the Office of the Secretary delineating certain Commission costs, such as rent, communications, vehicles, and equipment, that the Office of the Secretary would absorb. Additionally, at the request of an Interior official, a spending plan was prepared to supplement the agreement. Neither the agreement nor the plan was acted upon by Interior officials, and despite letters to key Interior officials, no written acknowledgement was received by the Commission. Interior did, however, pay for some of the Commission's rental and supply costs in the last two quarters of fiscal 1978.

Other evidence indicates that Interior agreed to give the Commission financial assistance. For example, as shown below, Interior's records show that the Commission committed anti-deficiency violations six times in fiscal 1978 because its recorded obligations exceeded amounts authorized.

Status of Obligational Authority

<u>Date</u>	<u>Amount allotted</u>	<u>Cumulative authority</u>	<u>Cumulative obligations</u>	<u>Unobligated balance</u>
October 1977	\$158,000	\$158,000	\$108,611	\$49,389
November 1977	-	158,000	200,271	(42,271)
December 1977	-	158,000	267,165	(109,165)
January 1978	158,000	316,000	244,322	71,678
February 1978	-	316,000	324,590	(8,590)
March 1978	-	316,000	340,413	(24,413)
April 1978	173,000	489,000	381,492	107,508
May 1978	-	489,000	431,165	57,835
June 1978	-	489,000	531,004	(42,004)
July 1978	200,787	689,787	591,688	98,099
August 1978	-	689,787	706,117	(16,330)

The Commission was never told to report these other violations, according to Interior's acting financial manager. He said that he was aware of Interior's verbal agreement to give the Commission financial assistance. He had made adjustments to keep the financial reports sent to the Office of Management and Budget from showing overobligations. The adjustments involved reducing the amount of accruals for salary and benefits and changing the time that obligations were recorded.

Interior officials determined in August 1978 that these adjustments were improper. Thus they instructed the new financial manager to make sure all applicable laws were followed regarding financial management practices.

FINANCIAL MANAGER'S DECISION TO STOP ASSISTANCE

In fiscal 1978, Interior paid for some Commission rent and office supplies expenses, as follows:

	<u>Amount</u>
Rent:	
3d quarter	\$ 6,500
4th quarter	6,600
Office supplies:	
4th quarter	<u>1,250</u>
Total	<u>\$14,350</u>

The rent was paid from the Office of the Secretary's salary and expense appropriation. The office supplies expense was absorbed by the Secretary's Working Capital Fund, which is normally used to furnish services to organizations on a reimbursable basis (43 U.S.C. 1467). The extent to which Interior is obligated to provide administrative and house-keeping services to the Commission pursuant to section 12(h) of Public Law 93-531 is presently under consideration by our office and a separate decision will be issued on this question.

Financial support, however, was not provided in August 1978 by the new financial manager in his efforts to use proper financial management practices. He cited 31 U.S.C. 628 as precluding the use of Interior's funds to pay for any Commission operating expenses. This statute generally prohibits appropriated funds from being used for purposes other than for which the funds are appropriated and therefore precludes the augmentation of one appropriation with funds from another, unless authorized by law.

QUESTIONS AS TO INTERIOR'S
RESPONSIBILITY TO PROVIDE SERVICES
ON A NONREIMBURSABLE BASIS

Section 12(h) of Public Law 93-531 requires Interior to provide the Commission administrative and housekeeping services on a nonreimbursable basis.

During the early stages of the Commission's operations, Interior and the Commission apparently did not attempt to define the intended scope of administrative and housekeeping services. The Bureau of Indian Affairs provided the Commission various fiscal and personnel services, which were funded through the Bureau's salary and expense appropriations. In addition, the Commission sought and received separate appropriations to finance its operating expenses under section 25(a)(5) of Public Law 93-531, which authorized the annual appropriation of not to exceed \$500,000 "for the expenses of

the Commission." This amount was subsequently raised to \$1 million by Public Law 96-40, July 30, 1979. These operating expenses encompassed the Commission's anticipated expenses for rent, utilities, communications, printing, supplies and materials, equipment, and other similar expenses.

In February 1977 Interior and the Commission entered into a memorandum of understanding for the purpose of defining Interior's responsibilities for furnishing administrative and housekeeping services. The services specified in the memorandum were those relating to budgeting, accounting, financial reporting, personnel, procurement, property management and other general services. The memorandum of understanding stated that these services were to be provided on a reimbursable basis. That is, the Commission was to advance to Interior, at the beginning of each fiscal year, an amount sufficient to cover their cost.

Commission officials believe that the Commission should not be required to reimburse Interior for the services because reimbursement would conflict with section 12(h). They also believe that the Commission's operating expense appropriation should be used for salaries, benefits, and travel only and that all other expenses which have been included in their appropriation (rent, utilities, communications, and equipment) should be classified as administrative and housekeeping services and therefore furnished on a nonreimbursable basis by Interior.

As a result of the serious funding problems that the Commission experienced during fiscal 1978, Interior's regional and associate solicitors reexamined Interior's interpretation of its responsibilities under section 12(h). In a January 19, 1979, memorandum the regional solicitor concluded that the memorandum of understanding was in direct conflict with section 12(h), by requiring the Commission to reimburse Interior for the services which Interior may furnish. He also defined administrative services to be provided from Interior's appropriations (after stating that the Commission's appropriations should cover only salaries of certain individuals and personnel services) as:

"All other expenses of a housekeeping or administrative nature, including office rent, telephone, furniture, other equipment, stenographic and clerical services, etc., are to be borne by the Department on a nonreimbursable basis."

He therefore recommended that the memorandum of understanding be amended to include Interior's furnishing of the specified services on a nonreimbursable basis. However, Interior's

associate solicitor has concluded that Interior should be reimbursed for any services provided by Interior which are covered by the Commission's appropriation for operating expenses. This issue will be covered in our separate opinion.

PROMPT SERVICES NOT ALWAYS PROVIDED

Interior has provided all accounting and some contracting services for the Commission since its inception. Since April 1977 the Commission's accounting services have been provided by the accounting system operated by Interior's Office of the Secretary, which had not been submitted to us for approval at the time of our review. After we sent our draft report to Interior for comment, this system was approved. For reasons discussed below, the services have not always been of the quality necessary for the Commission to effectively carry out its responsibilities.

The Commission had problems with the accounting reports that Interior provided in fiscal 1978. The Commission never received a complete set of reports showing financial position, and the reports it did receive were consistently late. Our Policy and Procedures Manual for Guidance of Federal Agencies (2 GAO 8) states that all needed reports must be produced promptly to be of maximum usefulness. In the second month of fiscal 1979, the Commission started receiving additional reports that it feels are very useful; however, it still does not receive a full complement of reports, and some that are provided are 1 to 2 months late.

In addition, Interior could have helped the Commission avoid incurring about \$44,100 in obligations for legal services by providing such services itself. Until fiscal 1979 the services were not provided because Interior's solicitors believed there would be a conflict of interest. In April 1978 the solicitors decided the potential for a conflict of interest was no greater than in cases where they furnished legal services to two other Interior agencies with competing interests. In May 1978 Interior's deputy solicitor decided the phrase "housekeeping and administrative services" could be interpreted to include legal services. But Interior did not start providing them until October 1978, even though the House Report 95-1251, dated June 1, 1978, had stated that Interior should provide legal services.

The Commission also experienced problems with Interior's efforts to lease office space for it in a commercial building. From January 1977 to March 1979, Interior issued six purchase orders, or contracts, to obtain office space. This was done without getting prior delegation of leasing authority from

the General Services Administration, which has responsibility for acquiring space for all Federal agencies. According to Interior officials, this was necessary because of General Services Administration delays in providing the space needed by the Commission. Similarly, in March 1979, Interior leased new space in another building, in Flagstaff, Arizona, to handle the Commission's expanding staff without prior delegation of leasing authority from the General Services Administration.

In the absence of the delegated authority, Interior's new financial manager refused to certify payment totaling \$38,000 for this current lease from Commission funds. The Commission had already moved into the new space, and after being advised of this, the General Services Administration negotiated a lease so that the lessor could be paid. However, the Commission occupied the space for 5 months before the first payments were made.

PENDING LEGISLATION

S. 751, 96th Congress, first session, would amend section 12 of Public Law 93-531 to authorize the Commission to provide its own administrative and housekeeping services and to provide for independent legal counsel. The version of the Bill approved by the House would authorize the appropriation of \$3,000,000 annually for these purposes while the Senate version would authorize \$5,000,000. The Department of the Interior has objected to these provisions of the Bill on the ground that "it is not fiscally or administratively prudent to establish such separate staffs for a temporary agency." Nevertheless, passage of this legislation would eliminate the need for Interior to consider the extent of administrative and housekeeping services it is obligated to provide on a non-reimbursable basis.

CONCLUSIONS

Interior's records show that as of August 31, 1978, the Commission's valid obligations exceeded its available budget authority by about \$16,330 in violation of 31 U.S.C. 665, which requires a reporting of such a violation. In addition, a series of obligations exceeded funds apportioned. This also requires a report under 31 U.S.C. 665.

Differences of opinion still exist between Interior and the Commission as to the services which Interior should provide the Commission on a nonreimbursable basis under section 12(h) of Public Law 93-531. Our response to Interior's financial manager will address this issue. Unless S. 751 becomes law, Interior must promptly provide, consistent with GAO's decision, nonreimbursable services to the Commission.

RECOMMENDATIONS

Unless S. 751 becomes law, we recommend that the Secretary of the Interior:

- Ascertain the financial services and reports needed by the Commission and promptly provide them.
- Provide the Commission with other nonreimbursable services consistent with our forthcoming decision on this matter.

We further recommend that the Chairperson of the Commission prepare a report to the President and the Congress on the anti-deficiency violations, as required by 31 U.S.C. 665.

AGENCY COMMENTS

We received written comments from the Department of the Interior and the Navajo and Hopi Indian Relocation Commission. Neither agency provided us evidence to warrant substantive revisions in our report.

Department of the Interior

In response to our recommendations that it ascertain the financial services and reports needed by the Commission and promptly provide them, Interior stated that it has been responsive to the Commission's financial service and report needs made known to it. The comments did not contain evidence to support this contention. However, our review showed that before fiscal 1979, Interior was not responsive to the Commission's financial service and report needs. The reports that were provided were late and in some cases were inaccurate. Our report recognizes that, after fiscal 1978, improvements were made by Interior. The comments correctly noted that because of the relative independence of the Commission, it would not be proper for Interior to specify the services and reports which the Commission may need. However, it was the Commission that informed us that financial reports were not received promptly and financial services, such as bill paying, could have been provided more expeditiously.

Regarding legal services, we agree with Interior that the Commission has been inclined to use other than Department counsel. Furthermore, we agree with Interior that the Commission incurred the \$44,100 obligation for legal services of its own volition. However, these conditions developed after Interior refused to provide the Commission with legal services, leaving the Commission with no other viable choice. Since Interior reversed its position, the Commission has been inclined to use Interior's counsel.

Navajo and Hopi Indian Relocation Commission

The Commission expressed reservations about our recommendation that the Chairperson prepare a report, as required by the Anti-Deficiency Act, to the President and Congress concerning the anti-deficiency violation. The comments raised questions about whether the Commission had, in fact, violated the act.

The Commission did violate the act. On several occasions it obligated more funds than it was apportioned and one time exceeded the amount appropriated. Both instances violated the act.

The Commission's suggestion to retroactively apply the definition of "administrative and housekeeping services" is not a basis for eliminating the violation. It was only after the violation surfaced that the definition was questioned. Although the memorandum of understanding signed in February 1977 conflicts with Public Law 93-531 on the question of reimbursement, it shows that the Commission intended to pay for services received from Interior. The Commission budgeted and received appropriated funds for items which it now wishes to have reclassified so that Interior will be responsible for them. The definition should be prospective rather than retrospective. However, the Commission's report can explain the circumstances leading to the violation.

Finally, Commission officials contended that the Commission had not been credited with a sufficient balance when the accounting function was transferred from the Bureau of Indian Affairs to the Office of the Secretary of the Interior. The Commission could not provide any evidence to support this contention. We reviewed the financial records and concluded that all available obligational authority had been transferred to the Commission.



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

OCT 1 1979

Mr. D.L. Scantlebury
Director
Division of Financial and
General Management Studies
United States General Accounting Office
Washington, D.C. 20548

Dear Mr. Scantlebury:

This letter responds to your request for comments on the draft Comptroller General report to the Chairman, Subcommittee on Interior and Related Agencies, Committee on Appropriations entitled: "Review of Anti-Deficiency Act Violations of the Navajo and Hopi Indian Relocation Commission." The scope of this GAO report called for a review of a Commission-incurred Anti-Deficiency Act violation in August 1978, and a determination of the extent and scope of services the Interior Department is obligated to provide the Commission without reimbursement. Although the amount of the Anti-Deficiency violation was ascertained, the report did not determine the extent and scope of services that Interior should provide the Commission on a non-reimbursable basis. We feel that such a determination by GAO is critical in the resolution of what constitutes a proper payment for certification. Therefore, we urge GAO to complete this important aspect of their review before the final report is issued. In our response on the content of the report, we want to address first the specific findings and recommendations directed to the Secretary of the Interior. Second, we want to address other aspects of the report which appear to need amendment.

We accept the findings of the draft report with respect to the determination of an Anti-Deficiency Act violation by the Commission. The report contends that the underlying cause of the Commission's over-obligation, amounting to \$16,330 in August of 1978, was Interior's reluctance to provide the Commission with administrative and housekeeping services on a non-reimbursable basis as required by Public Law-93-531. On the basis of this contention, GAO recommended that the Secretary of Interior "...define, in conjunction with the Commission and appropriate congressional committees what non-reimbursable services Interior should provide to the Commission." We believe that such a recommendation is inappropriate, or premature at best, until GAO has made a determination as to what services are reimbursable. Once a determination has been made, we would have no objections to applying that determination retroactively if the Comptroller General decides that such application would not contravene pertinent statutory requirements or interpretations thereof.

With respect to the recommendation that the Secretary of the Interior "... ascertain the financial services and reports needed by the Commission and promptly provide such services and reports to satisfy those needs," we have been responsive to the Commission's financial service and report needs made known to us. Each month, we provide to the Commission the normal distribution of financial reports available to all other organizations serviced by the Office of the Secretary's accounting system. Moreover, at the Commission's request, we currently provide them each month with a set of specialized reports. Because of the relative independence of the Commission, we feel it would not be proper for the Secretary of Interior to specify the services and reports which the Commission may require to manage their affairs. However, we remain receptive to any discussions which would explore how the Office of the Secretary's accounting system could reasonably accommodate any additional needs determined by the Commission.

In addition to commenting on the recommendations presented in the report, we feel obligated to make further comments on what we perceive to be misleading inferences or misrepresentations of fact contained in the report:

On Page 9 of the report GAO maintains that the Financial Manager should have consulted with the Solicitor's Office before he curtailed payments for rent and office supplies for the Commission from Interior appropriated funds. Neither services nor payments were curtailed, but rather the propriety of such payments was questioned. A certifying official is not obliged to seek or abide by interpretations which appear to contravene pertinent statutory requirements or decisions barring payments. Such official's proper recourse is to the Comptroller General as the final interpreter on any question of law involved in a payment of vouchers presented to him for certification. Perhaps this recourse should be noted in your report.

The report on page 10 indicates that "Interior could have prevented the Commission from incurring about \$44,100 in obligations by providing it with legal services prior to fiscal 1979." The Commission has been inclined to utilize other than Department counsel. In B-114868.18, February 10, 1978, the Comptroller General determined that the "Commission does have the power to hire an attorney as an employee on a full-time, part-time or intermittent basis at a rate not in excess of the maximum rate for GS-18 of the General Schedule." It is our view that the Commission incurred the \$44,100 obligation for legal services of its own volition. Therefore,

this amount would be payable from its own appropriations and should not be viewed, on hindsight, as an expense for which the Department was or should have been responsible. Because of the relative independence of the Commission, it would have been difficult for the Department to have "prevented" the Commission from incurring the obligation.

Page 12 of the report refers to an agreement between the Department and the Commission. This page states "The agreement did not establish specific services to be provided but did state that these services were to be provided on a reimbursable basis." Contrary to that statement, the memorandum of understanding specified staffing services, budget services, financial services, funding and position control services, personnel services, procurement services, and property management and general services to be provided under this agreement.

The GAO report on page 16 infers that the Office of the Secretary has provided the Commission continuous accounting service since its inception in 1974. The Office of the Secretary has only been involved in providing accounting service since April 1977. Prior to that time accounting service was provided by the Bureau of Indian Affairs. The change to the Office of the Secretary's accounting system was due in part to financial weaknesses identified by GAO in its report on the Commission's operations FGMSD-77- (B-114868). Your report also notes on page 16 that the Office of the Secretary's accounting system is unapproved. We are pleased to report that this system was formally submitted and approved by the Comptroller General on September 17, 1979.

I hope that the above comments will be beneficial to you in the preparation of your final report.

Sincerely,



Acting ~~Deputy~~ Assistant Secretary for Policy,
Budget and Administration

UNITED STATES GOVERNMENT
NAVAJO & HOPI INDIAN RELOCATION COMMISSION
2717 N. STEVES BLVD. BLDG. A FLAGSTAFF, ARIZONA 86001

October 4, 1979

Mr. D. L. Scantlebury
Director
Division of Financial and General Management Studies
United States General Accounting Office
Washington, D. C. 20548

Dear Mr. Scantlebury:

Thank you for your letter of September 12, 1979, and the enclosed Draft of GAO's Report on an Anti-Deficiency Violation and Related Problems of the Navajo and Hopi Indian Relocation Commission. We thank you and your staff for the detailed analysis of this problem contained in the draft report. It is evident that considerable effort was required to unravel this knotty problem.

Our comments on the draft report are as follows:

1. We agree with the first two recommendations on Page 4 of the draft letter from the Comptroller General to Congressman Yates. We suggest one change in the wording of the first recommendation to more accurately reflect the findings of the draft report. The first recommendation, as changed, would read as follows:

--Define, in consultation with the Commission and appropriate congressional committees, what non-reimbursable services Interior is required to provide to the Commission. (Change underlined.)

2. We do not agree with the third recommendation that the Chairperson of the Commission prepare a report on an anti-deficiency violation.

The report correctly concludes that Interior is required to provide administrative and housekeeping services for the Commission on a non-reimbursable basis pursuant to Section 12(h) of P.L. 93-531. Without a definition of what services were intended by Congress to be included within the phrase "administrative and housekeeping services," and an audit of Interior's records based on such definition, it is impossible to determine whether there was an overobligation of funds. Both the Phoenix Field Solicitor, in his memorandum of January 19, 1979, and the Associate Solicitor, Division of General Law, in his memorandum of February 26, 1979, recommended that an audit be done with appropriate instructions covering what is to be included in administrative and housekeeping services.

Mr. D. L. Scantlebury
October 4, 1979

We do not agree that what Interior or the Commission did or did not include in their budget justifications or any Memorandum of Understanding could or did diminish the responsibility of Interior to provide administrative and housekeeping services to the Commission. The first full paragraph on Page 15 of the draft report concludes otherwise. We believe that this conclusion, in effect, allows Interior to avoid its obligation to provide administrative and housekeeping services merely by failing to include them as an item in its budget justification or because the Commission erroneously included such items in its budget justification. Section 12(h) of P.L. 93-531 is clear - "Interior shall furnish these services on a non-reimbursable basis."

However, assuming the draft report is correct on this point, a definition and audit would still be required. The last sentence of the paragraph on Page 15 reads as follows: "Conversely, if the Commission has already received separate appropriations for these expenses, it would be improper for Interior to finance the expenses so long as such appropriations are available for expenditure." (Emphasis added.)

If this is correct, then its corollary should be correct - that when separate appropriations for administrative and housekeeping services received by the Commission are not available (i.e., have been fully obligated or expended) it would be proper (in our opinion required) for Interior to finance such expenses. Therefore, if the particular item or items which caused the alleged over-obligation in August 1978 were items within the definition of administrative and housekeeping services which Interior was required to provide the Commission, and Interior had funds in its appropriations available for this purpose, then Interior was required to obligate its funds. The draft report, at Page 10, concludes that "...the \$16,330 overobligation could have been covered by the Secretary's salary and expense appropriation of \$23 million." We contend that Interior was required to cover this obligation from that appropriation.

Funds appropriated to the Commission under Section 25(a)(5) of P.L. 93-531 are X-Year funds. If an audit were to show that administrative and housekeeping expenses which Interior was required to provide to the Commission were charged to the Commission then such funds would be available to cover the alleged over-obligation. We believe that an audit would disclose that sufficient incorrect charges were made so that an overobligation did not occur.

In addition, we believe that the Commission was not credited with a sufficient balance when control of its accounts was transferred from the Bureau of Indian Affairs to departmental accounting in April 1977. An audit would disclose the correct figure. We believe that the difference would more than cover the alleged overobligation.

3. For the reasons stated above, we suggest that the draft report

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recommend that a complete audit of Interior's records covering the accounts of the Commission be done under appropriate instructions covering which services Interior is required to provide the Commission on a non-reimbursable basis. If items required to be provided by Interior were charged to the Commission, appropriate corrections should be made. At that time it can be determined whether an overobligation occurred.

4. It should be emphasized that the alleged anti-deficiency violation involved an alleged violation of overobligation of funds and not expenditure of funds. That is, at no time was there any suggestion that the Commission had expended any funds beyond the amount appropriated to it by the Congress. In the absence of a complete audit, the Commission does not concur that there was ever an overobligation. But the Commission recognizes that a complete document-by-document audit is an expensive and time-consuming process and would like to suggest that in the absence of a complete audit GAO recommend that the Department of Interior withdraw its anti-deficiency notice.

We are not responding to your request to provide you with the details of any actions the Commission has taken or plans to take to correct this situation at this time. It would be more appropriate to provide this information, if necessary, when we are advised of your response to our comments.

Sincerely,



Sandra L. Massetto
Chairperson

SLM:ml