



United States Department of the Interior

BUREAU OF LAND MANAGEMENT
WASHINGTON, D.C. 20240

IN REPLY
REFER TO:

1379 (820)

Mr. Mark O. Walsh
Associate Director
Utah Association of Counties
55 South State Street, Suite 300
Salt Lake City, Utah 84111

Dear Mr. Walsh:

The Director of the Bureau of Land Management has asked that we respond to your letter of June 30, 1988, requesting a legal opinion from the Department of Interior, Bureau of Land Management, on the effects of Special Service Districts on Payment in Lieu of Taxes (PILT) distributed to Utah counties.

The enclosed opinion from the Associate Solicitor, Energy and Resources, indicates Special Service Districts which are financially and politically independent from the counties that create them may receive mineral lease payments without triggering corresponding deductions from PILT monies the creating counties otherwise would receive. The opinion further states that PILT payments to counties under 31 U.S.C. 6903(b)(1)(A) must be reduced by the amounts received by such counties under the Mineral Leasing Act in the prior fiscal year.

We hope this information proves helpful. If you have any further questions, please call Mr. William W. Howell, of my staff, on (202) 343-6743.

Sincerely,

David J. Holland
Chief, Division of Finance

Enclosure

OCT 26 1988



United States Department of the Interior



OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20240

OCT 3 1986

BLM.ER.0010

Memorandum

To: Director, Bureau of Land Management (100)
From: Associate Solicitor, Energy and Resources
Subject: PILT Payments to Special Service Districts

You have asked for our opinion on questions raised by Mr. Mark O. Walsh, Associate Director of the Utah Association of Counties, regarding payments under the Payments in Lieu of Taxes Act (PILT), 31 U.S.C. § 6901-6907 (1983).

The specific questions are as follows:

1. May Special Service Districts created by individual counties under the Utah Special Service District Act, Chapter 23, Title 11, Utah Code Annotated 1953, as amended (Service District Act), receive mineral lease payments, as mandated by the Trust Land Management Act, enacted as H.B. 273 of the 1988 General Session of the Utah Legislature, and pledge such mineral lease payments to the repayment of tax-exempt bonds to be issued to pay the costs of constructing, repairing, and maintaining roads within each Special Service District or to finance other purposes for which the Special Service District is created, without having such mineral lease payments deducted from the Payments In Lieu of Taxes (PILT) which the creating county would otherwise receive?
2. Individual counties, in which are located school or institutional trust lands, or other certain lands, will also receive some of the remaining unallocated portions of the mineral lease moneys according to the statutory formula set forth in the Trust Land Management Act. Your opinion with respect to the effect of these additional payments on any possible PILT reduction is also requested.

In brief, the answers to these questions are: (1) Yes. Special Service Districts that are financially and politically independent from the counties that create them may receive mineral lease payments without triggering corresponding deductions from PILT money the creating counties otherwise would receive. (2) PILT payments to counties under 31 U.S.C. § 6903(b)(1)(A) must be reduced by the amounts received by such counties under the Mineral Leasing Act in the prior fiscal year.

Payments to Special Service Districts

The PILT authorizes and directs the Secretary of the Interior to make payments on a fiscal year basis to each unit of general local government in which certain types of federal lands are located. 31 C.F.R. § 6902. The BLM is delegated authority to administer the PILT program for the Secretary. 43 C.F.R. § 1881.0-5(e). The PILT prescribes alternate formulae to be used in determining the amount of payments under the program, as follows:

A payment under section 6902 of this title is equal to the greater of--

(A) 75 cents for each acre of entitlement land located within a unit of general local government (but not more than the limitation determined under subsection (c) of this section) reduced (but not below 0) by amounts the unit received in the prior fiscal year under a payment law; or

(B) 10 cents for each acre of entitlement land located in the unit (but not more than the limitation determined under subsection (c) of this section).

31 U.S.C. § 6903(b)(1) (emphasis added).

The Mineral Leasing Act is a "payment law" within the meaning of subsection (A) above. 31 U.S.C. § 6903(a)(1)(H). Accordingly, mineral leasing revenues received by a unit of general local government trigger an offsetting reduction in the PILT. You have stated that each of the twenty-nine counties in Utah wishes to create a Service District under the provisions of Utah's Special Service District Act. The Trust Land Management Act, enacted by the Utah State Legislature this year, provides that a certain percentage of Mineral Leasing Act revenues will be distributed by the State directly to the Special Service Districts to carry out various public purposes.

The Comptroller General has considered the question of state distribution of mineral lease receipts to units of local government other than counties in two relevant decisions, numbers B-167553, 58 Comp. Gen. 19 (1978) and B-221248, 65 Comp. Gen. 849 (1986). The earlier decision, B-167553, held that payments made to an independent local school district without being received or acted upon by a local government unit, such as a county, would not trigger a reduction in PILT payments to that unit. The Comptroller General explicitly recognized the possibility that states might decide to change their systems for distributing revenues so that revenues collected under the various payment laws would be distributed directly to single purpose districts, thereby avoiding reductions in PILT payments. However, the Comptroller

General determined that this strategy would not violate PILT and must be addressed by Congress. 58 Comp. Gen. 19, 23.

The 1986 Comptroller General decision expanded on the earlier decision. It addresses the question of whether PILT payments to counties must be reduced to reflect mineral lease revenue distributions to multi-county associations of local government, and whether there must be a PILT reduction when states distribute mineral lease revenues to counties but stipulate what the monies shall be used for. Although these questions are not precisely what Utah is asking, the analysis and discussion in the decision embrace the issues raised regarding Service Districts. Specifically, the Comptroller General, citing its 1978 decision, concludes that:

"payments received by" units of local government [are]. . . funds actually received and available to the counties for obligation and expenditure to carry out the counties' own responsibilities, thereby alleviating the fiscal burdens imposed on local governmental units by the presence of tax-exempt Federal lands within their jurisdictions. . . . Congress did not intend that payments to local governments under the Act be reduced by amounts which, by virtue of state law, merely pass through these governments on the way to politically and financially independent school or single-purpose districts which are alone responsible for providing the services in question. Such payments are not meaningfully received by local governments, which would be acting solely as "conduits" for the funds. This is the only exception to the deduction requirement of section 6903(b) which we recognized [in 58 Comp. Gen. 19 (1978)].

65 Comp. Gen. 849, 851-852.

The above discussion, while directed at the issue of monies passed through counties to other local government entities, articulates the standard for determining when or whether a mineral lease payment to a local governmental entity other than a county would trigger a PILT reduction to the county. PILT payments to counties will not be reduced if mineral leasing money goes to "politically and financially independent school or single-purpose districts" created "by virtue of state law" and "which are alone responsible for providing the services in question."

We have analyzed the Service District Act and have determined that it does give counties authority to create Service Districts that meet the Comptroller General's criteria of independence. We note, however, that the Service District Act is broad enough to permit a variety of arrangements as to the purpose of the district, and as to nature and authority of the governing board. We have not

attempted to consider every possible type of Service District that could be created under the Utah law nor can we say that every Service District that conforms to the Utah law would also meet the legal test of independence set forth by the Comptroller General. It is necessary to look at these districts on a case-by-case basis to determine if they are independent.

Under the Utah law Special Service Districts are local government entities separate from county governments. The Trust Land Management Act prescribes that mineral lease revenues that come to the State are paid directly to Special Service Districts. Accordingly, a county is not in receipt of those funds unless the Service District it creates is not truly independent. Notwithstanding that the Utah Service District Act specifies that Service Districts are independent, as noted above, it would be necessary to make that factual determination in each case. As a threshold matter, it might be more evident that Service Districts are independent if they were created by the state rather than the counties. However, the Service Districts are created under authority of state law and this appears to satisfy the Comptroller General requirement that independent districts be created "by virtue of state law." The real indicators of independence will be found in the financial and political structure of the Service Districts. In evaluating the political and financial independence of a Service District, we would look, first, for a governing body that is independent of the governing body of the county. While the county might direct the process of selection and there might be some overlap of individuals, the county body should not also be the governing body of the Service District, nor should it be able either to direct the day-to-day actions of the Service District governing board or disband the governing board at will. The authority invested in the Service District should be broad enough that the district has an area of jurisdiction within which it makes decisions. If the Service District has such a narrow mandate that it has no real choices, it may not be truly independent. The Service District Act authorizes Service Districts to be chartered with various powers that are indicative of financial independence, such as the power to issue bonds and to borrow money. The key indicator of financial independence, however, would be that the county would not have the responsibility to undertake the road repairs, education or other functions assigned to the Service District if the Service District itself, were to fail to execute those functions.^{1/}

^{1/} It is important to note that these functions would presumably be the responsibility of the counties in the absence of independent special districts. However, implicit in the Comp. Gen. decisions is the notion that these functions are not the responsibility of the county so long as they are assigned to a distinct political unit.

Mineral Lease Payments to Counties

The answer to your second question is found at 31 U.S.C. § 6903(b)(1). The plain language of this section provides for a reduction in PILT payments to general units of local government, to offset payments received by such local governments under other payment laws. A county is a general unit of local government. Amounts received by a county under the Mineral Leasing Act will be deducted from PILT payments in the following fiscal year.

If you have additional questions about this matter, please contact Kristina Clark at 343-2293.

Tom Sansonetti

Thomas L. Sansonetti