

*External Opinion*  
*File # 99-17*

336-8817

August 27, 1999

Lorenzo Campbell, Executive Director  
DNA-People=s Legal Services, Inc.  
Route 12, Highway 264  
Window Rock, Arizona 86515-0306

Dear Mr. Campbell:

This is a response to your request for an opinion on whether DNA-People=s Legal Services, Inc. (DNA) should consider the Jicarilla tribe=s trust funds as income for client eligibility under 45 CFR Part 1611, the Legal Services Corporation=s (ALSC≡ or ACorporation≡) regulation on client financial eligibility.

According to the Jicarilla Tribal Code that you provided our office, per capita payments from the trust fund are periodically distributed equally to all members of the Jicarilla Apache Tribe. The trust fund is established under the Per Capita Distributions Act, Public Law 98-64, which in turn references Section 7 of the Judgment Fund Distribution Act, Public Law 93-134. The funds are deposited in the United States Treasury and are held in Trust by the Secretary of the Department of the Interior. The Tribal Council manages the trust fund in cooperation with the Secretary as permitted by Public Law 98-64.

Federal law regulates the use and expenditure of tribal trust funds and whether or not such funds should be counted as taxable income or as income for federal benefit programs. First, the Judgment Fund Distribution Act (AJudgment Act≡) regulates judgment funds awarded to Indian tribes and groups by the Indian Claims Commission or the Court of Claims that are held in trust by the federal government. Public Law 93-134, 87 Stat. 466 (1973). As enacted in 1973, it authorized the Secretary of the Department of Interior to establish a plan for the use and distribution of such funds. Section 7 of the Act protected the tribal trust funds from Federal or State income taxes and also protected any per capita payments distributed to tribal members under the Secretary=s plan from being considered as income or resources for purposes of assistance or benefits under the



January 12, 1983, and any purchases made with such funds, including all interest and investment income accrued thereon which such funds are so held in trust, shall be subject to Federal or State income taxes, nor shall such funds nor their availability be considered as income or resources nor otherwise utilized as the basis for denying or reducing the financial assistance or other benefits to which such household or member would otherwise be entitled under the Social Security Act [42 U.S.C.A.] or, except for per capita shares in excess of \$2000, any Federal or federally assisted program.

Section 1408 provides that:

Interests of individual Indians in trust or restricted lands shall not be considered a resource, and up to \$2,000 per year of income received by individual Indians that is derived from such interests shall not be considered income, in determining eligibility for assistance under the Social Security Act [42 U.S.C.A. §301 et seq.] or any other Federal or federally assisted program.

Section 117b provides that:

Funds distributed under sections 117a to 117c of this title shall not be liable for the payment of previously contracted obligations except as may be provided by the governing body of the tribe and distributions of such funds shall be subject to the provisions of section 7 of the Act of October 19, 1973 (87 Stat. 466), as amended [25 U.S.C.A. §1407].<sup>3</sup>

These three provisions provide the following protections for tribal trust funds and interests of individual Indians in trusts or restricted lands for the purposes of LSC eligibility.

As a threshold matter, the protections in §§1407 and 1408 apply to assistance under the Social Security Act . . . or any other Federal or federally assisted program.≡ LSC-funded services do not come under the Social Security Act. *See* 42 U.S.C. 301 et seq. Nor is it a Federal program. *See* 42 U.S.C. 2996d(e)(1). However, it qualifies as a federally assisted program because it

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<sup>3</sup> Section 117a describes the funds as: A[f]unds which are held in trust by the Secretary of the Interior for an Indian tribe and which are to be distributed per capita to members of that tribe.≡

receives an annual federal appropriation to provide financial assistance to recipients. *See* Pub. L. 105-277, 112 Stat. 2681 (1998). Thus, the protections applicable to federally assisted programs apply for purposes of LSC eligibility.

As read together, §§1407 and 117b protect per capita shares up to \$2000<sup>4</sup> from being counted as income or as a resource for the purposes of determining eligibility for LSC purposes. This protection applies to tribal trusts under both the Judgment and the Distribution Acts.<sup>5</sup>

Section 1408 protects the interests of individual Indians in trust or restricted lands from being considered as a resource under any federally funded program. It also protects up to \$2000 per year of funds received by individual Indians that is derived from such interests from being considered income for determining such eligibility.<sup>6</sup> According to a Letter Opinion from the Department of the Interior, Section 1408 applies to ownership interests which an individual Indian may have in lands that are either held by the United States in trust for them or are restricted from alienation by federal law.<sup>7</sup> Such interests are the result of the historical process of allotment on Indian reservations and are interests held independent of any judgment awarded to an Indian tribe. *Id.*<sup>8</sup>

Finally, the protections discussed in this opinion apply only to funds and other interests held *in trust* by the federal government and investment income accrued therefrom. The following have been found to qualify for the protections by the courts: income from the sale of timber from land held in trust,

tribal trust property are not protected by §§1407 or 1408 because such funds are not held in trust by the federal government. Thus, such funds are considered to be income for purposes of the Department of Veterans Affairs income-based benefits. O.G.C. Pres.21-97(5-23-97).

In summary, DNA may disregard up to \$2000 of per capita payments from the Jicarilla tribal trust when considering income for LSC eligibility. Nor should such funds or interests of individual Indians in trust or restricted lands be considered as a resource for the purpose of LSC eligibility as provided in §§1407 and 1408.

I hope this adequately responds to your inquiry. Please let me know if I can provide any additional assistance.

Sincerely,

Suzanne B. Glasow  
Senior Assistant General Counsel