

Decision

Matter of: Office of Navajo and Hopi Indian Relocation—*Request for Reconsideration—Compliance with the Miscellaneous Receipts Statute*

File: B-332596

Date: July 29, 2021

DIGEST

The Office of Navajo and Hopi Indian Relocation (ONHIR) asks us to reconsider our decision concluding that ONHIR violated the miscellaneous receipts statute when it retained money from the sale of cattle without statutory authority to do so. Our standard for reconsideration is a narrow one, and we will reverse or modify a prior decision only if it contains material errors of fact or law. Here, ONHIR failed to demonstrate that the prior decision contained such material errors. Therefore, we find no basis to change our previous decision.

DECISION

This responds to the Office of Navajo and Hopi Indian Relocation's (ONHIR) request that we reconsider our conclusion in B-329446, September 17, 2020, that ONHIR violated the miscellaneous receipts statute, 31 U.S.C. § 3302(b), when it failed to deposit money received from the sale of cattle into the Treasury and instead used that money to offset the Padres Mesa Demonstration Ranch's (PMDR) operating costs. Letter from Executive Director, ONHIR, to General Counsel, GAO (Sept. 24, 2020) (Reconsideration Letter). We will modify or reverse a prior decision or opinion only if it contains a material error of fact or law. GAO, *Procedures and Practices for Legal Decisions and Opinions*, GAO-06-1064SP (Washington, D.C.: Sept. 2006), available at <https://www.gao.gov/products/gao-06-1064sp>. See, e.g., B-327146, Aug. 6, 2015; B-213771.2, April 1, 1985. ONHIR has failed to demonstrate any material errors in our prior decision. Therefore, we find no basis to change our previous determination that ONHIR violated the miscellaneous receipts statute.

In accordance with our regular practice, we contacted ONHIR to seek factual information and its legal views on this matter. *Procedures*; Letter from Assistant General Counsel, GAO, to Executive Director, ONHIR (Apr. 6, 2021). ONHIR responded with its explanation of the pertinent facts and its legal analysis. Letter

from Executive Director, ONHIR, to Assistant General Counsel, GAO (Apr. 19, 2021) (Response Letter).

BACKGROUND

In B-329446, we reached three conclusions regarding ONHIR's use of funds. First, we concluded that ONHIR has authority to obligate a portion of its lump-sum appropriation for expenditures that assist the Navajo and Hopi tribes in meeting the economic burdens imposed by relocations under the Settlement Act. B-329446. We also concluded that ONHIR may use its appropriated funds for the construction of a travel center, as well as for the purchase of cattle and other goods and services to establish the Padres Mesa Demonstration Ranch (PMDR). *Id.* Finally, we concluded that ONHIR's use of cattle proceeds for PMDR's operating costs violated the miscellaneous receipts statute, 31 U.S.C. § 3302(b). *Id.*

ONHIR requests a reconsideration of this final conclusion. In B-329446, we explained that the miscellaneous receipts statute requires an official receiving "money for the Government" to deposit the money in the Treasury. 31 U.S.C. § 3302(b). We determined that the cattle proceeds constituted "money for the Government" for purposes of such statute and found that ONHIR did not have statutory authority to retain or obligate money from the sale of cattle purchased for the ranch. B-329446, at 7. Therefore, we concluded ONHIR violated the miscellaneous receipts statute. *Id.*

Our standard for reconsidering a prior decision is a narrow one. We will modify or reverse a prior decision or opinion only if it contains a material error of fact or law. *Procedures.* See, e.g., B-327146, Aug. 6, 2015; B-213771.2, April 1, 1985.

DISCUSSION

At issue here is whether we made a material error of fact or law when we previously concluded that ONHIR violated the miscellaneous receipts statute when it used money from the sale of cattle without statutory authority to do so. It is ONHIR's view that we did, but in its request for reconsideration, ONHIR failed to identify any such error. Reconsideration Letter. Indeed, with one exception, ONHIR's arguments echo arguments addressed in our prior decision. Therefore, for the reasons explained below, we decline to reverse or modify our prior decision.

In its request for reconsideration, ONHIR contends that we mischaracterized the resulting proceeds of cattle sales as "money for the Government." Reconsideration Letter at 5. According to ONHIR, because it "maintains and oversees the lands held in trust for the Navajo Nation as part of the Navajo Reservation," it is "not required to transfer ownership of the cattle to the Navajo relocatees to make the cattle Navajo property." *Id.* According to ONHIR, the Navajo Nation retains ownership of the trust lands and related resources, and ONHIR characterizes the proceeds from PMDR cattle sales as such a resource. *Id.* at 6. Therefore, ONHIR argues that it has authority to retain the proceeds of cattle sales because cattle are trust property and the proceeds are trust funds. *Id.*; Response Letter, at 4.

In our prior decision, we considered and rejected this line of argument from ONHIR. B-329446, at 7. After considering the relevant facts and circumstances, we concluded “the government owned the cattle until the moment they were sold, and therefore when ONHIR received the proceeds of the sale it received money for the government.” *Id.* Although ONHIR continues to assert that the proceeds from the cattle sale were trust funds, it has failed to support that position. As a result, it has not shown any error in our conclusion that cattle purchased with congressionally-appropriated funds were government owned until the moment they were sold. Therefore, our conclusion remains unchanged.

Similarly, ONHIR makes assertions that ONHIR has tacit approval to retain the cattle proceeds because Congress has not explicitly restricted its use of those funds. Reconsideration Letter at 4. According to ONHIR, we should conclude that Congress has approved its use of proceeds from cattle sales for two reasons. *Id.* First, Congress has not placed any restrictions on its use of proceeds from PMDR. *Id.* Second, the legislative history of the Settlement Act does not indicate an intent to restrict ONHIR’s trustee powers to dispose of receipts to a greater degree than the restrictions that apply to ONHIR’s annual appropriations. *Id.*

These arguments echo arguments previously raised by ONHIR that its inclusion of PMDR in annual budget requests, the Office of Management and Budget’s approval of these budget requests, and Congress’s subsequent enactment of its annual lump-sum appropriation provide tacit authority for using appropriated funds and cattle sales revenue to operate the ranch. Letter from Executive Director, ONHIR, to Assistant General Counsel, GAO (Apr. 11, 2018), at 1–2. As explained in our prior decision, ONHIR has no authority to retain proceeds from the sale of government cattle, absent an express statutory exemption from the miscellaneous receipts statute. B-329446, at 7; See, e.g., B-302825, Dec. 22, 2004, at 4 (“a generally expressed grant of authority . . . is insufficient to supersede the miscellaneous receipts statute”). ONHIR’s appropriation does not authorize it to retain these funds nor are we aware of any other statute that authorizes it to do so. ONHIR’s request for reconsideration fails to identify such a statute.

Finally, ONHIR raised one new argument in its request for reconsideration, based upon the conclusions in our prior decision. ONHIR cites to our conclusion that ONHIR exercised appropriate discretion in using appropriated funds for the ranch, and argues that its use of cattle proceeds for this purpose is a similar lawful exercise of agency discretion. Reconsideration Letter, at 2. Although we concluded ONHIR’s appropriated funds were available for PMDR, B-329446, at 6, we also concluded that Congress has not provided ONHIR with specific authority to use funds generated by the sale of cattle and to reinvest them in PMDR. *Id.* at 6–7. Because the legal availability of ONHIR’s appropriation for ranch costs has no bearing on whether Congress has separately authorized ONHIR to retain the cattle proceeds, our conclusion about ONHIR’s authority to retain the proceeds remains unchanged.

While ONHIR may disagree with our conclusions, disagreement alone does not merit a different outcome. We will only modify or reverse a prior decision or opinion

if it contains a material error of fact or law. *Procedures*. See, e.g., B-327146, Aug. 6, 2015; B-213771.2, April 1, 1985. Here, we find no such error, and therefore, have no basis to reverse our prior decision.

CONCLUSION

We find no basis to change our previous conclusion that ONHIR violated the miscellaneous receipts statute by failing to deposit money it received from the sale of government cattle into the Treasury and using those funds to offset its operating costs.

A handwritten signature in cursive script, reading "Thomas H. Armstrong". The signature is written in black ink and is positioned above the typed name.

Thomas H. Armstrong
General Counsel