

- Sec.
81b. Continuation of contracts with attorneys containing limitation of time where suits have been filed.
82. Payments under contracts; aiding in making prohibited contracts.
- 82a. Contracts for payment of money permitted certain tribes; payment for legal services.
- 83, 84. Repealed.
85. Contracts relating to tribal funds or property.
86. Encumbrances on lands allotted to applicants for enrollment in Five Civilized Tribes; use of interest on tribal funds.
- 87, 87a. Repealed.
88. False vouchers, accounts, or claims.

(R.S. § 2080.)

CODIFICATION

R.S. § 2080 derived from act July 5, 1862, ch. 135, § 1, 12 Stat. 528.

SUBCHAPTER II—CONTRACTS WITH INDIANS

§ 81. Contracts and agreements with Indian tribes**(a) Definitions**

In this section:

(1) The term “Indian lands” means lands the title to which is held by the United States in trust for an Indian tribe or lands the title to which is held by an Indian tribe subject to a restriction by the United States against alienation.

(2) The term “Indian tribe” has the meaning given that term in section 5304(e) of this title.

(3) The term “Secretary” means the Secretary of the Interior.

(b) Approval

No agreement or contract with an Indian tribe that encumbers Indian lands for a period of 7 or more years shall be valid unless that agreement or contract bears the approval of the Secretary of the Interior or a designee of the Secretary.

(c) Exception

Subsection (b) shall not apply to any agreement or contract that the Secretary (or a designee of the Secretary) determines is not covered under that subsection.

(d) Unapproved agreements

The Secretary (or a designee of the Secretary) shall refuse to approve an agreement or contract that is covered under subsection (b) if the Secretary (or a designee of the Secretary) determines that the agreement or contract—

(1) violates Federal law; or

(2) does not include a provision that—

(A) provides for remedies in the case of a breach of the agreement or contract;

(B) references a tribal code, ordinance, or ruling of a court of competent jurisdiction that discloses the right of the Indian tribe to assert sovereign immunity as a defense in an action brought against the Indian tribe; or

(C) includes an express waiver of the right of the Indian tribe to assert sovereign immunity as a defense in an action brought against the Indian tribe (including a waiver that limits the nature of relief that may be provided or the jurisdiction of a court with respect to such an action).

(e) Regulations

Not later than 180 days after March 14, 2000, the Secretary shall issue regulations for identifying types of agreements or contracts that are not covered under subsection (b).

(f) Construction

Nothing in this section shall be construed to—

(1) require the Secretary to approve a contract for legal services by an attorney;

(2) amend or repeal the authority of the National Indian Gaming Commission under the

SUBCHAPTER I—TREATIES

§ 71. Future treaties with Indian tribes

No Indian nation or tribe within the territory of the United States shall be acknowledged or recognized as an independent nation, tribe, or power with whom the United States may contract by treaty; but no obligation of any treaty lawfully made and ratified with any such Indian nation or tribe prior to March 3, 1871, shall be hereby invalidated or impaired. Such treaties, and any Executive orders and Acts of Congress under which the rights of any Indian tribe to fish are secured, shall be construed to prohibit (in addition to any other prohibition) the imposition under any law of a State or political subdivision thereof of any tax on any income derived from the exercise of rights to fish secured by such treaty, Executive order, or Act of Congress if section 7873 of title 26 does not permit a like Federal tax to be imposed on such income.

(R.S. § 2079; Pub. L. 100-647, title III, § 3042, Nov. 10, 1988, 102 Stat. 3641.)

CODIFICATION

R.S. § 2079 derived from act Mar. 3, 1871, ch. 120, § 1, 16 Stat. 566.

AMENDMENTS

1988—Pub. L. 100-647 inserted sentence at end relating to State tax treatment of income derived by Indians from exercise of fishing rights secured by treaties, Executive orders, or Acts of Congress.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-647 applicable to all periods beginning before, on, or after Nov. 10, 1988, with no inference created as to existence or nonexistence or scope of any income tax exemption derived from fishing rights secured as of Mar. 17, 1988, by any treaty, law, or Executive order, see section 3044 of Pub. L. 100-647, set out as an Effective Date note under section 7873 of Title 26, Internal Revenue Code.

SHORT TITLE OF 2000 AMENDMENT

Pub. L. 106-179, § 1, Mar. 14, 2000, 114 Stat. 46, provided that: “This Act [amending sections 81 and 476 of this title] may be cited as the ‘Indian Tribal Economic Development and Contract Encouragement Act of 2000.’”

§ 72. Abrogation of treaties

Whenever the tribal organization of any Indian tribe is in actual hostility to the United States, the President is authorized, by proclamation, to declare all treaties with such tribe abrogated by such tribe if in his opinion the same can be done consistently with good faith and legal and national obligations.

Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.); or

(3) alter or amend any ordinance, resolution, or charter of an Indian tribe that requires approval by the Secretary of any action by that Indian tribe.

(R.S. §2103; Pub. L. 85-770, Aug. 27, 1958, 72 Stat. 927; Pub. L. 106-179, §2, Mar. 14, 2000, 114 Stat. 46.)

REFERENCES IN TEXT

The Indian Gaming Regulatory Act, referred to in subsec. (f)(2), is Pub. L. 100-497, Oct. 17, 1988, 102 Stat. 2467, as amended, which is classified principally to chapter 29 (§2701 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of this title and Tables.

CODIFICATION

R.S. §2103 derived from acts Mar. 3, 1871, ch. 120, §3, 16 Stat. 570; May 21, 1872, ch. 177, §1, 2, 17 Stat. 136.

AMENDMENTS

2000—Pub. L. 106-179 amended section generally, substituting present provisions for provisions which required agreements with Indian tribes or Indians to be in writing, to bear the approval of the Secretary, to contain the names of all parties in interest, to state the time and place of making, purpose, and contingencies, and to have a fixed time limit to run, and provisions which declared agreements made in violation of this section to be null and void and which authorized recovery of amounts in excess of approved amounts, with one half of recovered amounts to be paid into the Treasury.

1958—Par. Second. Pub. L. 85-770 struck out requirement that contracts with Indian tribes be executed before a judge of a court of record.

Par. Sixth. Pub. L. 85-770 struck out par. Sixth enumerating contractual elements to be certified to by the judge.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 81a. Counsel for prosecution of claims against the United States; cancellation; revival

Any contracts or agreements approved prior to June 26, 1936, by the Secretary of the Interior between the authorities of any tribe, band, or group of Indians and their attorneys for the prosecution of claims against the United States, which provide that such contracts or agreements shall run for a period of years therein specified, and as long thereafter as may be required to complete the business therein provided for, or words of like import, or which provide that compensation for services rendered shall be on a quantum-meruit basis not to exceed a specified percentage, shall be deemed a sufficient compliance with section 81 of this title: *Provided, however*, That nothing herein contained shall limit the power of the Secretary of the Interior, after due notice and hearing and for proper cause shown, to cancel any such contract or agreement: *Provided further*, That the provisions of this section and section 81b of this title shall not be construed to revive any contract which

has been terminated by lapse of time, operation of law, or by acts of the parties thereto.

(June 26, 1936, ch. 851, §1, 49 Stat. 1984.)

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 81b. Continuation of contracts with attorneys containing limitation of time where suits have been filed

Any existing valid contract made and approved prior to June 26, 1936, pursuant to any Act of Congress by any tribe, band, or group of Indians with an attorney or attorneys for the rendition of services in the prosecution of claims against the United States under authority of which suit or suits have been filed, and which contains a limitation of time for the completion of the services to be performed may be continued in full force unless a subsequent contract dealing with the same subject matter has been made and approved.

(June 26, 1936, ch. 851, §2, 49 Stat. 1984.)

§ 82. Payments under contracts; aiding in making prohibited contracts

No money shall be paid to any agent or attorney by an officer of the United States under any such contract or agreement, other than the fees due him for services rendered thereunder; but the moneys due the tribe, Indian, or Indians, as the case may be, shall be paid by the United States, through its own officers or agents, to the party or parties entitled thereto; and no money or thing shall be paid to any person for services under such contract or agreement, until such person shall have first filed with the Commissioner of Indian Affairs a sworn statement, showing each particular act of service under the contract, giving date and fact in detail, and the Secretary of the Interior and Commissioner of Indian Affairs shall determine therefrom whether, in their judgment, such contract or agreement has been complied with or fulfilled; if so, the same may be paid, and, if not, it shall be paid in proportion to the services rendered under the contract.

(R.S. §2104.)

CODIFICATION

R.S. §2104 derived from act May 21, 1872, ch. 177, §3, 17 Stat. 137.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 82a. Contracts for payment of money permitted certain tribes; payment for legal services

Contracts involving the payment or expenditure of any money or affecting any property be-