



INTERIOR BOARD OF INDIAN APPEALS

Margaret Phillips Blixt v. Billings Area Director, Bureau of Indian Affairs

2 IBIA 295 (05/16/74)

Also published at 81 Interior Decisions 281



# United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
4015 WILSON BOULEVARD  
ARLINGTON, VA 22203

ADMINISTRATIVE APPEAL OF MARGARET PHILLIPS BLIXT

v.

AREA DIRECTOR, BILLINGS

IBIA 74-36-A

Decided May 16, 1974

Appeal from an administrative decision of the Commissioner, Bureau of Indian Affairs,  
affirming a decision of the Area Director, Billings Area Office.

Affirmed.

Indian Tribes: Generally--Indian Tribes: Organized Tribes

Ordinances or resolutions passed under a popular referendum of  
the general membership of the tribe cannot override, supplant,  
or compromise restraints contained in a tribe's constitution and  
charter.

APPEARANCES: Margaret Phillips Blixt, pro se.

OPINION BY ADMINISTRATIVE JUDGE WILSON

This is an appeal filed by Margaret Phillips Blixt, a member of the Confederated Salish and Kootenai Tribes of the Flathead Reservation of Montana, hereinafter referred to as the appellant, from the decision of the Commissioner, Bureau of Indian Affairs, issued February 22, 1974, which affirmed the decision of July 26, 1973, rendered by the Area Director, Billings, wherein he disapproved Tribal Ordinance 55A.

The appeal herein was transferred to the Director, Office of Hearing and Appeals by special delegation of authority from the Secretary's office, and by redelegation of authority from the Director to this Board, copies whereof are attached and identified herein as Appendixes "A" and "B", respectively.

A finding is made that the appeal herein was timely filed and notice is hereby given that the appeal herein is docketed by this Board for decision.

A further finding is made that the appeal record is considered adequate and sufficient upon which to base a decision. Accordingly, this appeal will be disposed of forthwith without requiring the filing of further legal briefs or statements by the parties concerned.

This case arises from an ordinance approved by the general membership of the Confederated Salish and Kootenai Tribes pursuant to Section 1, Article IX, of its Constitution.

The ordinance in question identified as 55A states as follows:

Be it enacted by the Tribal Council of the Confederated Salish and Kootenai Tribes that:

1. Ninety (90) percent of tribal income shall be paid out per capita.
2. Ten (10) percent of tribal income shall be retained for administrative purposes to be expended as the Tribal Council determines in the tribe's best interest.
3. No expenditures shall be made from the reserve funds unless approved by the people in a referendum.

The Area Director under date of July 26, 1973, disapproved the ordinance on the following basis:

\* \* \* That the mandatory 90 percent provision for a per capita payment places limitations on the Council which are not in accordance with the Constitution and Charter [of the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana].

The appellant, as a member of said Confederated Salish and

Kootenai Tribes, after first requesting and receiving clarification of the Director's decision of July 26, 1973, on August 27, 1973, appealed the Director's decision to the Commissioner, Bureau of Indian Affairs, pursuant to 25 CFR 2. The appellant in support of her appeal stated:

This appeal is made because the action of the Area Director in disapproving Ordinance 55A in effect appears to void the results of a tribal referendum which according to the Constitution is binding on the Tribal Council. This leaves the affected Tribal members with no recourse or means of control over the actions of the Tribal Council.

The Commissioner in his decision of February 22, 1974, wherefrom this appeal has been taken, as basis for his decision, among other things stated:

Because of the legal uncertainties, I must deny your appeal and confirm the decision of Area Director Canan as set forth in his letter of July 26, 1973, to the Tribal Chairman. If it is the desire of the tribal members to amend their constitution and corporate charter the means for such amendments are clearly spelled out in those documents. If you or other tribal members wish to initiate an amendment to place further limitations on the power of the tribal council to expend tribal funds and provide for per capita payments, I am sure that the technical advice of the Bureau of Indian Affairs would be made available to assist in drafting a proposed amendment, and to advise as to the particular consequence of such limitations on tribally funded programs. While it might be desirable to place further limits on the tribal council's authority to spend funds, care should be taken to prevent reduction of desired services from the tribe.

Section 1 (h), Article VI, permits the Tribal Council to appropriate for tribal use without the review of the Secretary an amount not to exceed \$25,000. We note the limitation set forth therein was effected by an election of the general membership pursuant to section 16 of the Act of June 18, 1934 (48 Stat. 984), as amended by the Act of June 15, 1935 (49 Stat. 378). Accordingly, any changes thereto would require an amendment in accordance with Article X of the Constitution and 25 CFR 52. It therefore follows that the ordinance in question passed pursuant to Section 1, Article IX, cannot be interpreted or construed as amending Section 1 (h), Article VI. Accordingly, we find Ordinance 55A cannot legally override, supplant or compromise the restraint or limitation mandated on the Tribal Council by Section 1 (h), Article VI.

Section 8 of the Corporate Charter of the Confederated Salish and Kootenai Tribes limits the distribution of profits that can be made in any one year. Section 8 provides:

Any such distribution of profits in any one year amounting to a per capita cash payment of \$100 or more, or amounting to a distribution of more than one-half of the accrued surplus, shall not be made without the approval of the Secretary of the Interior.

Accordingly, we further find and conclude that any change in the limitation as set forth in the Charter would require an amendment in accordance with Section X of the Charter and 25 CFR 52.

The appellant in her appeal to the Secretary contends:

- (1) That Ordinance 55A was processed in accordance with Section 1, Article IX of the Constitution of the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana which reads:

Section 1. Upon a petition of at least one third (1/3) of the eligible voters of the Confederated Tribes, or upon the request of a majority of the members of the Tribal Council, any enacted or proposed ordinance or resolution of the Council shall be submitted to a popular referendum, and the vote of the majority of the qualified voters voting in such referendum, shall be conclusive and binding on the Tribal Council, provided that at least 30 per cent (30%) of the eligible voters shall vote in such election.

- (2) That the Ordinance should be handled as an amendment to the Constitution since it was processed in the same manner as required for amendments.
- (3) That the Ordinance is binding on the tribe until it is amended by a subsequent referendum.

In reviewing the record there appears to be one basic issue which requires resolution by this Board. The issue is:

Does Ordinance 55A as passed under Section 1, Article IX, override or supplant the restraints and limitations set forth in the Tribal Constitution and the corporate Charter?

Section 1(h), Article VI, provides:

To appropriate for tribal use of the reservation any available, applicable funds in the tribal treasury; provided that any such appropriation in excess of \$25,000 shall be subject to review by the Secretary of the Interior.



We concur:

\_\_\_\_\_  
//original signed  
Mitchell J. Sabagh  
Administrative Judge

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//original signed  
David J. McKee  
Chief Administrative Judge



# United States Department of the Interior

OFFICE OF THE SECRETARY  
WASHINGTON, D.C. 20240

May 11, 1973

Memorandum

To: Bob Hitt

From: W. L. Rogers //original signed

Subject: Recommendation that the Office of Hearings and Appeals be delegated the authority to handle appeals from decision of the Bureau of Indian Affairs

In response to your request for comments on the subject question, attached is a memorandum from Bill Gershuny prepared at my request which reflects the position of this office:

1. Enrollment appeals should continue to be handled in accordance with existing procedures.
2. All appeals except enrollment appeals could well be handled by the Office of Hearings and Appeals, and it is recommended that authority to review such appeals be delegated to the Board of Indian Appeals.

cc: Mr. Franklin  
Mr. Soller



# United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
4015 WILSON BOULEVARD  
ARLINGTON, VA 22203

April 10, 1974

## Memorandum

To: Chief Administrative Judge, Board of Indian Appeals

From: Director

Subject: Delegation of Authority

Pursuant to the authority of the Director, Office of Hearings and Appeals, to appoint Ad Hoc Boards of Appeal, 43 CFR 4.1(5) the Board of Indian Appeals is hereby authorized to consider and rule upon appeals from decisions of officials of the Bureau of Indian Affairs and to issue decisions thereon, deciding finally for the Department all questions of fact and law necessary for the complete adjudication of the issues. This ad hoc authority shall remain in force and effect until the Board's authority to hear such appeals is published in the Federal Register.

//original signed

James R. Richards