



INTERIOR BOARD OF INDIAN APPEALS

Ralph Davis v. Commissioner of Indian Affairs and Sac & Fox Tribe of Oklahoma

4 IBIA 228 (11/25/1975)



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 RALPH DAVIS
v.
COMMISSIONER, BUREAU OF INDIAN AFFAIRS
AND SAC AND FOX TRIBE OF OKLAHOMA

IBIA 75-57-A

Decided November 25, 1975

Appeal from an administrative decision of the Commissioner of Indian Affairs issued February 7, 1975, affirming the decision of the Area Director approving amendments to the Constitution and Bylaws of the Sac and Fox Tribe of Indians.

Affirmed.

1. Indian Tribes: Constitution and Bylaws and Ordinances--Indian Tribes: Tribal Authority

The Department of the Interior has generally deferred to the tribe or tribal council when the interpretation of a constitution involves two reasonable alternatives.

APPEARANCES: Amos E. Black, III, Esq., for the Sac and Fox Tribe; Charles S. Chapel, Esq., of Chapel, Wilkinson, Riggs and Abney, for appellant, Ralph Davis; and Office of the Solicitor, by Scott Keep, Esq., for the Commissioner of Indian Affairs.

OPINION BY ADMINISTRATIVE JUDGE WILSON

Ralph Davis, the appellant herein, questions the interpretation that has been given to Article X of the Constitution and Bylaws of the Sac and Fox Tribe of Indians of Oklahoma by the Commissioner of Indian Affairs. Article X concerns the adoption of amendments thereto and the portion in question reads as follows:

* * * [Amendments] shall be submitted to a referendum vote of the adult members of the Tribe, and shall be effective if approved by majority vote.

The issue in this appeal focuses on the interpretation of the quoted portion of Article X, supra. The parties do not dispute that the foregoing section is controlling in this case.

The appellant contends that the seven amendments adopted over a period of approximately 13 years (1954 to 1967) were not legally adopted because the language of Article X, supra, requires that an amendment to be effective must be approved by a majority vote of all adult members of the tribe.

The Commissioner, on the other hand, contends that an amendment to be effective must be approved by a majority vote of the adults voting.

The amendments in dispute were not approved by a majority vote of all adult members of the tribe, but by a majority of those voting at the election. (Emphasis supplied.)

The Commissioner in his decision points out that there is no requirement that any particular percentage of the adult members participate in a referendum election. This point appears to be indisputable.

The appellant maintains that Article X should be given the same interpretation found in the interpretation the Department of the Interior gave to what it could be argued was comparable language in section 17, of the Indian Reorganization Act June 18, 1934, 48 Stat. 988, 25 U.S.C. § 477 (1970):

* * * That such charter shall not become operative until ratified at a special election by a majority vote of the adult Indians living on the reservation. * * *

The foregoing section was subsequently amended by the Act of June 15, 1935, 49 Stat. 378, 25 U.S.C. § 478 (1970) to the extent that only a majority of those voting is necessary to ratify a constitutional charter.

Appellant in support of his contention points out in his brief that a constitution is a basic governing document and must possess some measure of stability and, hence, is generally drafted so that amendments are somewhat difficult to pass.

Notwithstanding the forcefulness of appellant's arguments which are well taken, one, however, cannot overlook the fact that 20 years have elapsed since the adoption of the first amendment involved herein and all evidence that may assist in resolving the interpretation to be given to Article X must not be overlooked.

Past interpretation by the Department of the Interior of Article X and concurred therein by the Sac and Fox Tribe that an amendment may be adopted by a majority of the members voting cannot be ignored.

Moreover, the Sac and Fox Tribe in its brief concerning the appeal herein urges the foregoing interpretation be followed regarding the amendments involved herein.

[1] The Department of the Interior has generally deferred to the tribe or tribal council when the interpretation of a constitution involves two reasonable alternatives. Felix S. Cohen, Handbook of Federal Indian Law, page 126.

For the reasons hereinabove set forth the Commissioner's decision of February 7, 1975, should be affirmed.

NOW, THEREFORE, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1(2), the decision of the Commissioner of Indian Affairs, dated February 7, 1975, sustaining the Area Director's action concerning the amendments to the Constitution and Bylaws of the Sac and Fox Tribe of Indians of Oklahoma be, and the same is hereby AFFIRMED.

This decision is final for the Department.

Done at Arlington, Virginia.

//original signed
Alexander H. Wilson
Administrative Judge

I concur:

//original signed
Mitchell J. Sabagh
Administrative Judge