



INTERIOR BOARD OF INDIAN APPEALS

Estate of Ella Ashbough Randall Genereaux

5 IBIA 248 (11/10/1976)



United States Department of the Interior

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

ESTATE OF ELLA ASHBOUGH RANDALL GENEREAUX

IBIA 76-38

Decided November 10, 1976

Appeal from an Order denying petition for reopening.

Affirmed.

1. Indian Probate: Reopening: Generally

Under the provisions of 43 CFR 4.242 reopenings are limited to those persons who had no notice of the original proceedings and were not on the reservation, thus, one in attendance at the original hearing or who had actual notice has no standing to file a petition to reopen.

APPEARANCES: Racine, Huntley & Olson, by D. James Manning, Esq., for appellant, Brian W. Cutler.

OPINION BY ADMINISTRATIVE JUDGE SABAGH

The pertinent facts regarding this matter are set forth in Administrative Law Judge William E. Hammett's Order Determining Heirs of July 30, 1974, and his Order Denying Petition for Reopening of February 27, 1976. Accordingly, they are not repeated here.

Appellant's contentions on appeal are similar to those presented in his petition for reopening and are duly noted.

Suffice it to say that we are aware the Secretary of the Interior by virtue of his inherent authority may in certain situations reopen a matter. However, we do not agree with the appellant that this is such a situation.

[1] Under the provisions of 43 CFR 4.242 reopenings are limited to those persons who had no notice of the original proceedings and were not on the reservation, thus one in attendance at the original hearing or who had actual notice has no standing to file a petition to reopen.

In briefs submitted in support of his petition for reopening and appeal, the appellant stressed the point that he had not received written notice of the entry of the Order of July 30, 1974, until well after the permitted time for petitioning for rehearing or for appeal. He admits that he had actual notice of the institution of probate proceedings. Under paragraph III of the petition for reopening the appellant made the following statement:

That while your Petitioner had actual notice of the institution of probate proceedings in this estate, he did not receive a copy of said Order of July 30, 1974, determining heirs, within the sixty-day period permitted for petitioning for rehearing. * * *

The record discloses that notice of hearing was mailed to all probable heirs, including the appellant, his brother Robert A. Cutler, and sister Myrtle Prozinski. In addition, notices of the hearing scheduled for October 18, 1973, at Fort Hall, Idaho, were posted at United States Post Offices in Bannock Station, Blackfoot, Pocatello and Fort Hall, Idaho; Fort Hall Indian Agency, Fort Hall, Idaho, and Uintah & Ouray Indian Agency, Fort Duchesne, Utah.

The record further reveals that appellant's brother Robert A. Cutler was present at the October 18, 1973, hearing in addition to which copies of all Orders issued in this matter were mailed to all probable heirs.

NOW, THEREFORE, by virtue of the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the appeal is DISMISSED and the Order Denying Petition for Reopening is AFFIRMED.

This decision is final for the Department.

Done at Arlington, Virginia.

//original signed
Mitchell J. Sabagh
Administrative Judge

We concur:

//original signed
Alexander H. Wilson
Administrative Judge

//original signed
Wm. Philip Horton
Member of the Board