



INTERIOR BOARD OF INDIAN APPEALS

Estate of Frederick Jack Hart, Sr.

13 IBIA 241 (08/29/1985)



United States Department of the Interior

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

ESTATE OF FREDERICK JACK HART, SR. : Order Docketing and Dismissing Appeal
: :
: Docket No. IBIA 85-44
: :
: August 29, 1985

On August 26, 1985, the Board of Indian Appeals (Board) received a notice of appeal from Lorna Jean Hart Marsh (appellant), through counsel, Mary Linda Pearson, Esq., Lewiston, Idaho. Appellant seeks review of an order denying rehearing issued by Administrative Law Judge Robert C. Snashall in Indian probate case IP PO 146L 84 179, Estate of Frederick Jack Hart, Sr.

The appeal is docketed under the above case name and number which should be cited in all future correspondence or inquiries regarding the matter. The Board finds, however, that the appeal should be dismissed for lack of jurisdiction.

As the only grounds for the appeal, the notice states:

This appeal is filed under authority of 43 CFR 4.320, et seq. and for the reason that the escheat provisions of Sect. 207(a) of the Indian Land Consolidation Act, 25 U.S.C. 2206(a), which was applied to the probate of deceased, FREDERICK JACK HART, deprives petitioners of the right to inherit Nez Perce land valued in excess of \$3,500.00, without compensation and in violation of the Fifth Amendment to the U.S. Constitution. Irving v. Clark, et al, Case No. 84-1094 (8th Circuit).

Thus, the only issue raised on appeal is the constitutionality of section 207(a) of the Indian Land Consolidation Act. This Board does not have authority to declare an act of Congress unconstitutional. See, e.g., Zarr v. Acting Deputy Director, Office of Indian Education Programs, 11 IBIA 174, 90 I.D. 172 (1983). Because the Board does not have jurisdiction to address the sole issue raised on appeal, no purpose would be served by delaying dismissal.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, this appeal is dismissed.

//original signed
Bernard V. Parrette
Chief Administrative Judge

We concur:

//original signed
Jerry Muskrat
Administrative Judge

//original signed
Anne Poindexter Lewis
Administrative Judge