



INTERIOR BOARD OF INDIAN APPEALS

Elko Band Council v. Phoenix Area Director, Bureau of Indian Affairs and  
Area Education Program Administrator

16 IBIA 2 (11/12/1987)



# United States Department of the Interior

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

ELKO BAND COUNCIL,	:	Order Dismissing Appeal
Appellant	:	
	:	
v.	:	
	:	
AREA DIRECTOR and AREA EDUCATION	:	Docket No. IBIA 87-32-A
PROGRAM ADMINISTRATOR,	:	
PHOENIX AREA OFFICE, BUREAU	:	
OF INDIAN AFFAIRS,	:	
Appellees	:	November 12, 1987

On March 20, 1987, the Board of Indian Appeals (Board) received by transfer from the Secretary's Office an appeal filed by the Elko Band Council (appellant) from a November 17, 1986, decision of the Phoenix Area Director and the Phoenix Area Education Program Administrator, Bureau of Indian Affairs, (appellees, BIA), concerning the authority of appellant to contract for services under the Indian Self-Determination and Education Assistance Act and the Johnson-O'Malley Act, 25 U.S.C. §§450-450n, 455-457. Appellees concluded that under the tribal law of the Te-Moak Tribe of Western Shoshone Indians, in particular Te-Moak Resolution 86-TM-39, enacted on October 3, 1986, appellant, which is a constituent band of the tribe, did not have authority to contract to provide services to band members living beyond appellant's specific band jurisdiction.

On September 21, 1987, the Board received a letter from appellant, enclosing a copy of Te-Moak Resolution 87-TM-35, enacted by the tribal council on September 17, 1987. Appellant stated that the resolution restored to the band councils the right under tribal law to contract for services to off-reservation band members. Appellant further stated that the problem which gave rise to its appeal had been resolved and that it was therefore withdrawing its appeal.

Even though Te-Moak Resolution 87-TM-35 repealed Te-Moak Resolution 86-TM-39, upon which appellees' November 17, 1986, decision was based, the Board had no indication that appellees' decision had been withdrawn or revised on the basis of the new tribal resolution. Therefore, the Board requested BIA to advise it of the status of appellees' November 17, 1986, decision.

On November 10, 1987, the Board received a letter from the Acting Phoenix Area Director rescinding appellees' November 17, 1986, decision.

Therefore pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, and at the request of appellant, this appeal is dismissed with prejudice.

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//original signed  
Anita Vogt  
Administrative Judge

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//original signed  
Kathryn A. Lynn  
Acting Chief Administrative Judge