



INTERIOR BOARD OF INDIAN APPEALS

Fort McDermitt Paiute Shoshone Tribe v. Acting Phoenix Area Director,
Bureau of Indian Affairs

16 IBIA 221 (09/22/1988)



United States Department of the Interior

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

FORT McDERMITT PAIUTE : Order Docketing and Dismissing
SHOSHONE TRIBE, : Appeal
Appellant :
v. :
ACTING AREA DIRECTOR, PHOENIX : Docket No. IBIA 88-40-A
AREA OFFICE, BUREAU OF INDIAN :
AFFAIRS, :
Appellee : September 22, 1988

By memorandum dated September 14, 1988, the Deputy to the Assistant Secretary-- Indian Affairs (Tribal Services) transferred this appeal to the Board of Indian Appeals pursuant to 25 CFR 2.19(a)(2). 1/

The Fort McDermitt Paiute Shoshone Tribe appeals from a July 14, 1988, decision of the Acting Phoenix Area Director, Bureau of Indian Affairs (appellee; BIA). Appellee held that the Western Nevada Agency Superintendent, BIA, properly returned two tribal ordinances to the tribe without action because the tribe was untimely in submitting them for review under the terms of its constitution.

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 circumstances of this case require that the appeal be dismissed.

Normally, appellants before the Board are given a briefing schedule in accordance with the provisions of 43 CFR 4.311. However, the Board has authority to decide appeals without briefing in certain narrow circumstances. Estate of Richard Lip, 15 IBIA 97 (1987). In this case, appellant has filed a detailed appeal document which makes its position clear. The administrative record makes it equally clear, however, that this appeal is moot.

On April 12, 1988, the Fort McDermitt Tribal Council enacted a Landlord and Tenant Code, and on May 16, 1988, it enacted a Fire Protection Law. Both ordinances were submitted to the Superintendent for review on May 31, 1988. The Superintendent returned the ordinances to the tribe by letter of June 10, 1988, stating that they had not been submitted within 10 days of enactment as required by the tribe's constitution. The Superintendent advised the tribe to reenact the ordinances and resubmit them.

1/ 25 CFR 2.19(a) provides:

“(a) Within 30 days after all time for pleadings (including extension granted) has expired, the Commissioner of Indian Affairs [or BIA official exercising the administrative review authority of the Commissioner] shall:

“(1) Render a written decision on the appeal, or

“(2) Refer the appeal to the Board of Indian Appeals for decision.”

On June 14, 1988, the Tribal Council reenacted both ordinances. The Superintendent approved them on June 28, 1988.

Also on June 14, the tribe appealed the Superintendent's refusal to act on the original ordinances. It challenged the Superintendent's conclusion that the tribe's constitution required it to submit ordinances for review within 10 days of enactment. The tribe argued, inter alia, that the constitution imposed no time limit on the tribe with respect to submission of ordinances for review. It argued that the appeal was not moot, even though the ordinances had been reenacted, because of the possibility that the agency would take the same position again.

Appellee affirmed the Superintendent's June 10 letter on July 14, 1988. ^{2/} The tribe appealed to the Washington, D.C., office of BIA, and its appeal was subsequently transferred to the Board.

Appellant's initial appeal was filed prior to the Superintendent's approval of its reenacted ordinances. It is apparent that the approval of those ordinances has rendered this appeal moot, because appellant has been granted the relief it originally sought. Although appellant now seeks to pursue its dispute with BIA concerning the correct interpretation of its constitution, the disagreement, in the context of this appeal, has become hypothetical in nature. There is no possibility that an order in this case could grant appellant any further relief.

The doctrine of mootness, as developed in the Federal courts and followed by the Board, normally precludes the consideration of moot issues. The Board has recognized an exception to this doctrine where there is a potentially recurring question raised by short-term orders, capable of repetition, yet evading review. Estate of Peshlakai v. Navajo Area Director, 15 IBIA 24, 32-34, 93 I.D. 409, 413-414 (1986). See also Tohono O'odham Nation v. Phoenix Area Director, 15 IBIA 147, 156-157, 94 I.D. 120, 125 (1987).

This is not a case where it is appropriate to invoke this exception. Assuming BIA will adhere to its present interpretation of the review provisions in the tribal constitution, as appellant expects, there is, even so, no certainty that another dispute concerning that interpretation will arise. Such a dispute would arise only if the tribe did not submit an ordinance for review within 10 days of enactment. The tribe was prompt in submitting the reenacted ordinances involved here. There is no reason to assume that it will not continue to be prompt in the future.

^{2/} Appellee noted that there were discrepancies in the constitution's provisions for Secretarial review of ordinances. He recommended that appellant revise its constitution to eliminate review requirements except where Secretarial approval is required by Federal law.

A more important reason for not invoking the exception to the mootness doctrine, however, is that the issue here requires interpretation of a tribal constitution. Interpretation of tribal law is, first and foremost, a matter for the tribe. With deference to a tribe's authority to interpret its own laws, the Board undertakes to interpret tribal law only where there is a clear necessity for it to do so. See e.g., Crooks v. Minneapolis Area Director, 14 IBIA 181, 182 (1986); Menominee Tribal Enterprises v. Minneapolis Area Director, 15 IBIA 263, 266 (1987). In this case, there is no such necessity.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, this appeal from the Acting Phoenix Area Director's July 14, 1988, decision is dismissed as moot.

//original signed
Anita Vogt
Administrative Judge

//original signed
Kathryn A. Lynn
Chief Administrative Judge