



INTERIOR BOARD OF INDIAN APPEALS

Elaine Frease and Bessey Villalobos v. Sacramento Area Director,  
Bureau of Indian Affairs

17 IBIA 241 (08/24/1989)



# United States Department of the Interior

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

ELAINE FREASE and BESSEY VILLALOBOS

v.

SACRAMENTO AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS

IBIA 89-24-A

Decided August 24, 1989

Appeal from a decision of the Sacramento Area Director, Bureau of Indian Affairs, finding that certain actions taken by the Community Council of the Rumsey Indian Rancheria were invalid for lack of a quorum.

Affirmed.

1. Indians: Tribal Government: Constitutions, Bylaws, and Ordinances

While the Bureau of Indian Affairs should give deference to a tribe's interpretation of its own laws, its responsibilities under Federal and tribal law may require it to make an independent determination concerning whether certain tribal actions were taken in accordance with tribal law.

2. Indians: Tribal Government: Constitutions, Bylaws, and Ordinances

Under Article IV, sec. 1, of the Constitution of the Rumsey Indian Rancheria, the governing body of the tribe is the Community Council, which is "composed of all qualified voters of the band who are 18 years of age or older."

APPEARANCES: Dennis G. Chappabitty, Esq., Sacramento, California, for appellants; William M. Wirtz, Esq., Office of the Solicitor, U.S. Department of the Interior, Sacramento, California, for appellee; Howard L. Dickstein, Esq., Sacramento, California, for the Rumsey Indian Rancheria.

## OPINION BY CHIEF ADMINISTRATIVE JUDGE LYNN

Elaine Frease (Frease) and Bessey Villalobos (Villalobos; collectively, appellants) seek review of a March 10, 1988, decision of the Sacramento Area Director, Bureau of Indian Affairs (BIA; appellee), that certain actions taken by the Community Council of the Rumsey Indian Rancheria Band of Wintun Indians (tribe) were invalid for lack of a quorum. For the reasons discussed below, the Board of Indian Appeals (Board) affirms that decision.

### Background

The tribe is a Federally recognized Indian tribe operating under a Constitution and Bylaws adopted pursuant to section 16 of the Indian Reorganization Act of 1934, 25 U.S.C. § 476 (1982), and approved by the Commissioner of Indian Affairs on March 18, 1976. Under Article III of the Constitution, membership in the tribe consists of 16 named individuals and their lineal descendants. Article IV provides that the tribe's governing body is the Community Council, composed of all qualified voters 18 years of age or older. The Community Council is empowered to elect an Executive Committee, consisting of a chairman, secretary, and treasurer.

Frease was elected tribal chairperson and Villalobos tribal treasurer in an election held in March 1987. At a Community Council meeting held on December 12, 1987, 10 members voted in favor of Resolution 12-12-87-A. 1/ At another Community Council meeting on January 3, 1988, 10 members voted in favor of Resolutions 1-3-88-A, B, C, D, E, F, G, H, I, J, and K. 2/

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1/ This resolution, if valid, would have terminated the tribe's contractual relationship with Sovereign Holdings, Ltd., d.b.a. Indian Bingo Management of Northern California, Inc. (Sovereign Holdings), the manager of the tribe's bingo enterprise. The issue of the Sacramento Area Director's conditional approval of the bingo management contract between the tribe and Sovereign Holdings, with assignment to British American Bingo, Inc., is the subject of the Board's decision in Docket No. IBIA 89-15-A, also decided today. See Frease v. Sacramento Area Director, 17 IBIA 250 (1989).

2/ These resolutions, if valid, would authorize in part:

- A. the closing of "all tribal accounts at the Central Bank";
- B. the development of "an individual tax withholding plan";
- C. the suspension of "the voting rights of Philip, Randall and Rocco Knight, Sr.";
- D. the suspension of "all financial distributions to Philip, Randall and Rocco Knight, Sr.";
- E. the "Tribe to enter into legal services contract(s) with Dennis G. Chappabitty, Attorney at Law, and D.M. Perkovich & Nancy Perkovich";
- F. the elimination of the Bingo Policy and Monitoring Committee;
- G. a request for an investigation by Congressman Vic Fazio "to determine why the Bureau of Indian Affairs has failed to carry out its trust responsibility" to the tribe;
- H. a demand "that the Central Bank take necessary corrective action to cure the defective quitclaim deed" to certain property in Sparks, Nevada;
- I. a "demand that Howard Dickstein return all tribal money paid to him while he served as tribal co-counsel";
- J. support for the Executive Committee's exercise of "its clear constitutional authority" when, in Resolution 1-2-88-A, it defined "qualified voter" to mean "a person who is able to attend any community council meeting and [found] that Rocco Knight, Jr. is not a 'qualified' voter for the purposes of establishing a 'quorum'" since he was incarcerated at the time; and

Apparently because of internal tribal conflicts and a January 4, 1988, letter from Sovereign Holdings stating its belief that the resolutions were invalid, Frease approached the Superintendent of the Central California Agency, BIA (Superintendent), with questions concerning the validity of the council meetings. Appellants and appellee disagree as to the exact nature of the assistance Frease requested.

In letters dated January 7 and 8, 1988, the Superintendent informed Frease that BIA would not recognize any of the resolutions because BIA's records showed the Community Council at the time of both meetings consisted of 20 members and, since only 10 members attended the meetings and voted on the resolutions, a quorum had not been present. <sup>3/</sup> On February 22, 1988, appellants appealed these decisions to appellee, arguing that the Community Council consisted of only 19 members, rather than 20. By letter dated March 10, 1988, appellee reiterated that there were 20 members and that the 10 members attending the two Community Council meetings and voting on the resolutions did not constitute a quorum.

Appellants' appeal from this decision was forwarded to the Washington, D.C., BIA office on July 1, 1988. The appeal was still pending in that office on March 13, 1989, the date new appeals regulations for BIA and the Board took effect. <sup>4/</sup> The appeal was transferred to the Board for consideration under the new procedures. <sup>5/</sup> Both appellant and appellee have filed briefs on appeal.

#### Appearance of Counsel

Appellants contend that members of the tribe have interfered with their right to choose counsel and to pursue this administrative appeal by bringing a state court action challenging Mr. Chappabitty's right to represent either the tribe or any member of the tribe on the grounds that

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fn. 2 (continued)

K. a request for "technical assistance and other action necessary from the Bureau of Indian Affairs to advise on ejecting a trespasser, Sovereign Holdings, Inc., from our Rancheria". Emphasis in original.

<sup>3/</sup> Article V, sec. 2, of the tribe's constitution provides that "[a] majority of the qualified voters shall constitute a quorum at all meetings of the community council."

<sup>4/</sup> See 54 FR 6478 and 6483 (Feb. 10, 1989).

<sup>5/</sup> Appellants were involved in three appeals before the Washington, D.C., BIA office. As stated in note 1, supra, their appeal concerning the conditional approval of a bingo management contract is decided today. A third appeal, concerning an attorney contract between the tribe and Mr. Chappabitty, was decided by the Acting Assistant Secretary on Feb. 27, 1989. See Chappabitty v. Acting Assistant Secretary - Indian Affairs, 17 IBIA 94, recon. denied, 17 IBIA 121 (1989). Because these three appeals had interrelated facts, there was initially some confusion as to how many appeals were actually pending before the Department.

although he is a member of the Oklahoma State Bar, he is not licensed to practice law in the State of California. It further appears that a State court preliminary injunction was entered against Mr. Chappabitty on January 25, 1988, in McDaniel v. Chappabitty, Case No. 58484 (Super. Ct., Yolo County, Calif. Jan. 1, 1988).

No motion has been filed with the Board challenging Mr. Chappabitty's appearance on behalf of appellants in this proceeding. In the absence of such a challenge, the Board declines to address this matter.

By motion received on July 24, 1989, appellants argue that counsel for the tribe, Howard L. Dickstein, Esq., has not been shown to be qualified to appear under 43 CFR 1.5(a), which provides that the signature of a person appearing in a representative capacity constitutes a certification that the representative is authorized and qualified to appear in such representative capacity. Appellants further contend that this case cannot be litigated if the tribe appears without qualified counsel. Appellants' argument is based upon the fact that when Mr. Dickstein filed the brief for the tribe, he did not have an attorney contract approved under 25 CFR Part 89. In response, Mr. Dickstein has submitted evidence that an attorney contract with the tribe is pending before BIA for approval.

Although appellants' argument that this case cannot be litigated if the tribe does not appear through qualified counsel seems slightly inconsistent with their argument raised in earlier filings that the tribe should not be allowed to appear at all, the Board finds that the services rendered to the tribe by Mr. Dickstein are within the purview of the attorney contract presently before BIA. Mr. Dickstein is qualified to represent the tribe in this proceeding.

#### Arguments of the Parties

Appellants' main arguments are that: (1) BIA had no authority to interpret tribal law under the circumstances present here; and (2) in any interpretation of tribal law that BIA did undertake, it should have deferred to the tribe's interpretation of its own laws and attempts to resolve its own internal disputes. Appellants also raise many subsidiary and supporting arguments. See Appendix A.

Appellee argues that "[t]his appeal involves a very narrow issue, are the resolutions of December 12, 1987 and January 3, 1988 of the Rumsey Indian Rancheria valid?" (Answer brief at 6). Appellee contends there was no quorum present at either Community Council meeting under the clear and unambiguous language of the tribe's constitution. He further argues that the definition of "qualified voter" contained in Resolutions 1-2-88-A and 1-3-88-J is a constitutional amendment that is invalid unless adopted at a constitutional election called by the Secretary of the Interior (Secretary).

The tribe similarly argues there was no quorum at either meeting. It also contends that most of the resolutions passed at the January 1988 meeting did not require BIA approval to be effective, but the resolutions are

now moot because they have been repudiated by subsequent actions taken by the tribe.

### Discussion and Conclusions

Before addressing the issues raised in this case, the Board notes that the record clearly shows the tribe was in turmoil during the period involved in this appeal. There were 20 tribal members over the age of 18. Those members were equally divided into two groups based upon whether they supported the past tribal chairman, Philip Knight, or the chairperson at the time, Frease. Under such circumstances, the tribe necessarily would have found the conduct of business extremely difficult. Although there may have been issues on which the two groups could have agreed, the only issues apparently being addressed were the ones causing the turmoil, *i.e.*, the bingo enterprise and all of its ramifications. It is thus quite understandable that the group in control of the tribal government at any particular moment would face problems related to its leadership.

The Board finds that the crux of this case is whether or not appellee correctly determined that actions taken at the tribal council meetings of December 12, 1987, and January 3, 1988, were invalid for lack of a quorum. In this context, it is irrelevant whether or not Frease requested BIA to make this determination, because the Board further finds that the determination was required in order for BIA to discharge its independent duties under Federal statutes and the tribal constitution.

At the December 12, 1987, Community Council meeting, 10 members of the tribe voted to terminate the tribe's contractual relationship with Sovereign Holdings. At that time, the tribe's bingo management agreement with Sovereign Holdings was pending before BIA for approval. <sup>6/</sup> Although the tribe submitted the agreement to BIA in April 1986 and requested that it be approved, the Assistant Secretary - Indian Affairs, in response to several Federal court decisions, had determined that all tribal bingo management contracts should be approved by the Department under 25 U.S.C. § 81 (1982) in order to ensure their validity. Thus, approval of this management agreement was no longer based merely on a request from the tribe. In order to proceed with consideration of the agreement, BIA was required to determine whether or not the Community Council's action in terminating the agreement was valid.

At the January 3, 1988, Community Council meeting, 10 members of the tribe voted, *inter alia*, to enter into a legal services contract with Mr. Chappabitty. Any contract presented to BIA as a result of that resolution was subject to BIA approval under the provisions of 25 U.S.C. § 476 (1982) and Article VIII, sec. 1(b), of the tribal constitution. BIA was required to determine if the Community Council properly authorized this attorney contract.

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<sup>6/</sup> See Frease, 17 IBIA 250 (1989).

Also at the January 3, 1988, meeting, 10 members of the tribe voted to uphold the action taken by 2 members of the Executive Committee in defining what constituted a "qualified voter" for purposes of determining if a quorum was present at a Community Council meeting so that tribal business could be conducted. BIA was required to determine if the resolution containing this definition was validly enacted in order to determine whether or not other actions taken at that council meeting, including the authorization of Mr. Chappabitty's attorney contract, were valid.

It is true that BIA's determination that there was no quorum at either Community Council meeting was rendered quickly. This fact is directly related to Frease's request for a quick response to her inquiries to the Superintendent, and the knowledge that tribal turmoil would continue if decisions were not reached expeditiously. The speed with which the decision was rendered does not invalidate it.

[1] Having found that BIA was authorized to undertake an examination of tribal law in order to discharge its responsibilities, the Board turns to the question whether the conclusion appellee reached was legally correct. As the Board has noted on numerous prior occasions, the Department should give deference to a tribe's reasonable interpretation of its own laws. See Reese v. Minneapolis Area Director, 17 IBIA 169, 173 (1989), and cases cited therein. However, it must sometimes make an independent determination concerning whether tribal actions were taken in accordance with tribal law when it is required to carry out its responsibilities under Federal and/or tribal law. See Prairie Band of Potawatomi Indians v. Acting Anadarko Area Director, 17 IBIA 97 (1989).

As to the December 12, 1987, Community Council meeting, no argument is presented that would alter the facts that, at that time, there were 20 qualified voters in the tribe, and that a quorum of those voters was 11. Resolutions 1-2-88-A and 1-3-88-J, passed in January 1988, do not purport to be retroactive (and even if they did, it is questionable whether or not such retroactivity would be valid). Accordingly, the Board affirms appellee's determination that actions taken at the December 12, 1987, council meeting were invalid for lack of a quorum.

The validity of actions taken at the January 3, 1988, Community Council meeting depends upon whether Resolutions 1-2-88-A and 1-3-88-J, attempting to redefine a quorum, were legally enacted under the tribe's constitution. Appellants argue that, as a quorum of the Executive Committee, they were merely exercising their authority under Article VI, sec. 2, of the tribal constitution to enact a tribal election ordinance. Appellee and the tribe contend that appellants' action was an attempt to illegally amend the tribal constitution.

[2] Article VI, sec. 2, of the tribal constitution states in its entirety: "All elections of officers shall be by secret ballot. Regular elections of officers shall be conducted at the January meetings of the community council each third year in accordance with an election ordinance

adopted by the executive committee." By its clear terms, this section authorizes the Executive Committee to adopt an ordinance for the conduct of elections. It does not authorize the Executive Committee to alter Article IV, sec. 1, of the tribal constitution, which states that the governing body of the tribe is the Community Council, which is "composed of all qualified voters of the band who are 18 years of age or older." The Board finds that the changes contemplated in Resolutions 1-2-88-A and 1-3-88-J could only have been enacted through constitutional amendment at an election called by the Secretary in accordance with Article X of the tribal constitution.

Because Resolutions 1-2-88-A and 1-3-88-J were not legal enactments and, therefore, did not alter the definition of "qualified voter" for purposes of determining whether a quorum was present, any other resolutions passed at the January 3, 1988, Community Council meeting were also invalid because no quorum was present. Thus, the Board also affirms appellee's determination that actions taken at the January 3, 1988, Community Council meeting were invalid.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the March 10, 1988, decision of the Sacramento Area Director is affirmed. 7/

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//original signed

Kathryn A. Lynn  
Chief Administrative Judge

I concur:

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//original signed

Anita Vogt  
Administrative Judge

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7/ Arguments raised by appellants but not specifically mentioned in this opinion were considered and rejected. Any motions not otherwise addressed are hereby denied.

Appendix A

Grouped logically, appellants' supporting arguments, include, first, arguments addressed to the propriety of BIA's action: (1) the beneficiary of the Federal trust responsibility in this case was the tribal government under the leadership of appellants; (2) BIA acted in a vacuum to interpret tribal law because no member of the group opposing appellants requested the Superintendent to become involved in the tribal procedures; (3) contrary to BIA's assertions, Frease did not request BIA to interpret tribal law to determine that the ordinances were invalid, and would have been without authority to do so in any case; (4) BIA's decisions were not necessary for it to perform its government-to-government functions; (5) BIA's decisions impermissibly interfered with Frease's leadership of the tribe, thereby subverting tribal self-determination and self-government; (6) any action taken by BIA was not narrowly tailored so as to be least disruptive of tribal government; (7) the Superintendent may have been aware before he issued his Jan. 7 and 8, 1988, decisions of the position taken by Sovereign Holdings that the ordinances were invalid for lack of a quorum; (8) BIA's actions are so contrary to generally respected and well-established principles of Federal Indian law that a manifest injustice has been committed against the tribe under appellants' leadership; and (9) the speed with which BIA rendered the decisions at issue was unprecedented and failed to allow an opportunity to see if the actions taken by appellants would resolve tribal turmoil.

A second group of arguments relates to the alleged impermissible effect of BIA's actions: (10) BIA's decisions and the paralysis of the tribe caused by them led to appellants' recall in April 1988; (11) BIA's decisions caused the tribal government to be turned back over to a group influenced by the bingo manager; and (12) BIA has sided with a non-Federally recognized bingo manager over the legitimate interests of the tribe.

The third group of arguments concerns appellants' perception that BIA failed to respond to their allegations of outside interference in tribal affairs: (13) BIA knew that the Frease administration was under attack from Sovereign Holdings, and failed to take any action to protect the tribal government from this outside influence; (14) because the tribe was under attack from Sovereign Holdings, appellants should have been permitted to interpret the tribal constitution in a way that was in their best interests; and (15) the elected tribal leaders, not BIA, decide what is in the tribe's "best interests."

In a fourth group of arguments, appellants address issues concerning the ordinance defining a "qualified voter": (16) a tribal government should be allowed to interpret its governing documents in a way that meets its needs; (17) the Executive Committee acted within its authority under Article VI, sec. 2, of the tribal constitution in determining that a person who was incarcerated and therefore could not attend a Community Council meeting should not be counted for purposes of establishing a quorum; (18) a dictionary definition of "quorum" and "qualified voter" should not be used

against the rights of the tribal members who attended Community Council meetings and in favor of those who boycotted the meetings; (19) a rigid application of a roster of tribal members by BIA to determine a quorum cannot take the place of the "grass roots" judgment of tribal officials as to how to conduct crucial and significant governmental affairs; (20) the determination that an incarcerated person should not be counted for purposes of determining a quorum is not discriminatory; and (21) the right of an incarcerated individual to count toward a quorum was less significant than the rights of other tribal members participating in tribal governmental processes during a period of turmoil.

A fifth group of arguments relates to the boycott of Community Council meetings: (22) the boycott of Community Council meetings was advised by counsel for Sovereign Holdings; (23) the boycott was intended to subvert tribal government under appellants; (24) BIA should not recognize "tribal government by boycott" (reply brief at 6); (25) in issuing these decisions, BIA served as the "proxy" for tribal members who boycotted the Community Council meetings, thereby causing individuals who had declined to participate in the tribal democratic process to control those who had so participated; (26) BIA should not have rendered a decision that resolved a tribal dispute in a way that injured appellants' leadership and benefited tribal members boycotting the meetings; and (27) the "tribe" should not be allowed to file a brief in this appeal because the "tribe" as it appears in this appeal is composed of tribal members who boycotted the meetings at issue.

Two remaining arguments are essentially unrelated: (28) subsequent events within the tribe should not be considered in determining whether BIA was incorrect in approving the management agreement; and (29) the Board lacks jurisdiction because it does not have authority to review decisions made by tribal officials in matters committed to the tribe.