



INTERIOR BOARD OF INDIAN APPEALS

Nisqually Indian Tribe v. Portland Area Director, Bureau of Indian Affairs

21 IBIA 110 (12/19/1991)



United States Department of the Interior

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

NISQUALLY INDIAN TRIBE, Appellant	:	Order Docketing and Dismissing Appeal
v.	:	
PORTLAND AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS, Appellee	:	Docket No. IBIA 92-88-A December 19, 1991

This is an appeal challenging the Portland Area Director's June 5, 1991, approval of a constitutional amendment adopted by the Puyallup Indian Tribe on April 27, 1991. Appellant received notice of the Puyallup election in an October 3, 1991, letter from the Superintendent, Puget Sound Agency.

Upon receipt of appellant's notice of appeal, the Board ordered appellant to show cause why the appeal should not be dismissed for lack of standing.

Appellant's response indicates that the Puyallup amendment it seeks to challenge is one which prohibits dual enrollment and requires Puyallup tribal members who are also enrolled in another tribe to relinquish membership in one or the other tribe. In particular, appellant seeks to challenge the relinquishment requirement as it affects minors.

Appellant contends that it has standing to bring this appeal as parens patriae for its minor members who are also members of the Puyallup Tribe. It also contends that it has standing to bring the appeal to protect its right to maintain its own membership.

Appellant claims to have "associational standing" under Hunt v. Washington State Apple Advertising Commission, 432 U.S. 333 (1977), a case in which a Washington State agency was found to have standing to challenge a North Carolina statute on behalf of Washington apple growers. The Board finds, however, that the situation here is more akin to that in Massachusetts v. Mellon, 262 U.S. 447 (1923), even though that case concerned a state vis-a-vis the Federal Government. The Court held in Mellon that a state may not challenge a Federal statute as parens patriae for citizens of the state. The Court stated:

[T]he citizens of Massachusetts are also citizens of the United States. It cannot be conceded that a State, as parens patriae, may institute judicial proceedings to protect citizens of the United States from the operation of the statutes thereof. While the State, under some circumstances, may sue in that capacity, for the protection of its citizens* * * it is no part of its duty or power to enforce their

rights in respect of their relations with the Federal Government. In that field it is the United States, and not the State, which represents them as parens patriae, when such representation becomes appropriate; and to the former, and not to the latter, they must look for such protective measures as flow from that status. [Citation omitted.]

262 U.S. at 485-86. Although this case differs from Mellon in that the two governments concerned here are of equal stature, there are clear parallels. The minors are members of both appellant and the Puyallup Tribe. While appellant may well have authority to serve as parens patriae for its minor members in some circumstances, it has no authority to represent them in matters involving their relations with the Puyallup Tribe. If any entity may serve as parens patriae for them in this matter, it is the Puyallup Tribe. The Board rejects appellant's claim to have standing in this matter as parens patriae for the dually-enrolled minors.

Appellant also contends that it has standing in its own right. Appellant states that it may lose members, and consequently some of its Federal funding, because dually-enrolled members will choose to relinquish their membership in appellant. Appellant asserts that its "right to maintain its own membership" is a vested right under 25 U.S.C. § 476 (1988).

Appellant has no authority to force any of its members to remain members. Rather, its members have the right, at any time, to terminate their tribal membership. See Cohen's Handbook of Federal Indian Law 22 (1982). The Board finds that, whatever appellant's right to maintain its membership might mean in other circumstances, it does not give appellant standing to challenge a constitutional amendment adopted by another tribe, even though some of appellant's members may choose to relinquish their membership in appellant as a result of the amendment.

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 docketed and dismissed for lack of standing.

//original signed
Anita Vogt
Administrative Judge

//original signed
Kathryn A. Lynn
Chief Administrative Judge