



INTERIOR BOARD OF INDIAN APPEALS

Seminole Nation of Oklahoma v. Acting Director, Office of Tribal Services,
Bureau of Indian Affairs

25 IBIA 4 (11/08/1993)

Denying reconsideration of:
24 IBIA 209

Related court case:

Seminole Nation of Oklahoma v. Norton, No. 00-2384 (CKK)
(D.D.C. Sept. 27, 2001), 29 Indian Law Reporter 3287



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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SEMINOLE NATION OF OKLAHOMA,	:	Order Clarifying Decision and
Appellant	:	Denying Reconsideration
	:	
v.	:	
	:	Docket No. IBIA 92-216-A
ACTING DIRECTOR, OFFICE OF TRIBAL	:	
SERVICES, BUREAU OF INDIAN	:	
AFFAIRS,	:	
Appellee	:	November 8, 1993

On September 23, 1993, the Board issued a decision affirming BIA's disapproval of an amendment to the Seminole Nation's constitution. 24 IBIA 209. Appellant has now filed a motion for "clarification of dictum" or, in the alternative, reconsideration of the decision with respect to its discussion of section 28 of the Five Tribes Act of April 26, 1906, 34 Stat. 137.

Appellant requests the Board to "reconsider its holding that Section 28 was not repealed by the Oklahoma Indian Welfare Act [(OIWA)], 25 U.S.C. § 503, and requests permission to file a brief and present documentary evidence and affidavits in support of its alternative motion for reconsideration." It appears from appellant's motion that the evidence it seeks to present pertains to the practice of the Five Tribes and the Muskogee Area Office as to whether or not tribal laws have been submitted to the Area Office for approval and/or whether or not they have been acted upon by that office. Appellant alleges, inter alia, that "the Muskogee Area Office has had no policy or practice of requiring federal approval of Five Tribes' laws and resolutions for the past several years, if ever, a factor which should have been considered by the IBIA before issuing an opinion implying that the BIA had that responsibility."

In the original proceedings in this appeal, the Acting Director, Office of Tribal Services, argued that section 28 of the Five Tribes Act required that tribal laws and resolutions, including resolutions proposing constitutional amendments, be approved by BIA. In response, appellant contended that section 28 had been repealed by the OIWA. The Board ultimately rejected the Acting Director's section 28 argument, as it pertained to the resolution at issue in this appeal, on grounds not raised by appellant or discussed by the parties. However, in accordance with its usual practice, the Board first addressed the arguments actually made by the parties, including appellant's argument that section 28 had been repealed by the OIWA.

Although the Board was not persuaded by appellant's very general argument on this issue, it was cognizant of the fact that the Acting Director did not cite section 28 as a basis for disapproval of appellant's consti-

tutional amendment until he filed his answer brief in this appeal. The Board was aware, therefore, that appellant did not have an opportunity to address the argument until it filed its reply brief and may well have lacked sufficient time to develop its argument properly. For this reason, the Board made an attempt to phrase its conclusion concerning appellant's argument in such a way as to make clear that further argument on the issue, in an appropriate case, would not be foreclosed. ^{1/} Evidently, the Board was unsuccessful in its effort at clarity.

As appellant correctly states, the Board's holding in this appeal was not based on its conclusion concerning appellant's repeal argument. For this reason, among others, it is not appropriate to order further briefing or other proceedings on this issue in the context of this case. The Board held that section 28 does not apply to resolutions proposing constitutional amendments, 24 IBIA at 222, the only kind of tribal resolution at issue in this appeal. The question of whether section 28 is presently applicable to other "act[s], ordinance[s] or resolution[s]" of the Five Tribes may be addressed further if and when an appeal concerning one of those enactments arises. At this point, however, any attempt by the Board to address this issue further would be advisory in nature. The Board does not have authority to issue advisory opinions. Grand Traverse Band of Ottawa & Chippewa Indians v. Acting Deputy to the Assistant Secretary - Indian Affairs (Tribal Services), 18 IBIA 450 (1990).

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the Board's September 23, 1993, decision is clarified, and appellant's petition for reconsideration is denied.

//original signed

Anita Vogt
Administrative Judge

//original signed

Kathryn A. Lynn
Chief Administrative Judge

^{1/} See 24 IBIA 220: "The Board finds that, without a more persuasive argument than that put forth by the Nation, it cannot conclude that the approval requirement in the Five Tribes Act was repealed by the OIWA."