



INTERIOR BOARD OF INDIAN APPEALS

Janie Jovita Flores, et al.; Benjamin Olguin; and Romana A. Smith, et al.
v. Acting Anadarko Area Director, Bureau of Indian Affairs

25 IBIA 6 (11/12/1993)



United States Department of the Interior

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

JANIE JOVITA FLORES, ET AL.,

v.

ACTING ANADARKO AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS

IBIA 93-36-A, 93-39-A, 93-40-A

Decided November 12, 1993

Appeals from letters requiring the removal of personal property from tribal land of the Kickapoo Traditional Tribe of Texas.

Affirmed.

1. Constitutional Law: Generally--Indians: Civil Rights: Indian Civil Rights Act of 1968--Words and Phrases

“Ex post facto law.” The term “ex post facto law” in the Indian Civil Rights Act of 1968, 25 U.S.C. § 1302(9) (1988), should not be given a broader interpretation than the same term in the Constitution of the United States, Art. I, sec. 9, cl. 3, and sec. 10, cl. 1.

2. Indians: Lands: Individual Rights in Tribal Lands

An individual, even if a tribal member, does not acquire an ownership interest in tribal land by virtue of a tribal allocation of a right to occupy the land.

3. Appeals: Jurisdiction--Indians: Enrollment/Tribal Membership--Indians: Tribal Powers: Tribal Sovereignty

Respect for tribal self-government requires that tribal remedies be exhausted before a Federal forum may entertain a challenge to tribal actions or authority. This is particularly true where the matter at issue involves tribal membership.

4. Indians: Lands: Tribal Lands--Indians: Tribal Powers: Tribal Sovereignty

Indian tribes have the power to restrict the assignment of tribal lands to tribal members.

APPEARANCES: Gershon D. Cohen, Esq., San Antonio, Texas, for appellants; M. Sharon Blackwell, Esq., Field Solicitor, U.S. Department of the Interior, Tulsa, Oklahoma, for the Area Director.

OPINION BY ADMINISTRATIVE JUDGE VOGT

Appellants Janie Jovita Flores, et al., 1/ who are members of the Kickapoo Tribe of Oklahoma, seek review of letters issued on November 13, 1992, by the Acting Anadarko Area Director, Bureau of Indian Affairs (Area Director; BIA). The letters directed appellants to remove personal property, including structures, from tribal land of the Kickapoo Traditional Tribe of Texas (KTTT). For the reasons discussed below, the Board affirms the Area Director's letters.

Background

In 1983, Congress extended Federal recognition to the Texas Band of Kickapoo Indians as a subgroup of the Kickapoo Tribe of Oklahoma. Act of January 8, 1983, P.L. 97-429, 25 U.S.C. §§ 1300b-11 through 1300b-16 (1988). 2/ In 1986, pursuant to 25 U.S.C. § 1300b-14(b), a 125.43-acre tract in Maverick County, Texas, was taken into trust for the Texas Band. 3/ This tract is now known as the Kickapoo Village.

1/ Appellants are Janie Jovita Flores, Ramona Lopez Flores, Aurelia Trevino, Aurelio Garcia, Rogelio Flores, Maria Gonzalez, Juanita Garza, and Frances Garcia (Docket No. IBIA 93-36-A); Benjamin Olguin (Docket No. IBIA 93-39-A); and Ramona A. Smith, Juan Galan, and Kendall Scott (Docket No. IBIA 93-40-A).

2/ The circumstances leading to enactment of this statute are summarized in 25 U.S.C. § 1300b-11(a) (1988), in which Congress declared its findings

"that the Texas Band of Kickapoo Indians is a subgroup of the Kickapoo Tribe of Oklahoma; that many years ago, the Band was forced to migrate from its ancestral lands to what is now the State of Texas and the nation of Mexico; that, although many members of the band meet the requirements for United States citizenship, some of them cannot prove that they are United States citizens; that, although the Band resides in the State of Texas, it owns no land there; that because the Band owns no land in Texas, members of the Band are considered ineligible for services which the United States provides to other Indians who are members of federally recognized Indian tribes because of their status as Indians except when the members of the Band are on or near the reservation of the Kickapoo Tribe of Oklahoma; that members of the Band live under conditions that pose serious threats to their health; and that, because their culture is derived from three different cultures, they have unique needs including, especially, educational needs."

All further references to the United States Code are to the 1988 edition.

3/ The deed conveyed the property to the "UNITED STATES OF AMERICA, TRUSTEE, in Trust for the Texas Band of Kickapoo Indians, a Sub-Group of the Kickapoo Tribe of Oklahoma." It was accepted and approved by the Superintendent, Shawnee Agency, BIA, on Dec. 8, 1986.

For the background of this trust acquisition, see Kickapoo Tribe of Oklahoma v. Shawnee Agency Superintendent, 13 IBIA 339 (1985).

25 U.S.C. § 1300b-14(a) made the Indian Reorganization Act (IRA), 25 U.S.C. §§ 461-479, applicable to the Texas Band. On May 27, 1989, by a vote of 132 to 15, the members of the Texas Band adopted a constitution under the IRA as an independent tribal entity to be known as the "Kickapoo Traditional Tribe of Texas." 4/ The KTTT Constitution was approved by the Deputy to the Assistant Secretary - Indian Affairs (Tribal Services) on July 11, 1989. 5/

Following approval of the constitution, which prohibited dual enrollment, KTTT members were given an opportunity to relinquish their membership in the KTTT in order to enroll in the Kickapoo Tribe of Oklahoma. Eleven of the 12 appellants, until then members of the Texas Band/KTTT, chose to relinquish their membership in the KTTT. 6/ In late 1989, all eleven signed relinquishment statements, acknowledging that they understood they would no longer be entitled to the benefits of membership in the KTTT.

On January 4, 1991, the governing body of the KTTT, its Traditional Council, enacted Ordinance No. 0056, governing assignment of tribal lands. The ordinance provided that assignments could be made only to tribal members and, under certain circumstances, to widows of tribal members. See, e.g., section 5, "Land Assignment Policy." The ordinance also provided, in section 8:

(A) A land assignment may be terminated by the:

* * * * *

(2) execution of a relinquishment of Tribal membership by the holder of the assignment, which relinquishment is accepted by the Traditional Council.

* * * * *

4/ The preamble to the constitution reads: "We, the members of the Texas Band of Kickapoo, by virtue of our sovereign rights as an Indian Tribe and pursuant to the authorities conferred by the Indian Reorganization Act of June 18, 1934, (48 Stat. 984), and Public Law 97-429, do hereby organize as a Tribe separate and apart from the Kickapoo Tribe of Oklahoma for the well-being of the Band and its members, to direct and control our own affairs, to protect and develop our land and resources for ourselves and our children, and to ensure the political integrity and cultural identity of the Band, and for these purposes do adopt this Constitution for the Texas Band of Kickapoo, henceforth to be known as the Kickapoo Traditional Tribe of Texas."

5/ The Kickapoo Tribe of Oklahoma sought to enjoin the Secretary of the Interior from recognizing and dealing with the newly independent KTTT. Its suit was dismissed for failure to join the KTTT, which, the court held, was an indispensable party which could not be joined because of sovereign immunity. Kickapoo Tribe of Oklahoma v. Lujan, 728 F.Supp. 791 (D.D.C. 1990).

6/ One appellant, Frances Garcia, was never a member of the Texas Band/KTTT. See Area Director's Brief at 7.

(B) Termination of a land assignment by reason of subparagraph (A) * * * (2) above, shall become effective 30 days after * * * acceptance by the Traditional Council of a relinquishment of tribal membership executed by the holder of the assignment.

On or about January 7, 1991, the KTTT sent letters to each holder of an assignment who had relinquished his/her membership in the KTTT. Z/ The letters stated in relevant part:

Because there is not enough land to house all persons who want to live on the Reservation, the Ordinance specifies that only members of the [KTTT] may hold a land assignment in the Kickapoo Village. If a person relinquishes his or her tribal membership after being assigned lands, the land assignment shall be canceled.

If you have executed a relinquishment of your tribal membership, you will forfeit your land assignment and will be required to move yourself and your family out of the Village by January 31, 1991. You may revoke your relinquishment and retain your land assignment by coming by the Tribal Office during normal working hours (8:00 a.m. - 5:00 p.m., Monday through Friday) and withdrawing your relinquishment.

On or about February 1, 1991, the KTTT sent documents entitled "Official Notice" to the same individuals, stating that they must vacate tribal lands within ten days or face proceedings in Texas State courts. 8/

Z/ Although the parties to this appeal, and KTTT documents in the record, speak of "assignments" to appellants, there are no copies of any written assignments in the record, and none have been produced by appellants. There is a brief reference to assignments on page 4 of the minutes of an Apr. 19, 1986, meeting of the Traditional Council: "There followed discussion regarding assignment of the individual lots. It was decided that as people move into the village, they can pick the lot they want and then register it with the map in [the BIA field office.]"

It appears, therefore, that formal assignments may not have been issued by the Texas Band/KTTT.

8/ In his brief before the Board, the Area Director states:

"On January 25, 1991, the Kickapoo Tribe of Oklahoma and the 'Texas Band of Kickapoo, a subgroup of the Kickapoo Tribe of Oklahoma' filed suit in Maverick County District Court, Texas, seeking to enjoin enforcement of [Ordinance No. 0056] on the grounds that the tribal lands had been taken into trust for the Texas Band of Kickapoo, not the [KTTT], and that the eviction of plaintiff's tribal members was contrary to the plaintiff's interest as the recognized Federal sovereign governing entity. Kickapoo Tribe of Oklahoma, and the Texas Band of Kickapoo, a of the Kickapoo Tribe of Oklahoma v. Kickapoo Traditional Tribe of Texas, No. 91-01-10371--CV (Dist. Ct. Maverick Cnty., Tex., 1992). * * * [By

After the notices were sent out, the KTTT was advised by its attorneys that the Texas courts lacked jurisdiction over the contemplated proceedings because of a limitation in the grant of jurisdiction to the State contained in 25 U.S.C. § 1300b-15. 9/ Because the KTTT had no court system of its own, the attorneys concluded that the evictions must be pursued in Federal court. The KTTT therefore sought the assistance of BIA, in part because it did not believe it could afford the costs associated with filing suit in Federal court. On June 14, 1991, the Chairman of the KTTT Traditional Council wrote the Area Director, listing nine alleged trespassers, summarizing the steps it had taken so far, and describing the assistance it sought:

Initially, we would like the Department to send each individual a letter advising him or her (once again) that he is in wrongful trespass of tribal lands and must vacate by a date certain or pay appropriate penalties to the Tribe. If anyone fails to respond to the notice from the Department, we would like the Bureau to appraise the damages to the Tribe and to ask the United States Attorney for the Western District of Texas to initiate a civil trespass action against each wrongdoer, seeking his or her eviction from tribal lands and damages for the wrongful possession of trust property.

(Chairman's June 14, 1991, Letter at 3-4).

The record does not show any further activity until July 5, 1992, 10/ when the Membership Committee of the KTTT, acting under authority vested

fn. 8 (continued)

order entered on March 9, 1992, the Maverick County District Court dismissed the action for lack of subject matter jurisdiction holding that the incorporation of 28 U.S.C. § 1360 in the 25 U.S.C. § 1300b-15 grant of jurisdiction to the State [see note 9 below] prohibits adjudication of a dispute involving Indian trust property."

(Area Director's Brief at 8-9).

9/ 25 U.S.C. § 1300b-15 provides:

"The State of Texas shall exercise jurisdiction over civil causes of action and criminal offenses arising on the Band's trust lands in accordance with section 1360 of Title 28 and section 1162 of Title 18 as if it had assumed jurisdiction pursuant to sections 1321 and 1322 of this title."

25 U.S.C. § 1322(b) provides:

"Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; * * * or shall confer jurisdiction upon the State to adjudicate, in probate proceedings or otherwise, the ownership or right to possession of such property or any interest therein."

10/ Although not clear from the record, it is possible that eviction proceedings were delayed by the filing of the suit in the Maverick County district court.

in it by Article II, section 5, of the KTTT Constitution, adopted Resolution KTTT/MC 92-001, accepting the Membership relinquishments of 45 individuals, including the eleven appellants who had formerly been members of the KTTT. After 30 days had passed, and the termination of appellants' assignments had become effective under section 8(B) of Ordinance No. 0056, the KTTT renewed its request to the Area Director to evict the non-members from tribal land.

On November 13, 1992, the Area Director issued the letters challenged in this appeal. 11/ Writing to each appellant individually, he stated in part:

You made a decision to become a member of the Kickapoo Tribe of Oklahoma. After you made your decision the Kickapoo Traditional Tribe of Texas requested that you vacate the space where your structure is located so that it could be assigned to a member of the Kickapoo Traditional Tribe of Texas. You have not complied with the tribal request and now your use of the property is a trespass of tribal lands belonging to the Kickapoo Traditional Tribe of Texas. Accordingly, your use of lot __, Block __, must end. [12/]

Please be advised that you have 30 days to move your belongings and your shelter. If your personal property, including any structure you have built, is not removed within 30 days of the date you receive this letter, your property will be removed by proper authorities.

(Area Director's Decision Letters at 1-2). The letters were translated into Spanish, and the Area Director signed the Spanish versions on November 17, 1992. The Area Director attempted to deliver the letters personally, accompanied by Spanish and Kickapoo speaking individuals. Most of the addressees were not present in the Kickapoo Village, however, and the KTTT had no addresses for them. Accordingly, most of the original letters were left at the office of the Kickapoo Tribe of Oklahoma in Eagle Pass, Texas, and copies of most of the letters were left in the KTTT office. 13/

11/ Thirteen letters were issued. One addressee, Olivia Jiminez, did not appeal.

12/ The description of each appellant's assigned lot was included in his/her copy of the letter.

13/ The Area Director's actions are detailed in a Nov. 20, 1992, memorandum prepared by him. The memorandum concludes:

"The only original documents delivered personally were to Frances Garcia. The remaining twelve (12) letters were presented to Ms. Erica Garcia of the Kickapoo of Oklahoma Tribal office with a request that she deliver the letters. She acknowledged she would.

"Two envelopes, containing copies, were left (Maria Gonzalez and Juanita Garza). Eleven (11) envelopes of copies were left at the KTTT Office with a request that if any of the individuals appear on the reservation that they be given the letter.

Appellants' notices of appeal from these letters were received by the Board on December 14, 16, and 17, 1992. Appellants and the Area Director filed briefs.

Discussion and Conclusions

In their brief before the Board, appellants contend: (1) that KTTT Ordinance No. 0056 may not be enforced against them because it violates the Indian Civil Rights Act (ICRA), specifically 25 U.S.C. § 1302(5), (8), and (9); (2) that the manner of delivery of the eviction notices was "extremely suspect;" and (3) that the Kickapoo Village lands are not held in trust for the KTTT. Appellants made an additional argument in their notices of appeal, i.e., that any Kickapoo Indian domiciled in Maverick County, Texas, regardless of tribal affiliation, is entitled to reside in the Kickapoo Village.

25 U.S.C. § 1302 provides:

No Indian tribe in exercising powers of self-government shall—

(5) take any private property for a public use without just compensation.

* * * * *

(8) deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law.

(9) pass any bill of attainder or ex post facto law.

[1] Appellants first argue that Ordinance No. 0056 is an ex post facto law and therefore prohibited by 25 U.S.C. § 1302(9). However, the

fn. 13 (continued)

"Many of the individuals have not been on the KTTT reservation in months. Their dwellings, in some cases, are occasionally used by other people who are passing through Eagle Pass, Texas or near the end of the month for receipt of various services.

"Many individuals reside primarily in Mexico, Oklahoma, "Up North," or in the city of Eagle Pass. In almost all cases there is no address known to the KTTT staff." Area Director's Nov. 20, 1992, memorandum at 3.

Evidently appellants, like other Texas Kickapoos, are migratory. Typically, Texas Kickapoos spend part of the year in Texas, part in Mexico, and part following the harvests as migrant farm workers.

only authority they cite for this proposition is an excerpt from the definition of the term “ex post facto law” in Black's Law Dictionary (5th ed. 1979), an excerpt which fails to support their argument because it places the term firmly in a criminal context. So too do the Federal cases interpreting the term “ex post facto law” as it appears in the Constitution of the United States, Art. I, sec. 9, cl. 3; sec. 10, cl. 1. See, e.g., Weaver v. Graham, 450 U.S. 24 (1981); Dobbert v. Florida, 432 U.S. 282 (1977); Valley Wood Preserving, Inc. v. Paul, 785 F.2d 751 (9th Cir. 1986). Appellants have put forth no argument that would support a broader interpretation of the term “ex post facto law” in the ICRA, and the Board is aware of none. It therefore concludes that Ordinance No. 0056 is not an ex post facto law within the meaning of 25 U.S.C. § 1302(9).

Appellants also contend that the ordinance deprived them of property without just compensation and without due process of law, in violation of 25 U.S.C. §§ 1302(5) and (8). They argue:

The Appellants have not been offered any compensation whatsoever as to their particular parcels of land. No monetary compensation has been offered to cover prior monetary investment in the subject real estate. No monetary compensation has been offered to cover relocation costs that will be incurred, if forced to move from the subject real estate. No hearing has been offered or conducted that will constitute any "due process" procedure to address the foregoing lack of compensation.

[2] This argument suggests that appellants believe they have acquired some ownership rights in the tribal land. Clearly, however, they have no rights in the land itself, and would not, even if they were still members of the KTTT. See, e.g., F. Cohen, Handbook of Federal Indian Law 605-06 (1982 ed.):

It is well established that title to communal land or personal property of a tribe resides in the tribe itself and is not held by the tribal members individually. An individual member * * * has no right against the tribe to any specific part of tribal property, absent a federal law or treaty granting vested rights to individual members (footnotes omitted).

See also, “Powers of Indian Tribes,” 55 I.D. 14, 51, I Op. Sol. on Indian Affairs, 445, 468 (1934):

The powers of an Indian tribe with respect to tribal land are not limited by any rights of occupancy which the tribe itself may grant to its members. The proposition that occupancy of tribal land does not create any vested right in the occupant as against the tribe is supported by a long line of court decisions.

It is possible that appellants are not claiming a right in the land itself but only a right to be compensated for structures or other personal

property they have placed on the land. However, the KTTT has not claimed ownership of the structures and other property, and appellants will be allowed to remove them.

It is also possible that appellants, although not claiming interests in the land per se, are claiming that their assignments granted them a right to remain on the land and that this right was sufficient to entitle them to compensation should they be required to move. Appellants do not, however, make even the barest allegation concerning the terms of their assignments, let alone any offer to prove those terms. Given that the assignments were apparently not reduced to writing, appellants would, at the least, have to show that tribal officials made representations to them concerning any terms of the assignments which appellants now seek to enforce. Appellants have failed to show that they have any right to occupy tribal lands except at the sufferance of the KTTT. They have therefore failed to show that they had a right to remain on the land or to be compensated if required to vacate.

Appellants' due process and ex post facto arguments appear to be based in part on a contention that, because Ordinance No. 0056 was not enacted until after appellants signed their membership relinquishment statements, they could not have known that one of the consequences of signing the statements would be their eviction from tribal land. This argument might be relevant here if appellants were challenging their disenrollment by the KTTT. It does not appear relevant, however, to a challenge to their eviction, which was simply a consequence of their disenrollment. Appellants' filings in this appeal indicate that they are not contesting their disenrollment and have no wish to be recognized as members of the KTTT. Rather, they apparently seek to remain on KTTT land as non-members of the KTTT.

Assuming arguendo, however, that appellants did intend to challenge their disenrollment, or more accurately, BIA's recognition of their disenrollment; and further assuming that the Board had jurisdiction to review disenrollment matters; 14/ appellants would be required to show that they have exhausted their tribal remedies before the Board could review the matter.

Article II, section 5, of the KTTT Constitution provides:

The Membership Committee shall act on all applications for membership and other issues relating to membership. Decisions of the Membership Committee may be appealed to the Traditional Council which shall render final decisions. Persons appealing to the Traditional Council on membership matters shall be entitled to a hearing after proper notice.

14/ In fact, even where tribal enrollment matters are appealable to the Department, the Board has no jurisdiction over them. Rather, they are within the jurisdiction of the Assistant Secretary - Indian Affairs pursuant to 25 CFR Part 62.

Appellants thus had the right to appeal the Membership Committee's acceptance of their membership relinquishments. They do not allege that they did so. Nor do they allege that they made any effort to persuade the KTTT to reconsider its disenrollment of them, based upon their mistaken understanding of the consequences of their relinquishments. 15/

[3] Respect for tribal self-government requires that tribal remedies be exhausted before a Federal forum may entertain a challenge to tribal actions or authority. E.g., National Farmers Union Insurance Cos. v. Crow Tribe, 471 U.S. 845, 853-57 (1985); Totenhagen v. Minneapolis Area Director, 16 IBIA 9 (1987). This is particularly true when the matter at issue involves tribal membership. E.g., Santa Clara Pueblo v. Martinez, 436 U.S. 49, 72 n.32 (1978): "A tribe's right to define its own membership for tribal purposes has long been recognized as central to its existence as an independent political community.* * * [T]he judiciary should not rush to create causes of action that would intrude on these delicate matters."

As noted above, it does not appear that appellants actually seek to challenge their disenrollment. The Board concludes that, to the extent they may have intended to do so, the matter is not properly before the Board. Therefore, the only issues before the Board are whether appellants, as members of the KTTT, may be removed from tribal land and whether the Area Director's efforts in this regard were proper.

Appellants argue that the Kickapoo Village land was not taken into trust for the KTTT, which did not exist in 1986, but for the Texas Band of Kickapoo Indians. They further contend that

all Kickapoos with any evidence of domicile in Maverick County are members of the 'Texas Band of Kickapoo Indians,' as that language is used in the subject deed, regardless of past, present, or prospective tribal affiliation. Tribal affiliation with a particular tribe should not be a basis of exclusion from residing on the subject real property.

(Notices of Appeal at 2-3).

Appellants suggest that the "Texas Band of Kickapoo Indians," for whom the Kickapoo Village lands were taken into trust, continues to exist apart from the KTTT. This is clearly not the case. The entity which bore that name in 1986, when the lands were taken into trust, adopted a constitution in 1989, declaring that it would thereafter be known as the "Kickapoo Traditional Tribe of Texas." See note 4, supra, and accompanying text. BIA recognized the name change when it approved the KTTT Constitution. In Kickapoo Tribe of Oklahoma v. Lujan, supra, BIA's action was implicitly

15/ As noted above, appellants were given the opportunity to revoke their membership relinquishments, and were informed that they could retain their assignments by doing so, but did not take advantage of the opportunity.

affirmed. See 728 F. Supp. at 796: “When the Secretary approved the constitution and certified the election results, the Texas Band became a sovereign and now has an interest in protecting its own sovereignty.” 16/ It is clear that the entity which was known as the “Texas Band of Kickapoo Indians” in 1986 is the same entity as the present-day KTTT.

Appellants argue that, under Texas real property law, the KTTT would not be recognized as the beneficial owner of the Kickapoo Village lands, apparently because it now bears a different name than appears on the deed. As the Area Director argues, however, construction of the deed is a matter of Federal, not State, law. See 25 U.S.C. § 1322(b), supra, note 9. The Board sees no reason to suppose that an Indian tribe might, under Federal law, lose title to its trust land simply because it changed its name, adopted a new constitution, or reorganized itself. The Board concludes that the Kickapoo Village lands are presently held in trust for the KTTT.

[4] Appellants contend, however, that affiliation with a particular tribe should not be a requirement for occupancy of Kickapoo village lands. This appears to be an argument that the KTTT lacks the power to deny assignments of tribal land to non-members. Such an argument is not tenable. The power of an Indian tribe to exclude non-members from tribal lands is a fundamental attribute both of the tribe's sovereignty and its status as landowner. This tribal power has been recognized at least since Worcester v. Georgia, 31 U.S. 515 (1832). See, generally, F. Cohen, Handbook of Federal Indian Law at 252; “Powers of Indian Tribes,” 55 I.D. at 48-51, 1 Op. Sol. on Indian Affairs at 466-68. There simply is no question that the KTTT has the power to restrict the assignment of Kickapoo Village lands to its own members.

Finally, appellants object to the manner in which the eviction notices were delivered. They contend:

Some of the Appellants are tri-lingual in that they speak English, Spanish, and Kickapoo. Some of the appellants are bi-lingual in that they speak Spanish and Kickapoo. Some of the Appellants are only able to converse in Kickapoo. Most of the Appellants have limited education and could potentially qualify as being illiterate. [The Area Director's November 20, 1992, memorandum] attempts to explain the manner of communication of the eviction notices as contained in [the November 13, 1992, letters]; however, there is no detailing as to the education level of the various Appellants. It is farcical to contend that the mere delivery of the subject eviction notices in and of itself is communicating to a person who

16/ Although the court disposed of the case on procedural grounds, i.e., failure to join an indispensable party, its disposition had the effect of a decision on the merits because the court necessarily approved BIA's approval action and recognized its authority to deal independently with the KTTT when it found that the KTTT was a sovereign entity.

understands only Kickapoo or Spanish or perhaps English, but does not have the level of education to comprehend the consequences of an eviction notice.

(Appellants' Brief at 7-8).

It is apparent that the Area Director made a good faith effort to ensure that appellants understood his November 13, 1992, letters. He wrote the letters in a simple, non-legalistic manner, had them translated into Spanish, and furnished appellants with both the English and Spanish versions. He attempted to make personal delivery on appellants while accompanied by Spanish and Kickapoo speaking individuals. Finally, unable to locate most appellants or find addresses for them, he left most of the original letters at the office of appellants' tribe, which might be expected to have some communication with them, and left copies at the KTTT office, in case someone there might see them. It is difficult to imagine what more might have been done, given appellants' migratory way of life. In any event, even assuming the Area Director erred in his manner of delivering and/or explaining the eviction notices, any such error was harmless, because appellants clearly understood the eviction notices, as evidenced by the fact that they retained an attorney and filed these appeals.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the Area Director's November 13, 1992, letters are affirmed. 17/

//original signed
Anita Vogt
Administrative Judge

I concur:

//original signed
Kathryn A. Lynn
Chief Administrative Judge

17/ The Board finds that there is no need for further inquiry to resolve any genuine issue of material fact, 43 CFR 4.337(a), and therefore denies appellants' request for an evidentiary hearing.