



INTERIOR BOARD OF INDIAN APPEALS

Prairie Island Indian Community v. Minneapolis Area Director,  
Bureau of Indian Affairs

25 IBIA 187 (02/25/1994)



# United States Department of the Interior

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

PRAIRIE ISLAND INDIAN COMMUNITY

v.

MINNEAPOLIS AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS

IBIA 93-97-A

Decided February 25, 1994

Appeal from a decision concerning eligibility for voting at an election to amend an Indian Reorganization Act corporate charter.

Affirmed.

1. Indians: Tribal Government: Constitutions, Bylaws, and Ordinances--Regulations: Interpretation

Where there are discrepancies between a Bureau of Indian Affairs regulation and a later-enacted statute, the statute controls.

2. Indians: Tribal Government: Constitutions, Bylaws, and Ordinances--Indians: Tribal Powers: Tribal Sovereignty

In furthering the doctrines of tribal sovereignty and self-determination, the Department of the Interior has recognized the right of Indian tribes initially to interpret their own governing documents and to resolve their own internal disputes, and, in administering the government-to-government relationship with a tribe, has given deference to that tribe's reasonable interpretation of its own laws.

3. Indians: Tribal Government: Constitutions, Bylaws, and Ordinances--Indians: Tribal Government: Elections

While the Bureau of Indian Affairs should give deference to a tribe's interpretation of its own laws, the Bureau's responsibilities under Federal and tribal law may require it to make an independent determination concerning voter eligibility in a Secretarial election.

APPEARANCES: Freeman Johnson, its Chairman, and Johnny Johnson, its Vice-Chairman, for the Prairie Island Indian Community; Scott Keep, Esq., Assistant Solicitor, Division of Indian Affairs, Office of the Solicitor, U.S. Department of the Interior, Washington, D.C., for the Area Director.

## OPINION BY ADMINISTRATIVE JUDGE VOGT

Appellant Prairie Island Indian Community (Community) seeks review of a May 26, 1993, decision of the Minneapolis Area Director, Bureau of Indian Affairs (Area Director; BIA), concerning eligibility for voting at a Secretarial election to amend the Community's corporate charter. <sup>1/</sup> For the reasons discussed below, the Board affirms the Area Director's decision.

Background

As originally enacted, section 17 of the Indian Reorganization Act (IRA), 25 U.S.C. § 477 (1988), provided:

The Secretary of the Interior may, upon petition of at least one-third of the adult Indians, issue a charter of incorporation to such tribe [organized under section 16 of the IRA]: Provided, That such charter shall not become operative until ratified at a special election by a majority vote of the adult Indians living on the reservation. \* \* \* Any charter so issued shall not be revoked or surrendered except by Act of Congress.

The Community ratified a charter under this provision on July 23, 1937.

In 1990, Congress amended section 17. As amended, the first sentence now reads: "The Secretary of the Interior may, upon petition by any tribe, issue a charter of incorporation to such tribe: Provided, That such charter shall not become operative until ratified by the governing body of such tribe." Act of May 24, 1990, P.L. 101-301, § 3(c), 104 Stat. 206, 207 (1990 amendment).

Sometime prior to May 1993, the Community proposed to amend its charter. The Area Director scheduled a Secretarial election for July 27, 1993, for the purpose of voting on the proposed amendment. On May 21, 1993, at a meeting between Community officials and Area Office staff, a question arose as to eligibility to vote at the election. The Area Director sought advice from the Field Solicitor. Following receipt of the Field Solicitor's response, the Area Director wrote to the Community's Chairman, stating:

The question [raised at the May 21 meeting] concerns whether voters who would be eligible under [the Community's] Enrollment Ordinance No. 1, adopted in 1983, are also eligible to vote in the secretarial election or whether the election is governed by the amendment provision of the Corporate Charter and the regulations contained at 25 C.F.R. 81.6(f).

---

<sup>1/</sup> Secretarial elections are governed by 25 CFR Part 81. As defined in 25 CFR 81.1(s), "Secretarial election means an election held within a tribe pursuant to regulations prescribed by the Secretary as authorized by Federal Statute (as distinguished from tribal elections which are conducted under tribal authority. \* \* \*)" (Emphasis in original) .

For a Secretarial Election called for the purpose of amending the charter, the regulations at 25 C.F.R. 81.6(f) and the charter itself govern. The regulations indicate the following as to eligibility for voting on the ratification of a charter amendment:

any adult member who has duly registered shall be entitled to vote, provided that if the tribe is of a reservation, only duly registered members physically residing on the reservation shall be entitled to vote.

The [Community] is "of a reservation" and therefore the eligible voters are limited to registered members physically residing on the reservation.

The Corporate Charter itself in Section 10, states that "amendment . . . shall be effective when ratified by a majority vote of the adult members living on the Reservation at a popular referendum in which at least 30 per cent of the eligible voters vote." \* \* \*

The enrollment ordinance appears to give "residency" to all members who live in Red Wing, Hastings, Welch and the Twin Cities. The Community may choose to define its membership by a constitutional amendment or it may choose to allow non-resident members to vote for council members through an election ordinance or it may choose to define "community" to include members who live beyond the confines of trust property, but it may not extend the reservation boundaries and thereby include residents of the Twin Cities or the other listed communities in its definition of those who are "residents of the Reservation."

Therefore, the eligible voters for the Secretarial election are those registered voters who are living on the Reservation.

(Area Director's May 26, 1993, Letter).

The Community appealed this letter to the Board, contending, inter alia, that it had the sovereign right to define the phrase "living on the Reservation" for purposes of an election to amend its charter.

At the time the Community's notice of appeal was filed, it was apparent that normal briefing could not be completed prior to the scheduled election. Therefore, the Board first offered the Community an opportunity to make any further arguments it wished to make. The Board stated that, if the Community's arguments showed that full briefing was needed, it would so order, even though postponement of the election would be required in that case.

Upon review of the Community's response, the Board determined that full briefing was warranted, in part because the issues raised by the appeal

might well affect other tribes with charters granted under the original version of section 17. Accordingly, the Board called for briefing by the Area Director and allowed a response by the Community. Because the Area Director had not addressed the 1990 amendment in his decision, the Board requested that he do so in his brief.

### Discussion and Conclusions

It is apparent that the 1990 amendment made a significant change to the charter ratification provision of section 17. <sup>2/</sup> No longer does the statute require that an election, either Secretarial or tribal, be held for this purpose. Instead, a charter may be ratified by a tribe's governing body. The question here is whether, and/or to what extent, the Community may take advantage of this change in the law in connection with its present effort to amend its existing charter.

Of the two authorities cited in the Area Director's decision, one has clearly survived the 1990 amendment. That is the Community's charter, which provides with respect to amendments:

---

<sup>2/</sup> This is so despite statements in the legislative history that the amendment was "technical" or "non-substantive" in nature.

Describing the legislative history, the Area Director states:

"The amendments to Section 17 of the IRA were contained in a 'technical amendment' added to the reported bill, Indian Laws: Miscellaneous Amendments, by the full Senate. See 136 Cong. Rec. S5595-98 (daily ed. May 2, 1990) (statement of Sen. Inouye). There was no discussion of these specific amendments either in the Report of the Senate Select Committee on Indian Affairs or during floor action on the measure in either body of the Congress. Id.; 136 Cong. Rec. H2241-43 (daily ed. May 10, 1990); S. Rep. No. 101-226, 101st Cong., 2d Sess. [9,] 11, reprinted in 1990 U.S. Code Cong. and Admin. News 196, 198. No House Report was submitted with this legislation.

"The total legislative history concerning these specific amendments appears to be a general statement by Senator Inouye on the floor of the Senate which is echoed in the Senate Report. After noting that the bill corrected certain errors in laws passed in the prior Congress, Senator Inouye stated:

"Certain of the amendments in the bill are simply intended to better fulfill or clarify the intent of the Congress or to facilitate the administration of the law.

"Besides technical corrections to the Indian Reorganization Act amendments and. . .' 136 Cong. Rec. [S5596] (daily ed. May 2, 1990). The Senate Report states:

"In addition, the bill proposes certain non-substantive changes in other laws in order to better fulfill or clarify the intent of the Congress or to facilitate the administration of the law. [Emphasis added.]'

S. Rep. No. 101-226, 101st Cong., 2d Sess. [9], reprinted in 1990 U.S. Code Cong. and Admin. News 196."

(Area Director's Brief at 5-6).

10. This Charter shall not be revoked or surrendered except by act of Congress, but amendments may be proposed by resolutions of the Community Council which if approved by the Secretary of the Interior, shall be effective when ratified by a majority vote of the adult members living on the Reservation at a popular referendum in which at least 30 per cent of the eligible voters vote.

[1] It is less clear that 25 CFR 81.6(f) has survived. The present 25 CFR Part 81 was promulgated in 1981 and has not yet been revised to take the 1990 amendment into account. As presently drafted, 25 CFR 81.6(f) provides:

For a reorganized tribe to ratify a charter or to adopt a charter amendment, any adult member who has duly registered shall be entitled to vote, provided that if the tribe is of a reservation, only duly registered members physically residing on the reservation shall be entitled to vote.

It is apparent that this regulation no longer describes the statutory requirements for the initial ratification of a charter. The Board has held that where there are discrepancies between regulations and a later-enacted statute, the statute controls. Ottawa Indian Tribe v. Muskogee Area Director, 24 IBIA 92, 93 n.3 (1993); Guardian Life Insurance Company v. Acting Anadarko Area Director, 22 IBIA 104, 113-14 (1992). <sup>3/</sup> If a tribe without an existing charter were to apply for a charter today, it seems clear that the tribe could not be required by this regulation to have the charter ratified at a Secretarial election. Rather, the charter may be ratified by the tribal governing body, in accordance with tribal law. <sup>4/</sup>

---

<sup>3/</sup> The preamble to the Federal Register publication of the present 25 CFR Part 81, then designated Part 52, states a related principle: "Where, due to the general nature of the regulations, a discrepancy might appear to exist between the regulations and a specific requirement of the statute governing the reorganization of a tribe, the regulations shall be interpreted to conform with the statute." 46 FR 1668, 1669 (Jan. 7, 1981).

<sup>4/</sup> The Area Director states that BIA is in the process of revising the regulations in Part 81. He further states:

"While the proposed regulations are not yet available, it is likely that what action is required to ratify new corporate charters by the 'governing body' of a tribe will be determined by reference to the tribe's own governing documents, where they exist, or governing traditional laws. Thus, the ratification of new corporate charters may not require a Secretarial election or, indeed, even a tribal election, unless such an election is required by the tribe's governing documents or traditional laws."

(Area Director's Brief at 3 n.2.) The Area Director does not indicate what the requirements of the new regulations might be with respect to the amendment of existing charters.

This case, of course, does not involve the initial ratification of a charter but, rather, the amendment of an existing charter--a charter which itself requires that an election be held. Arguably, there is no discrepancy here between section 81.6(f) and the 1990 amendment. Both the regulation and the Community's own law, *i.e.*, its charter, require a vote of members "living on the reservation." However, because the statutory basis for the regulatory requirement has been removed, BIA's decision in this case must be grounded in its authority to interpret tribal law.

[2, 3] On a number of occasions, the Board has stated that a tribe has the right initially to interpret its own governing documents and that the Department must give deference to a tribe's reasonable interpretation of its own laws. The Board has also stated, however, that the Department has both the authority and the responsibility to interpret tribal law where necessary to carry out the government-to-government relationship with the tribe. *E.g.*, Greendeer v. Minneapolis Area Director, 22 IBIA 91, 95 (1992); Reese v. Minneapolis Area Director, 17 IBIA 169, 173 (1989), and cases cited therein. Where a Secretarial election is to be conducted, BIA has the authority to make an independent interpretation of tribal law concerning voter eligibility, although it should give deference to the tribe's reasonable interpretation of its own law in this regard.

The Community interprets the phrase "living on the Reservation" in its charter to include any member "with the domiciliary intent to return to the reservation at some time in the future" (Community's Notice of Appeal at 1). It contends that, under the Area Director's interpretation, most of the qualified voting members of the Community would be disenfranchised because, of 208 members over the age of 18, only 59 live on the reservation. The Community states that many members have been forced to move away from the reservation because of the limited land base and lack of housing. It further states that these non-resident members routinely vote in tribal elections and were also permitted to vote in a 1991 Secretarial election to amend the Community's constitution. In support of the latter statement, it submits a certificate of election results for the 1991 Secretarial election which shows that 195 members were deemed entitled to vote in that election.

The Community argues:

While the Constitution and Bylaws does not use the phrase "living on the reservation," the Constitution instead requires a "qualified" member of the Community. A qualified member is defined by Article III, section 1 (b) as a person who is a "bona fide Indian resident of the Prairie Island Indian Reservation whose names appear on the various other Sioux Indian Rolls." Black's Law Dictionary defines "Bona Fide Residence" as "residence with domiciliary intent." "Domicile" is defined as "a person's legal home. That place where a man has his true, fixed permanent home and principal establishment, and to which whenever he is absent he has the intention of returning." \* \* \* [E]very enrolled member of the Community has the "intent to return" to the Reservation. The intent to return to the reservation allows

each enrolled member to meet the domiciliary intent requirement to be classified as a bona-fide resident of the reservation.

It is our contention that the constitutional term "bona-fide resident" has the same meaning as the Corporate Charter phrase "actually living on the reservation." As the Area Director and the Community have always interpreted the Constitutional phrase "bona-fide resident" to allow all adult members to vote in every election regardless of their current transitory residences off the reservation, the same interpretation should be applied in the Secretarial Election for July 27, 1993.

(Community's Response to Order to Show Cause at 1-2).

The Area Director argues:

To the extent that persons may have been permitted to vote in 1991 because they had an "intent to return" rather than being required to establish that they "physically resid[e] on the reservation" as expressly required by 25 C.F.R. § 81.6(b), [5/] the validity of that election may be suspect. However, the election was apparently not challenged and its validity is not directly at issue here. The Area Director certainly can not be bound to follow a prior practice which on its face appears to be inconsistent with the express language of the Assistant Secretary's regulations.

(Area Director's Brief at 7).

Both the Community's argument and the Area Director's argument suggest that the voting requirements in the Community's constitution are similar to those in its charter. In fact, the constitution does not limit the right to vote on constitutional amendments to "bona fide Indian residents" of the reservation. Article XIII provides that the constitution may be amended by a majority vote of the "qualified voters" of the Community. Article VI, section 5, provides that "a voter must qualify by having reached the age of 21 years and be a member of the Community." Article III, section 1, provides:

---

5/ 25 CFR 81.6(b) concerns entitlement to vote at constitutional elections for tribes organized as the "adult Indian residents of a reservation." The Area Director states that the Community was originally organized in this manner. Subsection 81.6(b), like subsection 81.6(f), requires that voters physically reside on the reservation.

Constitutional amendments are specifically addressed in subsection 81.6(d), which provides: "[R]egistration is open to the same class of voters that was entitled to vote in the Secretarial election that effected the reorganization, unless the amendment article of the constitution provides otherwise.

Membership in the [Community] shall consist of the following:

- (a) The bona fide Indian residents of the Prairie Island Reservation whose names appear on, or are entitled to appear on the official census roll of the Minnesota Mdewakanton Sioux Indians as of April 1, 1934, with the official supplement thereto of January 1, 1935.
- (b) The bona fide Indian residents of the Prairie Island Reservation whose names appear on various other Sioux rolls, provided that such persons transfer their enrollment to the Minnesota Sioux rolls, with the approval of the Secretary of the Interior.
- (c) All children of any member who is a resident of the Prairie Island Reservation at the time of the birth of said children.

It is apparent that those individuals who qualify for membership in the Community under subsection (c) of Article III, section 1, need not be residents of the reservation for either membership or voting purposes. <sup>6/</sup> Accordingly, even if the phrase "living on the Reservation" in the charter may be equated to the term "bona fide Indian resident" in the constitution, as the Community argues, there is still not an equivalency between the entire class of eligible voters under the constitution and the class of eligible voters under the charter. Therefore, the Board must reject the Community's argument to the extent it is based upon the premise that the voting requirements in the two documents are the same.

The question remains whether the Community's interpretation of the phrase "living on the Reservation" is a reasonable one and is therefore entitled to deference by the Department. As noted above, the Community interprets the phrase to include all members with a domiciliary intent

---

<sup>6/</sup> Prior to the 1991 amendment, Article III, section 3, provided: "Any person who is a member of the Community, but has removed therefrom for a period of two (2) years, shall automatically lose all rights and privileges to the benefits of said community such as land assignments and sharing in community profits." The section was amended in 1991 to read: "Any person who is a member of the Community, but has removed therefrom for a period of two (2) years, shall automatically lose all rights and privileges to a land assignment."

The Board reaches no conclusion concerning the meaning of the original version of this section--i.e., what "removal from the Community" entailed, or whether voting privileges were included in the privileges to be lost. Even giving the section its most far-reaching interpretation--that a member who moved off the reservation lost his/her voting privileges in 2 years--it is still apparent that those non-residents who had been away less than 2 years would still have the right to vote.

to return to the reservation. Further, it considers every enrolled member to have an intent to return to the reservation.

Although the terms “domicile” and “residence” both have extensive and complex legal histories, the term “living on (or in)” is not so commonly used in the law. To the extent it is used, however, it is related to the concept of “residence.” Further, its usage indicates that it denotes the fact of actual inhabitancy. See the definition of “live” in Black’s Law Dictionary (5th ed. 1979): “To live in a place, is to reside there, to abide there, to occupy as one’s home.” “Reside” is defined: “Live, dwell, abide, sojourn, stay, remain, lodge.” Similar definitions appear in general dictionaries. See, e.g., Webster’s Third New International Dictionary, which defines “live,” as relevant here, as “to occupy a home: DWELL, RESIDE.” The Board concludes that, as the concept is generally understood, “living” in a place means actually residing in that place.

In interpreting the Community's charter, some consideration must be given to the intent of the Community members who voted to ratify the charter in 1937. It is true that their actual intent can probably never be known. However, the language of section 10 of the charter, insofar as it limits voting on amendments to "adult members living on the Reservation," tracks the language of section 17 of the IRA. At the time the Community's charter was drafted, undoubtedly with BIA's assistance, the statutory language was interpreted by the Department to require actual residence on the reservation. <sup>7/</sup> The phrase “living on the Reservation” appears not only in section 10 of the charter, concerning amendments, but also in the preamble and in section 11, both concerning the initial ratification election. It seems likely that Community members who voted on the charter in 1937 would have understood the phrase to mean the same thing throughout the charter and, inasmuch as the members who voted in 1937 were voting in accordance with BIA's interpretation of the phrase, it seems most likely that they understood the phrase as BIA interpreted it.

Finally, even if the Board were to accept the Community's interpretation of the phrase "living on the Reservation" to include all members with a "domiciliary intent to return to the reservation," the Community goes further and attempts to vest all its members with such an intent, regardless of the members' individual circumstances or actual personal intent.

---

<sup>7/</sup> See, e.g., Solicitor's Opinion M-27810, Dec. 13, 1934, 1 Op. Sol. on Indian Affairs 484, 489:

“[T]he phrase ‘living on the reservation’ [in section 17 of the IRA] cannot be dismissed as meaningless. It must be seen as an additional [i.e., in addition to tribal membership] qualification for voting on the ratification of a tribal charter. Only those members who have maintained a residence upon the reservation will be entitled to vote in the election for the ratification of a tribal charter.”

See also Amended Rules and Regulations for the Holding of Elections under the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), sec. 23, 55 I.D. 355, 360 (1935).

A person's residence or domicile normally depends upon that person's own circumstances and/or intent, not upon an across-the-board rule which does not take variations in individual circumstances into account. The actual effect of the Community's interpretation is to write the phrase "living on the Reservation" out of the charter. This cannot be considered a reasonable interpretation of the charter language.

The Board concludes that the Community's interpretation cannot be accepted by the Department for purposes of an election to amend the charter. Therefore, voting on the amendment is properly restricted to members who actually, or "physically," reside on the reservation.

The voting restriction in the charter may well appear outdated to the Community, especially in the present circumstances, where many Community members are unable to find housing on the reservation. The Community may wish to consider repealing the restriction for purposes of future amendments. However, an amendment to repeal the restriction must be adopted by a vote conducted in accordance with the charter as it presently exists, including the voting restrictions presently included in the charter.

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 May 26, 1993, decision is affirmed.

\_\_\_\_\_  
//original signed

Anita Vogt  
Administrative Judge

I concur:

\_\_\_\_\_  
//original signed

Kathryn A. Lynn  
Chief Administrative Judge