



INTERIOR BOARD OF INDIAN APPEALS

Central Council of Tlingit and Haida Indian Tribes of Alaska v. Acting Chief,  
Division of Social Services, Bureau of Indian Affairs

28 IBIA 206 (09/26/1995)



# United States Department of the Interior

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

CENTRAL COUNCIL OF TLINGIT AND HAIDA INDIAN TRIBES OF ALASKA

v.

ACTING CHIEF, DIVISION OF SOCIAL SERVICES, BUREAU OF INDIAN AFFAIRS

IBIA 95-166-A

Decided September 26, 1995

Appeal from the inaction of a Bureau of Indian Affairs official.

Docketed and dismissed; referred to the Assistant Secretary - Indian Affairs.

1. Indians: Indian Child Welfare Act of 1978: Financial Grant Applications: Generally

Appeals under 25 CFR 23.63 and 25 CFR 2.8, alleging official inaction relating to tribal applications for grant funding under the Indian Child Welfare Act, are properly before the Assistant Secretary - Indian Affairs pursuant to the review authority established in 25 CFR 23.61.

APPEARANCES: Thomas P. Schlosser, Esq., Seattle, Washington, for appellants.

## OPINION BY CHIEF ADMINISTRATIVE JUDGE LYNN

Appellant Central Council of Tlingit and Haida Indian Tribes of Alaska seeks review of the failure of the Acting Chief, Division of Social Services, Bureau of Indian Affairs (Chief; BIA) to respond to its August 7, 1995, demand for an additional \$109,446 in FY 1995 Indian Child Welfare Act (ICWA grant funds).

Appellant states that, in response to a notice of the availability of funds published at 59 FR 14310 (Mar. 25, 1994), it filed an application for FY 1995 ICWA funds under 25 CFR Part 23, Subpart C, Grants to Indian Tribes for Title II Indian Child and Family Service Programs. <sup>1/</sup> Appellant further states that its application encompassed all of its tribal members, including those residing in Juneau, areas of the United States south of Alaska, and a number of small Alaskan communities that had separate tribal organizations established under the Indian Reorganization Act (IRA). Appellant contends that it

learned that the Department had decided to treat its application as one submitted by a consortium of the Southeast Alaskan

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<sup>1/</sup> Appellant characterizes this as a dispute over FY 1995 funds. The Federal Register announcement cited by appellant awarded FY 1994 funds, with a conditional right of continuing funding for FYs 1995 and 1996.

IRA tribes, thus omitting appellant's tribal members in the City of Juneau and those south of Alaska. The reason for the action was because while the Department doubted that [appellant] was a federally recognized tribe, the IRA communities that included many [of appellant's] members, were on the list of federally recognized tribes. Further, the Southeast Alaska IRA Communities were served by [appellant's] self-governance compact.

(Notice of Appeal and Statement of Reasons at 2-3).

Appellant did not include with its appeal any written notification of this decision and, when asked to provide the decision, stated that it had received none. The Board contacted the Juneau Area Office, which forwarded several documents relating to the tribal ICWA grant process, including an October 14, 1994, letter to appellant from the Acting Director, Office of Self-Governance (Director). That letter stated that appellant was being awarded a total of \$280,568 for ICWA programs serving nine communities, none of which were located in Juneau or outside the State of Alaska. <sup>2/</sup> The letter also informed appellant that

[a]s discussed with your Human Services Director during the review of your application and confirmed by conversation with the [BIA], Social Services, funds to provide [ICWA] services to the Juneau population were not provided to the Office of Self-Governance for award and it was necessary to apply for [the ICWA] Urban Grant program.

The letter did not mention appellant's request for funding for tribal members outside the State of Alaska, and no appeal information was provided.

It thus appears that appellant was on notice as of at least October 14, 1994, that it had not been funded for tribal members in Juneau and outside the State of Alaska. Section D of the Federal Register announcement discusses appeals: "Appeals filed under revised 25 CFR 23.61 and 23.63 shall be filed in accordance with appeal procedures as set out in 25 CFR part 2. \* \* \* A Notice of Appeal must be filed within 30 days of the appellant's receipt of the decision being appealed. The notice must be filed in the office of the official whose decision is being appealed" (59 FR at 14312).

The present appeal, although couched in terms of an appeal from the failure of the Chief to take action, is in actuality an attempt to change the October 14, 1994, decision (and any earlier decisions on which that letter was based), which treated appellant as a consortium rather than as a tribe. Thus, it initially appears that this is an untimely appeal from the October 14, 1994, decision. However, 25 CFR 2.7, which is part of the appeal process set out in 25 CFR Part 2, requires a BIA deciding official

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<sup>2/</sup> The materials furnished to the Board included appellant's ICWA grant application, showing that it had requested a total of \$410,014 in ICWA funds.

to inform interested parties of the right to appeal, the identity of the official to whom an appeal may be taken, and the 30-day time limit on the filing of an appeal. 25 CFR 2.7(b) states that if this information is not given, the decision is valid, but the time for filing an appeal is tolled until the information is given. The Board has strictly enforced this regulatory provision. See, e.g., Johnson v. Acting Minneapolis Area Director, 28 IBIA 104 (1995); Sac and Fox Nation v. Chief, Branch of Judicial Services, 26 IBIA 203 (1994).

In the absence of proof that appellant was informed of the appeal procedures, the Board declines to conclude that this is an untimely appeal from the October 14, 1994, decision, and therefore addresses the issues raised.

Appellant contends that the conclusion that it was not a tribe was erroneous as a matter of law, and that its tribal status was reaffirmed by Congress in the Act of November 2, 1994, P.L. 103-454, 25 U.S.C. § 1212 (1994). Appellant's filings with the Board suggest that it anticipated the Department would change the interpretation of its tribal status (and provide additional funding) without a request from it. Appellant states that when the Department did not change the interpretation, and messages left for the Chief of BIA's Division of Social Services were not answered, it wrote to the Assistant Secretary - Indian Affairs on March 16, 1995, asking "that the ICWA funding made available to [appellant] under its self-governance compact be increased to reflect the addition of the Juneau population." Appellant states that when it again received no response, it wrote to the Chief on August 7, 1995. The August 7, 1995, letter states:

Please reactivate consideration of the 1994 ICWA application submitted by [appellant]. That application included a funding request for services within Juneau and for out-of-state Tlingit and Haida children, but that portion was mistakenly not funded based on a Department misunderstanding about whether [appellant] is a tribe. Title II of Pub.L. 103-454 made clear that [appellant] is a tribe \* \* \*. Now the full FY 1995 funding must be provided \* \* \*.

\* \* \* \* \*

We previously requested action on this matter by letter dated March 16, 1995 \* \* \*. Pursuant to 25 CFR § 2.8 we request action upon this request within 10 days of receipt, failing which we will appeal.

Appellant states that it filed this appeal when it received no response to its August 7, 1995, letter. The Board received the notice of appeal and a statement of reasons on September 14, 1995.

25 CFR 23.61 through 23.63, which establish appeal procedures in ICWA cases, were specifically referenced in the Federal Register announcement. See 59 FR at 14312. 25 CFR 23.63 states: "A person \* \* \* whose interests

are adversely affected, or whose ability to protect such interests is impeded by the failure of an official to act on a request to the official, may make the official's inaction the subject of an appeal under part 2 of this chapter."

25 CFR 2.8 provides procedures under which a person affected by the failure of a BIA official to take action may make the official's inaction the subject of an appeal. It appears that appellant has complied with the procedural requirements established by section 2.8. 25 CFR 2.8(b) provides in pertinent part that when the official fails to respond, "the official's inaction shall be appealable to the next official in the process established in this part."

[1] The initial issue raised in this case is the identification of "the next official in the [appellate] process." 25 CFR 23.61 provides that appeals from tribal ICWA award decisions are taken to the Assistant Secretary. 25 CFR 2.8 states that official inaction may be appealed "to the next official in the process established in this part." (Emphasis added.) It appears that the Board would be "the next official" to review the inaction of the Chief under the process established in 25 CFR Part 2. Thus there is a question as to whether the merits of this matter should, under the regulations, be reviewed by the Assistant Secretary or by the Board.

The Board concludes that the incorporation of 25 CFR 2.8 into the ICWA regulations through 25 CFR 23.63 was not intended to alter the normal ICWA appeal procedures. Accordingly it holds that the inaction of the Chief, as well as the merits of the underlying appeal, are properly appealed to the Assistant Secretary in accordance with 25 CFR 23.61.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, this appeal from the inaction of the Chief, Division of Social Services, is docketed and dismissed. The matter is referred to the Assistant Secretary - Indian Affairs for exercise of her review authority.

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//original signed  
Kathryn A. Lynn  
Chief Administrative Judge

I concur:

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//original signed  
Anita Vogt  
Administrative Judge