



INTERIOR BOARD OF INDIAN APPEALS

Hilda Smoke, et al. v. Acting Eastern Area Director, Bureau of Indian Affairs

30 IBIA 90 (10/31/1996)

Denying reconsideration of:

30 IBIA 31



United States Department of the Interior

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

HILDA SMOKE, et al.,	:	Order Denying Reconsideration
Appellant	:	
	:	
v.	:	
	:	Docket No. IBIA 96-108-A
ACTING EASTERN AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	October 31, 1996

By order dated September 24, 1996, 30 IBIA 31, the Board affirmed a July 26, 1996, decision of the Acting Eastern Area Director, Bureau of Indian Affairs. In his decision, the Acting Area Director recognized and accepted two orders issued by the Saint Regis Mohawk tribal court, concerning the status of the tribal constitution and the identity of the tribal leaders. The Board, in turn, declined to consider appellants' contentions that the tribal court orders were invalid. Instead, the Board held that appellants were required to challenge the tribal court orders in a tribal forum.

On October 24, 1996, the Board received a petition for reconsideration from appellants Hilda Smoke, Alma Ransom, Paul Thompson, John Bigtree, Jr., Bryan Garrow, Barbara Lazore, and Carol Herne. Appellants contend that "the Board's refusal to consider the merits violated the Administrative Procedure Act and breached the Federal trust responsibility to the Tribe and its people" (Petition for Reconsideration at 5). As they did in the earlier proceedings, appellants argue that the Board was required to address, not only the question of whether the tribal judge who issued the orders was a valid tribal judge at the time she issued the orders, but also the substantive questions which had been addressed in the judge's orders. Citing St. Pierre v. Commissioner of Indian Affairs, 9 IBIA 203, 89 I.D. 32 (1982), appellants further contend that "the Board's failure to consider critical factors constituted a prima facie breach of the trust responsibility" (Id. at 10).

Appellants submit an affidavit from the Administrator of the tribal court. The affidavit states that, although the tribal court system is still extant, only administrative functions are currently being performed, and no one has functioned as a judge since mid-July, 1996. Therefore, appellants contend, they cannot resort to the tribal court to challenge the earlier orders.

Assuming the tribal court remains inactive, the identification of the appropriate forum in which to challenge the earlier tribal court orders will undoubtedly be more difficult. However, as the Supreme court has stated, "[n]onjudicial tribal institutions have also been recognized as competent law-applying bodies." Santa Clara Pueblo v. Martinez, 436 U.S. 49, 66

(1978). The fact that the tribal court is presently inactive does not provide a basis for the Board to assume authority over the fundamental tribal questions appellants seek to persuade the Board to decide in this case. Those questions belong in a tribal forum, whether that forum is judicial or nonjudicial.

The Board long ago disapproved the approach taken in St. Pierre, the case appellants cite for the proposition that the trust responsibility requires that the Board inject itself into this internal tribal dispute. In Burnette v. Deputy Assistant Secretary - Indian Affairs (Operations), 10 IBIA 464 n.1 (1982), decided 8 months after St. Pierre, the Board explicitly withdrew the statements it had made in St. Pierre concerning trust responsibility in this context. In any event, the law concerning exhaustion of tribal remedies has evolved considerably since 1982. The cases cited in the Board's September 24, 1996, decision are only a few of the many Federal court and Board decisions on this point, all of which appear to have been pointedly ignored by appellants. The development of this line of cases reflects the evolution of the concept of tribal self-determination into an increasingly mature reality. Appellants would have the Board retreat into the old days of paternalism. This the Board will not do.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, appellants' petition for reconsideration is denied.

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Anita Vogt
Administrative Judge

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Kathryn A. Lynn
Chief Administrative Judge