



INTERIOR BOARD OF INDIAN APPEALS

Emma Sue Holland v. Acting Muskogee Area Director, Bureau of Indian Affairs

33 IBIA 64 (11/24/1998)



# United States Department of the Interior

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

EMMA SUE HOLLAND,	:	Order Docketing Appeal and
Appellant	:	Affirming Decision
	:	
v.	:	
	:	
ACTING MUSKOGEE AREA	:	Docket No. IBIA 99-2-A
DIRECTOR, BUREAU OF	:	
INDIAN AFFAIRS,	:	
Appellee	:	November 24, 1998

This is an appeal from an August 24, 1998, letter signed by the Acting Muskogee Area Director, Bureau of Indian Affairs (Area Director, BIA), stating that BIA would not become involved in the election processes of the United Keetoowah Band of Cherokee Indians (UKB). The Area Director's letter was written in response to Appellant's attempt to appeal to BIA from a UKB Council decision to postpone a tribal election.

In her notice of appeal to the Board, Appellant stated that she "believe[s] in this case the BIA has the supervisory responsibility to protect and ensure the UKB Constitution/Bylaws are observed." Further, she stated that she does not seek to persuade BIA to conduct the election but only "to instruct the Council that they are violating its Constitution and ByLaws and must have an election immediately according to the UKB Constitution/ByLaws."

On September 21, 1998, the Board ordered Appellant to "identify some authority under which the Area Director could have heard her appeal from the UKB Council decision." The Board also ordered Appellant to serve her notice of appeal, as well as her response to the September 21, 1998, order, on the interested parties.

Appellant's response was received by the Board on October 13, 1998, but did not show that she had served copies of all her filings on the interested parties. The Board gave her a further opportunity to complete service. On November 9, 1998, the Board received a certificate of service from Appellant.

Appellant appears to be contending that the Area Director has authority to hear her appeal under the UKB Constitution, pursuant to Article V, which states: "All officers and employees of the Interior Department are ordered to abide by the provisions of the said Constitution and By-laws."

Appellant also contends that BIA has often become involved in UKB elections in the past. She cites, *inter alia*, United Keetoowah Band of Cherokee Indians v. Muskogee Area Director, 22 IBIA 75, recon. denied, 22 IBIA 172 (1992), as evidence of both BIA and Board involvement.

As is clear from United Keetoowah Band and other materials submitted by Appellant, BIA may be called upon to decide whether or not it will recognize the results of a tribal election. BIA must make decisions in such cases because it must know with whom it will deal in carrying out the government-to-government relation. <sup>1/</sup>

Here, however, there is no such need. There is no question as to the legitimacy of the present UKB Council because, even under Appellant's theory of UKB law, the terms of the present members have not yet expired. Thus, while it is possible that, if no election is held, BIA will, at some time in the future, be required to determine whether or not it will recognize "hold-over" Council members, for it to do so now would be premature at best.

The provision of the UKB Constitution cited by Appellant does not authorize the Area Director to hear appeals from UKB Council decisions. Moreover, there is nothing in the materials submitted by Appellant which reflects any instance of BIA having undertaken to hear an appeal from a UKB Council decision. The Board finds that Appellant has not shown any authority under which the Area Director could have decided her appeal from the UKB Council's decision to postpone a tribal election.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, this appeal is docketed, and the Area Director's August 24, 1998, decision is affirmed.

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//original signed

Anita Vogt  
Administrative Judge

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//original signed

Kathryn A. Lynn  
Chief Administrative Judge

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<sup>1/</sup> E.g., Bucktooth v. Acting Eastern Area Director, 29 IBIA 144 (1996). Even when acting under its authority to carry out the government-to-government relationship, however, BIA must take care to avoid intruding upon tribal sovereignty. This means, among other things, that BIA must defer to a tribe's reasonable interpretation of its own laws. E.g., Brady v. Acting Phoenix Area Director, 30 IBIA 294 (1997); Wadena v. Acting Minneapolis Area Director, 30 IBIA 130 (1996).