



INTERIOR BOARD OF INDIAN APPEALS

Shoalwater Bay Indian Tribe v. Acting Northwest Regional Director,
Bureau of Indian Affairs

36 IBIA 1 (01/04/2001)



United States Department of the Interior

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

SHOALWATER BAY INDIAN TRIBE,	:	Order Docketing and Dismissing Appeal
Appellant	:	
	:	
v.	:	
	:	Docket No. IBIA 01-28-A
ACTING NORTHWEST REGIONAL	:	
DIRECTOR, BUREAU OF	:	
INDIAN AFFAIRS,	:	
Appellee	:	January 3, 2001

Appellant Shoalwater Bay Indian Tribe (Tribe) seeks review of a September 29, 2000, letter from the Acting Northwest Regional Director, Bureau of Indian Affairs (Regional Director; BIA), concerning the proposed trust acquisition of a 170.8-acre tract of land in Clark County, Washington. For the reason discussed below, the Board of Indian Appeals (Board) concludes that it lacks authority to grant the relief the Tribe requests, and so dismisses this appeal.

The crux of the Regional Director’s September 29, 2000, letter is that BIA was prohibited “from engaging in any activities towards acquisition of property in Clark County for the [Tribe] until certain conditions specified in Section 128 [of the fiscal year 2000 Interior Appropriations Act] are met.” Fiscal year 2000 ended on September 30, 2000. However, in a November 21, 2000, order, the Board noted that a provision almost identical to section 128 was included in section 124 of the Interior Appropriations Act for fiscal year 2001, Act of October 11, 2000, Pub. L. No. 106-291, 114 Stat. 922, 945. Section 124 provides:

None of the Funds provided in this Act shall be available to the Bureau of Indian Affairs or the Department of the Interior to transfer land into trust status for the Shoalwater Bay Indian Tribe in Clark County, Washington, unless and until the tribe and the county reach a legally enforceable agreement that addresses the financial impact of new development on the county, school district, fire district, and other local governments and the impact on zoning and development.

In its November 21, 2000, order, the Board noted:

[T]he Regional Director clearly stated that BIA could not expend appropriated funds in violation of a Congressional directive; and the Tribe has clearly challenged that Congressional directive on the grounds that it is unconstitutional

as violative of Article I, sec. 9, cl. 3, of the United States Constitution [prohibiting ex post facto laws] and of the 14th Amendment.

The Tribe is advised that, as part of the Executive Branch of government, the Board lacks authority to declare an act of Congress unconstitutional. See, e.g., Estate of Nicholas Joseph Bellard, 29 IBIA 54 (1996), and cases cited therein. Authority to declare an act of Congress unconstitutional rests with the Judicial Branch, i.e., the Federal courts.

Nov. 21, 2000, Order at 2.

The Board gave the Tribe an opportunity to show that the Board had jurisdiction over the Tribe's appeal. On December 26, 2000, the Board received two filings from the Tribe: a motion to amend appeal and a response to a filing made by Clark County.

The Board has carefully reviewed both of the Tribe's responses. It finds that the Tribe continues to seek a determination that section 128 of the fiscal year 2000 appropriations act and/or section 124 of the fiscal year 2001 appropriations act are unconstitutional. In its motion to amend appeal, the Tribe argues that the "Board should proceed to find for the Tribe on Constitutional grounds."

The Board lacks jurisdiction to grant the relief the Tribe requests because, as discussed above, the Board lacks authority to declare an act of Congress unconstitutional. The Board finds that no purpose would be served by delaying final resolution of this matter in an administrative forum, when only Congress (through an amendment to section 124) or the Federal courts (through a finding that section 124 is unconstitutional) can grant the relief the Tribe seeks.

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 from the Acting Northwest Regional Director's September 29, 2000, letter is docketed but dismissed for lack of jurisdiction. If it so chooses, the Tribe can now proceed to Federal court.

//original signed
Kathryn A. Lynn
Chief Administrative Judge

//original signed
Anita Vogt
Administrative Judge