



INTERIOR BOARD OF INDIAN APPEALS

Joe J. McKay v. Acting Rocky Mountain Regional Director,
Bureau of Indian Affairs

36 IBIA 61 (03/12/01)



United States Department of the Interior

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

JOE J. McKAY,	:	Order Dismissing Appeal
Appellant	:	
	:	
v.	:	
	:	Docket No. IBIA 00-80-A
ACTING ROCKY MOUNTAIN	:	
REGIONAL DIRECTOR, BUREAU	:	
OF INDIAN AFFAIRS,	:	
Appellee	:	March 12, 2001

Appellant Joe J. McKay seeks review of an April 20, 2000, decision of the Acting Rocky Mountain Regional Director, Bureau of Indian Affairs (Regional Director; BIA), finding untimely Appellant's February 18, 2000, challenge to a September 22, 1998, Secretarial election to amend the Constitution of the Blackfeet Tribe. ^{1/} For the reasons discussed below, the Board of Indian Appeals (Board) dismisses this appeal.

The Blackfeet Constitution was adopted under the Indian Reorganization Act (IRA), 25 U.S.C. § 476. Elections to amend an IRA constitution are Federal elections that are called by the Secretary of the Interior and are governed by 25 C.F.R. Part 81. Thomas v. United States, 189 F.3d 662 (7th Cir. 1999), cert. denied, 121 S.Ct. 33 (2000); Cheyenne River Sioux Tribe v. Andrus, 566 F.2d 1085 (8th Cir. 1977), cert. denied, 439 U.S. 820 (1978); Rosales v. Sacramento Area Director, 34 IBIA 50, 54 (1999).

Based on an initial review of Appellant's notice of appeal, the Board believed that Appellant was challenging only the conduct of the Secretarial election. Therefore, it ordered him to show: (1) that he had standing to bring this appeal, and (2) that his election challenge was timely. Appellant responded with factual and legal arguments on both of these issues. The

^{1/} Another challenge to this same Secretarial election was dismissed for failure to serve the Blackfeet Tribe (Tribe). See Reevis v. Billings Area Director, 33 IBIA 101 (1999). The Board received the appeal in Reevis in December 1998.

Board issued an order allowing opposing parties to comment on Appellant's response, but it did not receive any comments. 2/

Appellant's response shows that he was a qualified voter in the September 1998 Secretarial election. It also reveals that he has intertwined his challenge to certain aspects of the conduct of the Secretarial election with a challenge to the approval of the results of that election. The Board first addresses the challenge to the approval of the election results.

Under 25 C.F.R. § 81.24, BIA approves or disapproves the results of a Secretarial election "following receipt of the original text of the material voted upon and the original of the Certification of Results of Election from the officer in charge" of the election. These documents are not forwarded until after the resolution of any contests which are filed against the election under 25 C.F.R. § 81.22. The Regional Director has provided the Board with a copy of his October 19, 1998, approval of the election results.

Based upon the well-established Federal policy of respect for tribal self-government, which counsels that the Department refrain from interfering in intra-tribal matters, such as a decision on whether or not to amend the tribal constitution, the Board has held that a tribal member lacks standing to object to the Department's action in approving or disapproving a constitutional amendment adopted in a Secretarial election. Welbourne v. Anadarko Area Director, 26 IBIA 69, 78 (1994). Appellant here has not presented any information suggesting that he is anything more than a tribal member who disagrees with the constitutional amendments adopted in the September 1998 election. Appellant has not shown any reason why the Board should reconsider its holding in Welbourne. Therefore, the Board holds that Appellant lacks standing to challenge the Departmental approval of the results of the September 1998 Secretarial election.

Appellant also seeks to challenge the conduct of the election and to argue that proper notice was not given of the election contest procedures, including the 3-day time limitation established in 25 C.F.R. § 81.22 for raising election challenges. Under the circumstances of this case, in which the amendments adopted at the Secretarial election were approved 2½ years ago and Appellant lacks standing to challenge that approval, the Board declines to permit Appellant

2/ Although the order gave the Tribe an opportunity to comment on Appellant's response, the Tribe was inadvertently omitted from the Board's distribution list for the order. After the Tribe was added to the distribution list, counsel for the Tribe requested information concerning the appeal. The Tribe has not appeared further.

to attempt at this late date to overturn the approval of the election results through a backdoor challenge to the conduct of the election. 3/

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 challenge to the September 1998 Secretarial election to amend the Blackfeet Constitution and to the October 1998 approval of the results of that election is dismissed.

//original signed
Kathryn A. Lynn
Chief Administrative Judge

//original signed
Anita Vogt
Administrative Judge

3/ If Appellant continues to disagree with the amendments adopted and approved in 1998, his remedy is to seek reversal of those amendments through another Secretarial election to amend the constitution.