



INTERIOR BOARD OF INDIAN APPEALS

State of Kansas v. Acting Southern Plains Regional Director, Bureau of Indian Affairs

37 IBIA 61 (11/16/2001)

Reconsideration denied:

37 IBIA 67

Related Board cases:

36 IBIA 152

36 IBIA 164

37 IBIA 68

38 IBIA 6



United States Department of the Interior

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

STATE OF KANSAS,	:	Order Docketing and Dismissing
Appellant	:	Appeals
	:	
v.	:	
	:	Docket Nos. IBIA 02-11-A
ACTING SOUTHERN PLAINS REGIONAL	:	IBIA 02-12-A
DIRECTOR, BUREAU OF INDIAN	:	
AFFAIRS,	:	
Appellee	:	November 16, 2001

These are appeals from two September 20, 2001, decisions issued by the Acting Southern Plains Regional Director, Bureau of Indian Affairs (Regional Director), concerning the acquisition of land in trust for the Prairie Band of Potawatomi Indians (Tribe). The Regional Director issued his decisions following remands by the Board in Kansas v. Acting Southern Plains Regional Director, 36 IBIA 152 (2001), and Kansas v. Acting Southern Plains Regional Director, 36 IBIA 164 (2001). In both of his September 20, 2001, decisions, the Regional Director stated his intent to take the subject land into trust. ^{1/}

Appellant's notices of appeal were received by the Board on October 29, 2001. On November 5, 2001, the Board received a motion to dismiss both appeals. The motion was filed by the Tribe, which contended that Appellant's notices of appeal were untimely because

^{1/} The land subject to one of the Regional Director's decisions was described in the decision as follows:

"A tract of land in the Northwest Quarter of Section 22, Township 8 South, Range 15 East of the 6th P.M., described as follows: Beginning at a point 691 feet North of the Southwest Corner of the Northwest Quarter of Section 22, Township 8 South, Range 15 East, thence East 608.0 feet, thence North 321.14 feet; thence West 608.0 feet to the West line of the Northwest Quarter, thence South along the West line 321.14 feet to the point of beginning, Jackson County, Kansas."

The land subject to the other decision was described in that decision as follows:

"The North Half of the Northwest Quarter and the Northwest Quarter of the Northeast Quarter of Section 23, Township 8 South, Range 14 East of the 6th P.M., Jackson County, Kansas, containing 120 acres, more or less."

they were postmarked October 25, 2001, and Appellant admitted receiving the Regional Director's decisions on September 24, 2001.

As the Tribe contends, Appellant states in both notices of appeal that it received the decision being appealed on September 24, 2001. In order to verify Appellant's date(s) of receipt, the Board asked the Regional Office to furnish copies of the return receipts for certified mail (green cards) for Appellant's copies of both decisions. The information furnished by the Regional Office shows that the two decisions were enclosed in a single envelope. The green card for that envelope confirms that Appellant received the two decisions on September 24, 2001.

Appellant's two notices of appeal to the Board were enclosed in a single envelope, which was postmarked October 25, 2001, more than 30 days after September 24, 2001.

Each of the Regional Director's September 20, 2001, decisions stated:

Your notice of appeal to the board must be signed by you or your attorney and **must be mailed within 30 days of the date you receive this decision.** * * *

If the notice of appeal is not timely filed, this decision will become final for the Department of the Interior at the expiration of the thirty (30) day appeal period. No extension of time can be granted for the filing of the notice of appeal.

Appellant was given correct appeal information but failed to file timely notices of appeal. Under the Board's regulations, 43 C.F.R. § 4.332(a), Appellant's appeals must be dismissed.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, these appeals are docketed but are dismissed as untimely.

//original signed

Anita Vogt
Administrative Judge

//original signed

Kathryn A. Lynn
Chief Administrative Judge