



INTERIOR BOARD OF INDIAN APPEALS

Robert Tabor, Bill Blind, Vinita Sankey, and Ed Whiteskunk
v. Acting Southern Plains Regional Director, Bureau of Indian Affairs

39 IBIA 186 (10/31/2003)

Reconsidering:
39 IBIA 144



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
801 NORTH QUINCY STREET
SUITE 300
ARLINGTON, VA 22203

| | | |
|----------------------------------|---|--------------------------|
| ROBERT TABOR, BILL BLIND, VINITA | : | Order on Reconsideration |
| SANKEY, and ED WHITESKUNK | : | |
| Appellants | : | |
| | : | |
| v. | : | Docket No. IBIA 03-111-A |
| | : | |
| ACTING SOUTHERN PLAINS REGIONAL | : | |
| DIRECTOR, BUREAU OF INDIAN | : | |
| AFFAIRS, | : | |
| Appellee | : | October 31, 2003 |

The Field Solicitor, Tulsa Field Office (Field Solicitor), has filed a petition for reconsideration of part of the decision which the Board of Indian Appeals (Board) issued in this case on October 2, 2003. 39 IBIA 144. The Field Solicitor primarily seeks review of the Board's vacation, in whole or in part, of two Field Solicitor opinions issued on November 4, 2002, and February 5, 2003. The Field Solicitor also asks that Acting Administrative Judge Kathleen R. Supernaw be recused from this case for the sole reason that she is "a former employee of the Tulsa Field Solicitor." Petition at 5.

The Board first addresses the issue of the recusal of Acting Judge Supernaw. 43 C.F.R. § 4.27(c) requires an administrative judge to recuse herself "if [she] deems [herself] disqualified under the recognized canons of judicial ethics." The Board has reviewed the Model Code of Judicial Conduct prepared by the American Bar Association and finds nothing there which suggests that recusal is appropriate merely because a judge is a former employee of the same office as an attorney appearing before the Board. Therefore, the Field Solicitor's request that Acting Judge Supernaw be recused from this case is denied. 1/

1/ Since Acting Judge Supernaw's appointment, the Board has considered one case in which she entered an appearance as counsel for the Department while she was employed in the Tulsa Field Solicitor's office. Acting Judge Supernaw recused herself from that case. Thlopthlocco Tribal Town v. Acting Muskogee Area Director, 39 IBIA 132, 133 n.1 (2003).

The Field Solicitor presents arguments in support of his contention that the Board lacks authority to vacate his opinions. The Board is not interested in entering into an internal Departmental debate on this issue. It took the extraordinary step of vacating the opinions because of the hopefully unique circumstances of this case. However, upon mature reflection, it has determined that it can obtain the same result by informing the Southern Plains Regional Director, Bureau of Indian Affairs (Regional Director), that, should the issue addressed in those opinions arise in the future, the Board will not affirm any decision issued by the Regional Director that is based on the two opinions.

Other issues raised by the Field Solicitor were considered and rejected.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. §§ 4.1 and 4.317, the Board's October 2, 2003, decision in this matter is amended as discussed above.

//original signed

Kathryn A. Lynn
Chief Administrative Judge

//original signed

Kathleen R. Supernaw
Acting Administrative Judge