



INTERIOR BOARD OF INDIAN APPEALS

Steven R. Smith v. Acting Pacific Regional Director, Bureau of Indian Affairs

42 IBIA 224 (02/27/2006)



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

STEVEN R. SMITH,	:	Order Dismissing Appeal
Appellant,	:	
	:	
v.	:	
	:	Docket No. IBIA 04-115-A
ACTING PACIFIC REGIONAL	:	
DIRECTOR, BUREAU OF INDIAN	:	
AFFAIRS,	:	
Appellee.	:	February 27, 2006

Appellant Steven R. Smith (Appellant), pro se, seeks review of a May 19, 2004 decision of the Acting Pacific Regional Director, Bureau of Indian Affairs (Regional Director; BIA), concerning the November 16, 2002 tribal election of the Dry Creek Rancheria of Pomo Indians of California (Tribe). In that election, Appellant was defeated in his bid to run for the office of tribal chairperson. After an unsuccessful appeal to the Tribe's Election Committee, Appellant appealed the Election Committee's decision to the BIA. The Superintendent and the Acting Regional Director both rejected Appellant's request to declare the 2002 election invalid. For the reasons discussed below, the Board of Indian Appeals (Board) dismisses the appeal as moot.

While this appeal was pending, the Board was notified that the Tribe had held a bi-annual election on November 20, 2004, and that the Tribe had certified and forwarded the results to BIA. ^{1/} The Board issued an Order for Additional Briefing, asking the parties to submit briefs concerning whether the Tribe's 2004 election rendered moot Appellant's appeal of the 2002 election. The Tribe submitted a brief arguing that the 2004 election did render moot Appellant's challenge to the 2002 election, and urging the Board to dismiss Appellant's appeal. Appellant submitted a "reply brief," which contends that the 2004 election did not moot his "core" complaint that ineligible individuals are being allowed to run for office and vote in tribal elections.

It is well-settled that a valid election held during the pendency of an appeal moots any questions concerning prior tribal leadership. See e.g., Williams v. Alaska Regional

^{1/} There is no evidence that Appellant ran for office in the 2004 election.

Director, 39 IBIA 140, 142 (2003); Kostzuta v. Southern Plains Regional Director, 35 IBIA 205 (2000); Rosales v. Sacramento Area Director, 34 IBIA 125, 126 (1999); Hamilton v. Acting Sacramento Area Director, 29 IBIA 122, 123 (1996); Villegas v. Sacramento Area Director, 24 IBIA 150, 151-52 (1993). “[T]he determination of tribal leadership is quintessentially an intra-tribal matter raising issues of tribal sovereignty, and therefore the Department should defer to tribal resolution of the matter through an appropriate tribal forum, including the normal electoral process.” Hamilton, 29 IBIA at 123.

In Hamilton, the Board held that the person opposing BIA’s conclusion that an appeal from a prior leadership dispute is moot must show one of the following: (1) that the subsequent election has been determined invalid in a tribal forum; (2) that a challenge to the subsequent election is presently pending in a tribal forum; (3) that BIA has declined to recognize the results of the subsequent election; or (4) that BIA has recognized the results of the subsequent election, but an appeal from that recognition is presently pending. 29 IBIA at 123. Here, Appellant has not met this burden. It appears that the results of the 2004 election may have been challenged by other individuals but that those challenges were rejected in a tribal forum. Further, there is no evidence that BIA has declined to recognize the results of the 2004 election or that there is a pending challenge to BIA’s recognition of the election results.

Appellant argues that the “core issue” in his appeal is not moot because individuals ineligible for membership are still being allowed to run for office and vote in elections. This appeal, however, is limited to reviewing the Regional Director’s decision concerning the 2002 election, and the dispute over the validity of that election was rendered moot by the 2004 election.

The Board finds that the 2004 election has rendered moot Appellant’s challenge to the 2002 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 from the Acting Regional Director’s decision of May 19, 2004 is dismissed as moot.

I concur:

// original signed
Amy B. Sosin
Acting Administrative Judge

// original signed
Steven K. Linscheid
Chief Administrative Judge