



INTERIOR BOARD OF INDIAN APPEALS

Kozlowicz & Gardner Advocates, Inc. v. Superintendent, Uintah and Ouray Agency,
Bureau of Indian Affairs, and Deputy Assistant Secretary for
Policy and Economic Development - Indian Affairs

50 IBIA 201 (09/15/2009)

Reconsideration denied:

50 IBIA 236

Related Board cases:

51 IBIA 166

51 IBIA 220



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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KOZLOWICZ & GARDNER)	Order Docketing and Dismissing
ADVOCATES, INC.,)	Appeal
Appellant,)	
)	
v.)	
)	
SUPERINTENDENT, UINTAH AND)	
OURAY AGENCY, BUREAU OF)	
INDIAN AFFAIRS, AND)	Docket No. IBIA 09-137
DEPUTY ASSISTANT)	
SECRETARY FOR POLICY AND)	
ECONOMIC DEVELOPMENT -)	
INDIAN AFFAIRS,)	
Appellee.)	September 15, 2009

On September 8, 2009, the Board of Indian Appeals (Board) received a notice of appeal from Kozlowicz & Gardner Advocates, Inc. (Appellant), through Lynda M. Kozlowicz, Ute Tribal Advocate, and Edson G. Gardner, Uintah Non-Member Advocate. The notice of appeal attaches two letters addressed to Gardner, and refers to both 25 C.F.R. § 2.9 (Notice of an appeal), and 25 C.F.R. § 2.8 (Appeal from inaction of official). One letter, dated September 1, 2009, is from the Superintendent of the Uintah and Ouray Agency (Agency), Bureau of Indian Affairs (BIA), in which the Superintendent acknowledged receipt from Gardner of incorporation documents and a Business License issued to Appellant by the Ute Indian Tribe. The Superintendent advised Gardner that the documents did not appear to implicate any role or action by BIA, but that the Agency would keep the documents on file. The other letter to Gardner, dated March 27, 2009, is from the Deputy Assistant Secretary for Policy and Economic Development - Indian Affairs (Deputy Assistant Secretary), and denies a request from Gardner that BIA conduct a Secretarial Election to adopt a new constitution for the Uintah mixed-blood Indians and to reorganize under section 16 of the Indian Reorganization Act, 25 U.S.C. § 476.

It is not clear from the notice of appeal whether Appellant appeals from one or both of these letters. The notice of appeal references both letters, but does not articulate any complaint concerning them, and the subject matter of the appeal is not otherwise clear from the notice of appeal. We construe the appeal as intended to appeal either action or alleged inaction by either the Superintendent or the Deputy Assistant Secretary, or both. We docket this appeal but dismiss it for lack of jurisdiction because the Board lacks jurisdiction over an appeal from a Superintendent's action or alleged inaction and, in this case, also lacks jurisdiction over an appeal from the Deputy Assistant Secretary's letter.¹

The Board's jurisdiction to review and decide appeals from administrative action (or alleged inaction) of BIA officials is prescribed by 25 C.F.R. § 2.4(e), and does not include the authority to review appeals from action or inaction by a Superintendent. *See Demery v. Standing Rock Agency Superintendent*, 50 IBIA 136, 137 (2009). Therefore, to the extent that this appeal seeks Board review of the Superintendent's letter to Gardner, the Board lacks jurisdiction to do so.

With exceptions not relevant here, the Board also lacks jurisdiction to review administrative action (or inaction) by the Assistant Secretary - Indian Affairs. *See id.*; *Pendleton v. Assistant Secretary - Indian Affairs*, 45 IBIA 133 (2007). In the present case, the March 27, 2009, letter to Gardner was from the Deputy Assistant Secretary, but at the time it was issued, the position of Assistant Secretary was vacant; the Deputy Assistant Secretary had been delegated the authority and responsibilities of the Assistant Secretary; and he was acting as the de facto, if not de jure, Assistant Secretary. *See Ramah Navajo Chapter v. Deputy Assistant Secretary for Policy and Economic Development - Indian Affairs*, 49 IBIA 10, 11-12 (2009).² Thus, to the extent that this appeal seeks Board review of the Deputy Assistant Secretary's letter to Gardner, the Board lacks jurisdiction to do so.

¹ Even if we were to construe the appeal as separately seeking some type of direct action or intervention by the Board in matters discussed in the notice of appeal, we would dismiss the appeal because the Board is an appellate review body whose jurisdiction is limited to reviewing appeals from specific action (or inaction) by other officials.

² The present Assistant Secretary - Indian Affairs was sworn into office on May 22, 2009. *See* U.S. Department of the Interior News Release, May 22, 2009 ("Larry Echohawk Officially Sworn In as Interior's New Assistant Secretary for Indian Affairs"), *available at* http://www.doi.gov/news/09_News_Releases/052209a.html.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Board docketed this appeal but dismisses it for lack of jurisdiction.

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

// original signed
Debora G. Luther
Administrative Judge