



INTERIOR BOARD OF INDIAN APPEALS

Sandy Point Improvement Co. v. Northwest Regional Director, Bureau of Indian Affairs

51 IBIA 277 (05/27/2010)

Reconsideration denied:

52 IBIA 11



United States Department of the Interior

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

SANDY POINT IMPROVEMENT CO.,)	Order Docketing and Dismissing Appeal
Appellant,)	
)	
v.)	
)	Docket No. IBIA 10-090
NORTHWEST REGIONAL)	
DIRECTOR, BUREAU OF INDIAN)	
AFFAIRS,)	
Appellee.)	May 27, 2010

On April 19, 2010, the Board of Indian Appeals (Board) received a notice of appeal from Sandy Point Improvement Co. (Appellant), through its chairperson, Ron Jepson. The notice of appeal seeks review of the failure of the Northwest Regional Director (Regional Director), Bureau of Indian Affairs (BIA), to respond to a January 29, 2010, request for action from Appellant in which it requested BIA to send a letter to the governing body of the Lummi Nation (Nation) “directing them to [eliminate] their inappropriate constitution and its associated regulations and codes and acquire organizational papers securing their place under Washington State law.” Letter from Ron Jepson to Regional Director, Jan. 29, 2010. The letter also requests that the “Lummi[']s abuse of power [be] addressed.” *Id.* The notice of appeal, styled as a “MOTION TO VACATE INAPPROPRIATE CONSTITUTION,” recites various complaints about the Nation, and seeks additional relief, including declarations that the United States does not hold lands in trust for the Lummi Tribe of the Lummi Reservation (Tribe) and that there is no “trust relationship within the lands of the reservation land survey.” Notice of Appeal at 21. In seeking relief, Appellant asserts that “[s]ince any Board remand will result in delay tactics from the Regional Director, Appellant is requesting the issue be addressed by the Board.” *Id.* Except for the referenced January 29, 2010, letter to the Regional Director (and followup correspondence to the Regional Director seeking a response to that letter), Appellant identifies no action or inaction of the Regional Director as the subject of its appeal or the object of its relief.

Because it is premised on the Regional Director’s failure to respond to Appellant’s January 29, 2010, letter, we construe Appellant’s “motion” as an appeal arising under 25 C.F.R. § 2.8 (appeal from inaction of official). Accepting Appellant’s representation

that the Regional Director failed to respond, as he would normally be required to do on receipt of a demand for action submitted under section 2.8, we nevertheless dismiss this appeal because (1) Appellant's request to the Regional Director to "eliminate" the Nation's constitution presented no plausible grounds for the Regional Director to consider Appellant's request on the merits, and (2) even if that were not the case, Appellant expressly rejects a remand to the Regional Director as relief, which is the only form of relief that is available under section 2.8.

The Board's jurisdiction is limited to the authority vested in it by regulation or otherwise delegated to it by the Secretary of the Interior. *See* 43 C.F.R. § 4.1(b)(2); *see also* 25 C.F.R. § 2.4(e); *Muñoz v. Arctic Slope Regional Corporation*, 51 IBIA 209, 209-10 (2010); *Preckwinkle v. Pacific Regional Director*, 44 IBIA 45 (2006); *Delmar v. Acting Navajo Regional Director*, 40 IBIA 184, 184 (2005). Under 25 C.F.R. Part 2, our jurisdiction is limited to reviewing specific actions or inactions taken by certain Bureau of Indian Affairs (BIA) officials or officials in the Office of the Assistant Secretary - Indian Affairs. *See* 43 C.F.R. § 4.1(b)(2)(i); 25 C.F.R. §§ 2.4(e), 2.8. When an appeal is filed with the Board under section 2.8, the Board's authority "is limited to deciding whether BIA must take action or issue a decision, and does not extend to directing BIA how to act or decide a matter in the first instance." *Midthun v. Rocky Mountain Regional Director*, 43 IBIA 258, 264 n.7 (2006).

In the present case, we conclude that Appellant's January 29, 2010, request for action by the Regional Director — to vacate the Tribe's constitution — presented no plausible basis upon which he could seriously consider the request, and therefore we decline to order him to take action or issue a decision under section 2.8. *Cf. Castillo v. Pacific Regional Director*, 46 IBIA 209, 213 (2008) (section 2.8 did not require BIA to issue a merits decision when the request for action simply repeated a prior request that had been denied and the denial was not timely appealed). Appellant's letter to the Regional Director cited no authority (nor does its notice of appeal to the Board) for the proposition that the Regional Director may "eliminate" the Nation's constitution. The Nation, as a quasi-sovereign entity, is empowered to adopt tribal governing documents such as a Constitution and ordinances to govern its relations. *See generally Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 55-56 (1978). Of course, consistent with section 2.8, BIA should have responded to Appellant's demand for action — even if only to deny the request as baseless. But we find no grounds in the instant case to order the Regional Director to issue a decision.¹

¹ We note too that Appellant would, more likely than not, lack standing to challenge a decision by BIA with respect to the Nation's constitution. As our cases explain, we are

(continued...)

Moreover, as noted above, Appellant expressly rejects the idea of a remand, contending that it would only result in delay. But if, in fact, Appellant had provided some plausible basis for the Regional Director to consider its request on the merits, a remand would be the only form of relief available, because the underlying merits of a section 2.8 demand are not within the scope of a section 2.8 appeal. *See Forest County Potawatomi Community v. Deputy Assistant Secretary - Indian Affairs*, 48 IBIA 259, 265-66 (2009); *Midthun*, 43 IBIA at 264 n.7. Thus, the relief Appellant seeks from the Board is not available in this appeal.

Appellant's notice of appeal includes a litany of additional complaints against the Nation. To the extent Appellant may be intending to seek Board review of actions by tribal officials, the Board lacks jurisdiction over such allegations. *See Wasson v. Pyramid Lake Tribal Council*, 51 IBIA 169 (2010), and cases cited therein.

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 is docketed but dismissed.

I concur:

// original signed
Debora G. Luther
Administrative Judge

// original signed
Steven K. Linscheid
Chief Administrative Judge

¹(...continued)

loath to interfere in intratribal matters, such as challenges to tribal governing documents, and have held that tribal members and tribal employees lack standing, e.g., to challenge BIA's approval of amendments to tribal constitutions. *See McKay v. Acting Rocky Mountain Regional Director*, 36 IBIA 61, 62 (2001); *Welbourne v. Anadarko Area Director*, 26 IBIA 69, 78 & n.14 (1994), and cases cited therein. For this additional reason, we decline to order the Regional Director to respond to Appellant's letter.