



INTERIOR BOARD OF INDIAN APPEALS

Doc Pewewardy v. Commissioner of Indian Affairs

3 IBIA 259 (02/12/1975)



# United States Department of the Interior

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

ADMINISTRATIVE APPEAL OF  
DOC PEWEWARDY  
v.  
COMMISSIONER,  
BUREAU OF INDIAN AFFAIRS, ET AL.

IBIA 75-17-A

Decided February 12, 1975

Appeal from an administrative decision of the Commissioner, Bureau of Indian Affairs, declaring as valid the nomination of candidates for Comanche Tribal offices in a recent election.

Reversed.

1. Indian Tribes: Constitution By-Laws and Ordinances: Elections:  
Generally

Nomination and election of tribal officers are governed by the provisions of its constitution.

APPEARANCES: Doc Pewewardy, pro se.

## OPINION BY ADMINISTRATIVE JUDGE WILSON

Doc Pewewardy, hereinafter referred to as appellant, has appealed to this Board a decision of the Commissioner, Bureau of Indian Affairs, hereinafter referred to as Commissioner, wherein the Commissioner declared valid the nomination of candidates for tribal office in a recent Comanche Tribal election.

The appellant in his letter of June 10, 1974, to the Commissioner protested the tribal election of officers held on June 8, 1974, and requested the election be declared invalid since the candidates had been nominated contrary to the requirements of ARTICLE V, Section 6 of the Comanche Constitution, hereinafter referred to as the Constitution.

ARTICLE V, Section 6 of the Constitution provides:

No action shall be taken by the Tribal Council unless a quorum is present. A quorum shall consist of two-hundred and fifty (250) eligible voters.

The Commissioner on July 9, 1974, denied the request to declare the election of June 8, 1974, invalid. As reason for the denial the Commissioner stated:

We cannot agree with your further request concerning the recent election of tribal officials. As mentioned in our April 21, 1972, communication, you referred to in your letter, the purpose of the Comanche Constitution is to continue tribal government. Election procedures including nomination of candidates, are needed to achieve that purpose. Therefore, the quorum provisions as set forth in Article V, Section 6 cannot be considered applicable to nomination of candidates. Without an election, the over all intent of the constitution could not be implemented.

The Commissioner in his denial further stated:

You may recall that the April 21, 1972, decision was appealed to the Secretary. However, the Commissioner's decision was sustained on April 27, 1972. We are enclosing copies of such correspondence. Accordingly, we have no basis to deny recognition of those who were elected at the June 8 balloting.

It is from the foregoing denial that the appellant is now before this Board with his appeal.

A review of the record indicates only the following issue to be considered and decided by this Board:

Is nomination of candidates for a tribal election subject to the quorum provision of ARTICLE V, Section 6 of the Comanche Constitution?

In order to arrive at an answer to the question involved it is necessary to look to that part of the Constitution dealing with elections. Tribal election procedures are found under ARTICLE VII of the Constitution. Section 2 thereof particularly provides:

At each annual Comanche Tribal Council meeting subsequent to the first election of officers and business committeemen, under this constitution, candidates will be nominated to compete for election to offices being vacated by reason of expiration of term of office. Determination of qualifications of nominated candidates and election processes shall be as

described in Section 1(c) and (d) of this Article except that the Comanche tribal officers and business committeemen will assume the responsibilities assumed by the Area Director for the first election under this constitution. No election shall be held later than sixty (60) days after the annual meeting. (Emphasis supplied.)

[1] It is clear and quite evident from the foregoing that nomination of candidates for tribal offices must be made at each annual Comanche Tribal Council meeting. In view thereof, it only follows that any and all business transacted or carried out at a Tribal Council meeting would be subject to the provisions of ARTICLE V, Section 6.

Apparently no quorum was present at the Tribal Council meeting of April 20, 1974, when the nominations in question were made. At least the record does not indicate to the contrary.

The argument that the quorum provision is inapplicable to the nomination of candidates for office in order for tribal government to function cannot be sustained. To that extent a great deal is made of the Secretary's decision of April 27, 1972, wherein he declared ARTICLE V, Section 6 inapplicable to elections, including nominations. A careful examination of the Secretary's action taken at that time appears to have been taken in the face of an admitted and deliberate boycott of the Tribal Council meeting in order to thwart the election process as required in the Tribal Constitution. Such, however, from the record does not appear to be the situation in the present appeal. In the absence of an extreme emergency or a complete breakdown of tribal government there appears to be no justification for departmental interference such as was done in the case herein.

Assuming arguendo the quorum provisions of the Constitution hamper or impede the continued and effective operation of tribal government there appears to be no reason why an appropriate amendment could not be effected to remedy the situation under ARTICLE XI, Section 1 of the Comanche Constitution.

In view of the reasons hereinabove set forth the Board finds that the nomination of candidates and the subsequent election were in violation of ARTICLE V, Section 6 of the Constitution and that the Commissioner's decision of July 9, 1974, holding to the contrary must be reversed.

NOW, THEREFORE, by virtue of the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR

4.1(2) and 211 DM 13.7, the decision of July 9, 1974, of the Commissioner, Bureau of Indian Affairs, be, and the same is hereby, REVERSED and REMANDED, for whatever action that is deemed necessary and appropriate consistent with the opinion herein.

Done at Arlington, Virginia.

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//original signed  
Alexander H. Wilson  
Administrative Judge

I concur:

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//original signed  
Mitchell J. Sabagh  
Administrative Judge