



INTERIOR BOARD OF INDIAN APPEALS

Estate of John Mahkuk

3 IBIA 291 (03/20/1975)



United States Department of the Interior

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

ESTATE OF JOHN MAHKUK

IBIA 75-19

Decided March 20, 1975

Petition to reopen.

Granted and remanded.

1. Indian Probate: Reopening: Generally

Although the Superintendent of an Indian agency has no interest in the outcome he is a proper official of the Bureau of Indian Affairs to file a petition for reopening, under the authority of 43 CFR 4.242.

2. Indian Probate: Reopening: Waiver of Time Limitation

An Administrative Law judge is without power to reopen a case after the passage of three years from the date the judge enters the order, but the Secretary is not bound by the limitations of 43 CFR 4.242 and he has authority at any time to review on proper grounds.

APPEARANCES: Jack Carson, Superintendent, Horton Agency, Bureau of Indian Affairs, Horton, Kansas, petitioner, pro se.

The above-entitled matter comes before this Board on a Petition to Reopen dated August 29, 1974, filed by Jack Carson, Superintendent, Horton Agency.

[1] The Superintendent as Petitioner, although having no interest in the outcome of the petition herein, is a proper official of the Bureau of Indian Affairs to file such a petition under the authority of 43 CFR 4.242.

[2] More than three years having elapsed since the Order to Determine Heirs was entered in the estate of John Mahkuk, Prairie Band Potawatomi Allottee No. 654, the Administrative Law Judge properly referred the petition to this Board for appropriate action pursuant to 43 CFR 4.242(h).

The Superintendent in his petition reports that Jo Ellen Rodriquez and Judy Rodriquez, due to inadvertence and the misconstruction of a statute relating to the right of illegitimates to inherit, were omitted from the Order Determining Heirs, dated August 28, 1961, and that the omission of said individuals first came to the attention of the Superintendent on or about July 18, 1974.

The individuals in question, being the children of decedent's prior-deceased daughter, Gladys Mahkuk McKinney, appear to have been minors at the time of the hearing held in this matter. One of the omitted heirs is reported by the Superintendent as still being a minor.

The Superintendent further reports that the decedent's entire trust estate remains intact and recommends that the estate be reopened so that the omitted individuals can be included as heirs in the decedent's estate. The Administrative Law Judge having probate jurisdiction over the estate under date of September 9, 1975, concurred with the Superintendent's recommendation.

It would appear that in order to prevent the continuation of a manifest injustice to the omitted heirs, the Petition to Reopen should be granted and the matter remanded to the Administrative Law Judge for further proceedings.

NOW, THEREFORE, by virtue of the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the Petition to Reopen is hereby GRANTED and the matter is hereby REMANDED to the Administrative Law Judge for whatever proceedings he deems appropriate in the matter and for the issuance of an order or decision in connection therewith.

//original signed
Alexander H. Wilson
Administrative Judge

I concur:

//original signed
Mitchell J. Sabagh
Administrative Judge