



INTERIOR BOARD OF INDIAN APPEALS

Estate of Hiemstennie (Maggie) Whiz Abbott

4 IBIA 79 (06/19/1975)

Denying reconsideration of:

4 IBIA 12

Judicial review of this case:

Affirmed, *Burkybile v. Smith*, No. C-75-190 (E.D. Wash. Jan. 21, 1977)

Related Board case:

2 IBIA 53



United States Department of the Interior

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

ESTATE OF HIEMSTENNIE (MAGGIE) WHIZ ABBOTT

IBIA 75-30 (Supp.)
(See also IBIA 73-3)

Decided June 19, 1975

Petition for reconsideration.

Denied

APPEARANCES: Pipestem, Rivas and Charloe, by John H. Charloe, Esq., for petitioner.

OPINION BY ADMINISTRATIVE JUDGE SABAGH

The above-entitled matter comes before the Board upon a petition for reconsideration filed by Doris Whiz Burkybile, hereinafter referred to as petitioner, through counsel.

Indian probate regulations do not contain any provisions for reconsideration of a matter which has been finally determined by the Secretary of the Interior, yet he has the inherent power to reopen and review administrative determinations when some new factors such as newly discovered evidence of fraud are involved. Estate of Meshach (Mace) Tipton, IA-41 (January 19, 1951).

The petition contains no new factor such as newly discovered evidence of fraud.

Petitioner was ably represented by counsel throughout the proceedings and ample opportunity was afforded to interpose whatever objections or contentions she might deem appropriate.

The decision and order dated April 17, 1975, being final for the Department from which there is no further administrative remedy, the petition filed June 16, 1975, must be and is denied.

The petitioner interposes the contention that certain of the December 31, 1970 amendments to the Act of August 9, 1946, was unconstitutional.

IBIA 75-30 (Supp.)
(See also IBIA 73-3)

The Board does not consider the contention to be either timely or material. Nonetheless, the Department of Interior does not have the authority to declare a statute unconstitutional as being in violation of the constitution of the United States.

Only the courts have the authority to take action which runs counter to the will of the legislature. 3 Davis, Administrative Law Treatise, § 20.04; Public Utilities Commission v. United States, 255 U.S. 534, 539 (1958); Estate of Benjamin Harrison Stowhy, 1 IBIA 269, 79 I.D. 428 (1972); Estate of Florence Bluesky Vessell, 1 IBIA 312, 79 I.D. 615 (1972).

NOW, THEREFORE, by virtue of the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, IT IS ORDERED that the petition for reconsideration shall be and the same is hereby DENIED.

Done at Arlington, Virginia.

//original signed
Mitchell J. Sabagh
Administrative Judge