



INTERIOR BOARD OF INDIAN APPEALS

Doyon, Ltd.

7 IBIA 83 (08/08/1978)



# 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 DOYON, LIMITED

IBIA 77-23-A

Decided August 8, 1978

Appeal from the decision of the Deputy Commissioner, Bureau of Indian Affairs, affirming decision of the Area Director, refusing to consummate a lease agreement.

Affirmed.

1. Bureau of Indian Affairs: Administrative Appeals: Acts of Agents of the United States: Notice of Limitation on Authority

Persons dealing with an agent of the United States are charged with notice of limitation on his authority and that the United States is bound only by acts of an agent which are within his authority.

2. Bureau of Indian Affairs: Administrative Appeals: Acts of Agents of the United States: Limitation on Authority to Act: Contracts Express or Implied in Fact

The limitation that the United States is bound only by acts of agents which are within his authority applies not only to express contracts but to contracts implied in fact as well.

APPEARANCES: Fried, Frank, Harris, Shriver & Kampelman, by Lawrence R. Sidman, Esq., for appellant; E. Edward Wiles, Department Counsel, Office of the Solicitor, for appellee.

### OPINION BY ADMINISTRATIVE JUDGE SABAGH

This is an appeal from the decision of the Deputy Commissioner of Indian Affairs, dated December 16, 1976, affirming the decision

of Clarence Antioquia, Area Director, Juneau Area Office, dated March 31, 1975, refusing to consummate a lease agreement between Doyon, Ltd., and the Bureau of Indian Affairs, for space in Doyon's office building in Fairbanks, Alaska.

Doyon, Ltd., is the regional corporation for the Tanana Chiefs Conference Area, and was established pursuant to the Alaska Native Claims Settlement Act. In or about April 1973, discussions began between the Area Director, Bureau of Indian Affairs, Juneau, Alaska, and officials of Doyon, Ltd., regarding the possibility of BIA leasing the first floor in a building Doyon, Ltd., planned to build and complete in 1974 consisting of approximately 10,336 square feet of space at \$1.25 per square foot. At the time negotiations began between BIA and Doyon, Ltd., BIA was housed in the Arctic Bowl Building which the Area Director and others in BIA, Juneau Area Office, considered to be inadequate from the standpoint of location and space.

By letter of June 29, 1973, Doyon, Ltd., requested a firm commitment that upon completion of the building in 1974, BIA would lease the floor. On July 23, 1973, La Vaughn H. Jones, Acting Area Property and Supply Officer, BIA, responded that it was the intent of BIA to negotiate a lease upon completion of the building in 1974, but that such negotiations would be subject to the availability of funds. Mr. Jones further advised that BIA could not now enter into a formal contract because in effect BIA did not have the authority to enter into such an obligation.

On July 24, 1973, La Vaughn Jones advised the Director, Space Management Division, General Services Administration, of its intent to lease from Doyon, Ltd., in 1974 for 3 years until BIA was ready to move into the Federal Building which was to be constructed.

Apparently, Doyon was required to acquire approval from the Secretary of the Interior prior to the expenditure of certain funds for the construction of an office building.

On August 6, 1973, W. L. Rogers, Deputy Assistant Secretary, Department of the Interior, responded to letters from James H. Lack, General Counsel, Doyon Ltd., dated May 22, July 2 and 13, 1973, wherein Doyon requested Secretarial approval of Doyon's plan to construct an office building in Fairbanks, Alaska, for use in part by Doyon itself for a central office.

The Deputy Assistant Secretary stated in part:

\* \* \* It is understood that Doyon would use part of the planned building for its present office space needs and that the unneeded space would be leased out until such time as Doyon required the space \* \* \*. In view of these

facts \* \* \* it is not considered Doyon's proposal to purchase land and build an office building is an investment within the intended meaning of Article IX, Section 2, of Doyon's bylaws.

\* \* \* It is noted from your letters that Doyon has been searching for six or eight months for office space which would fill its present needs and also allow for its future growth. The feasibility study you have provided shows that Doyon currently needs 5,200 square feet of office space and that in five years this need will have increased to 13,000 square feet. The study, and Mr. Sackett's recent telephone conversation with Mr. Soller, indicate since Doyon will need only a portion of the office space initially, it has entered into negotiations with the Bureau of Indian Affairs for the lease of a portion of the building.

\* \* \* The Bureau has informally indicated an interest in leasing 9,000 square feet for three to five years.

\* \* \* It appears the short term office-space needs of the Bureau very nearly coincide with the temporary surplus space which Doyon would have \* \* \*.

\* \* \* It is understood that the building will be financed by a construction loan rather than by funds advanced to Doyon pursuant to Public Laws 92-306 (86 Stat. 167), and 92-369 (86 Stat. 510), which impose certain restrictions on the use of such advance funds. It is also understood that Doyon intends to negotiate for the construction contract rather than submit it to competitive bidding. The advantages of a shortened construction time, lower financing costs, an early commencement of work on the foundation and preferential hiring of Alaska natives to work on the building are considered by Doyon to outweigh the disadvantages of a negotiated contract.

\* \* \* In view of all of the above, and without evaluating the proposal from the standpoint of business judgment I foresee no objection from this office to Doyon's plan \* \* \*.

\* \* \* Before the Secretary can give his formal approval to Doyon's plan, it will be necessary for the Board of Directors to pass and submit a formal resolution adopting the plan. When the resolution is received, it will be given prompt consideration \* \* \*.

On August 29, 1974, George F. Gauzza, Director of Management Operations, Office of the Secretary, Department of the Interior, by memorandum advised the heads of Bureaus and Offices, Department of the Interior, that Congress approved for the most part, the General Services Administration's request for authorization to withdraw money from the Federal Building Fund to finance the operations of the Public Building Service. He further advised that Congress had reduced the amounts significantly in the areas of building operations, i.e., cleaning and guard service, and the acquisition of rental space.

Gauzza advised that this loss of available funds for rental of space made it impossible for GSA to acquire additional leased space as the authorization did not cover even existing leases.

The Director of Management further advised that the Administrator of GSA, as an initial response to this Congressional action, placed a freeze on the acquisition of space in July (1974), and that it appeared that this freeze would remain in force for the foreseeable future and at least until January 1, 1975.

By memorandum dated October 4, 1974, the Area Procurement Officer, BIA, responded to the Area Supply Officer's question of proper procedure for negotiating a lease for office space from Doyon, Ltd. He advised that the process would be somewhat routine except for the fact that GSA had placed a freeze on the acquisition of space, effective until January 1, 1975. He continued that, GSA would handle negotiations unless circumstances were such that they judged it to be better for the BIA to do their own negotiations, in which case, GSA would grant BIA authority to negotiate under the "Buy Indian Act." He further stated that the situation seemed to boil down to--

1. We should ask GSA to negotiate for space.
2. GSA is not doing any negotiating until after January 1, 1975.
3. GSA will not give us authority to negotiate until after January 1, 1975.

The Acting Area Property and Supply Officer, BIA, on December 27, 1974, requested GSA to authorize 10,202.2 square feet of office and storage space (Doyon Building), occupancy to commence April 1, 1975. As justification for the space request, the Acting Area Property and Supply Officer stated in part: "This building was designed with our specific needs in mind, and with the understanding that it was our intent to occupy the space, depending on acceptable price negotiations \* \* \*."

By letter of January 15, 1975, J. Wayne Roy, Director, Space Management Division, Public Building Service, GSA, returned BIA's

request of December 27, 1974, advising it was not the intention of GSA to take any action to procure space to replace that already occupied by BIA under Lease No. GS-10B-04056 (Arctic Bowl Building). He further advised that a new Federal building would be completed during the latter part of calendar year 1977 in which BIA would be housed.

On February 12, 1975, BIA responded, advising that the space in the Arctic Bowl Building was inadequate, and that BIA's request to GSA was for negotiation of a lease in the Doyon Building. BIA asked to be advised if it was possible to cancel space assignment in the Arctic Bowl Building if obtaining a lease from Doyon and whether BIA could negotiate a lease under its "Buy-Indian" provisions?

By letter of February 24, 1975, BIA advised Doyon of GSA's January 15 decision, and of BIA's February 12, 1975, letter to GSA.

On March 10, 1975, GSA responded to BIA's February 12 letter, advising that GSA was precluded from taking any action at that time and that the lease for space occupied by BIA in the Arctic Bowl Building could not be cancelled until November 9, 1976. Accordingly, GSA could not take action to relocate BIA or grant it approval to negotiate its own lease.

The Area Director, BIA, Juneau Area Office, on March 31, 1975, issued a decision concluding therein that neither BIA nor the Department of the Interior had authority to negotiate a lease with Doyon Ltd.; that GSA had the sole authority to negotiate lease for office space with Doyon Ltd.; and in effect BIA could not negotiate a lease unless GSA authorized BIA to do so.

Doyon Ltd., appealed this decision to the Commissioner of Indian Affairs, who by decision of December 16, 1976, affirmed the Area Director. A timely appeal was filed with this Board.

Doyon requests that the Board consider only the question of Doyon's entitlement to compensation without determining the amount of damages.

The appellant gives as the reasons for entitlement, the following:

1. The existence of an implied agreement between the Government and Doyon which required BIA to enter into a lease with Doyon.
2. The Government is estopped to deny the existence of an agreement between BIA and Doyon.

- (a) The Government may be estopped to deny the existence of a contract.
- (b) The facts present a compelling case for application of the doctrine of equitable estoppel against the Government.
- (c) BIA was authorized by the Buy-Indian Act to enter into a lease agreement with Doyon, and therefore, the Government is estopped to deny the existence of such agreement.
- (d) Assuming BIA did not have authority to enter into the lease agreement, the Government is estopped to deny the existence of the agreement because of GSA's acquiescence therein.

3. Doyon has presented an equitable claim entitling it to compensation for its reliance upon BIA's representations.

The Bureau of Indian Affairs in substance contends the following:

- 1. The Board of Indian Appeals has no jurisdiction over this appeal.
- 2. Statutory authority is a prerequisite in the creation of either an implied contract, or an obligation based on an equitable estoppel to deny the existence of a contract.

The Board considers the issue here to be one of jurisdiction. In other words, does the Secretary of the Interior or his subordinates have jurisdiction over the acquisition of building space by lease?

Section 490(h)(1) of Title 40 of the United States Code provides:

The Administrator (General Services) is authorized to enter into lease agreements with any person, co-partnership, corporation, or other public or private entity, which do not bind the Government for periods in excess of twenty years for each such lease agreement, on such terms as he deems to be in the interest of the United States and necessary for the accommodation of Federal agencies in buildings and improvements which are in existence or to be erected by the lessor, for

such purposes and to assign and reassign space therein to Federal agencies.

The 1950 Reorganization Plan No. 18, effective July 1, 1950, section 1, entitled, "Transfer of Space Assignment and Leasing Functions," provides in part that:

All functions with respect to acquiring space in buildings by lease, and all functions with respect to assigning and reassigning space in buildings for use by agencies (including both space acquired by lease and space in Government-owned buildings), are hereby transferred from the respective agencies in which such functions are now vested to the Administrator of General Services \* \* \*.

Section 101-18.101(a) and (c) of Title 41 of the Code of Federal Regulations, revised as of July 1, 1974, provides that:

a. GSA will perform all functions of leasing building space, and land incidental thereto, for Federal agencies except as provided in this Subpart 101-18.1.

c. Agencies not authorized to acquire space by lease, or agencies which have requested GSA to provide leased space for their activities, shall not directly or indirectly contact lessors or potential lessors for the purpose of making oral or written promises, commitments, or agreements with respect to the conditions of occupancy of particular space, alterations and repairs, or payment of overtime services.

The Board has completed a full review of the record as stipulated to in this matter, including the arguments and submissions of the parties.

It is clear from the foregoing that authority to acquire space in buildings was transferred to the General Services Administration, pursuant to the 1950 Reorganization Plan No. 18, section 1, effective July 1, 1950, and regulations promulgated thereto. Consequently, any attempt on the part of the Secretary or his subordinates to act in such matters without authorization would be futile, since the power to act lies exclusively within the General Services Administration.

Authority of the Secretary of the Interior to act, stems from authority granted him by statute. Title 25 of the United States Code, and Chapters I and II of Title 25, Code of Federal Regulations, contain the bulk of statutes and regulations of the Department of

the Interior of general application relating to Indian Affairs. Nothing therein authorizes the Department to acquire space in buildings by lease.

Section 4.351 et seq., of Title 43 of the Code of Federal Regulations, provides for appeals to the Board of Indian Appeals for correction of actions or decisions of officials of BIA, where they are protested as a matter of right or privilege arising out of Chapter I of Title 25.

It follows, therefore, that this Board is powerless to provide any relief in this matter, and accordingly, has no jurisdiction.

We cannot agree with the appellant that the Government is estopped to deny the existence of the agreement because of GSA's acquiescence therein. GSA was not obliged to take action on the Acting Area Property and Supply Officer's letter of July 24, 1973, and following. The mere advising of GSA by the Acting Area Property and Supply Officer, BIA, of the intention to lease from Doyon, Ltd., in 1974 does not create or generate a responsibility on the part of GSA to act.

Were we empowered to exercise jurisdiction in this matter, we would be compelled to uphold the action taken by the Bureau of Indian Affairs.

Persons dealing with an agent of the United States are charged with notice of limitation on his authority, and that the United States is bound only by acts of an agent which are within his authority. Farm Security Administration, Department of Agriculture v. Herren, 165 F.2d 554; Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380, 68 S. Ct. 1; Wilber National Bank v. United States, 294 U.S. 120, 123, 55 S. Ct. 362, 79 L.Ed. 798.

This limitation on the authority of an agent to bind the United States applies not only to express contracts but contracts implied in fact as well. The Supreme Court said: "The limitation upon the authority to impose contract obligations upon the United States is as applicable to contracts by implication as it is to those expressly made. Sutton v. United States, 256 U.S. 575, 580, 41 S. Ct. 563, 565, 65 L.Ed. 1099, 19 A.L.R. 403; Barnett v. United States, 397 FS 631 (1975)."

Doyon, Ltd., by letter of June 29, 1973, requested a firm written commitment that upon completion of the Doyon building in 1974, BIA would lease the floor. The Acting Area Property and Supply Officer on July 23, 1973, responded that it was the intent of BIA to negotiate a lease upon completion of the building in 1974, but that such negotiations would be subject to the availability of funds. He further advised that BIA could not now enter into a formal contract because BIA in effect did not have the authority to do so.

Clearly, the Acting Area Property and Supply Officer's letter of July 23, 1973, was not a written commitment to lease in 1974 upon completion of the Doyon building. At most, it meant that BIA intended to lease the Doyon building upon completion in 1974 provided BIA was granted authority to lease and sufficient funds were then available.

Moreover, the Deputy Assistant Secretary's letter of August 6, 1973, cannot be construed to be a commitment, either express or implied, to lease the Doyon building upon completion in 1974. At most, the letter was a response to Doyon's request for Secretarial approval of its plan to construct its office building in Fairbanks, Alaska, for use in part by Doyon, Ltd., for its central office. The Deputy Secretary's awareness that BIA had entered into preliminary negotiations with Doyon, Ltd., in no way obligated the Secretary of the Interior or the Government, nor can it be considered to be an express or implied acquiescence.

The "Buy Indian Act," 25 U.S.C. § 47, did not provide the Secretary of the Interior or the Bureau of Indian Affairs the substantive authority or the power to negotiate a lease for office space. It is a procedural authority for negotiation without advertising, once authority to act is acquired. See Solicitor's Opinion dated June 20, 1969, entitled "Scope and Applicability of the 'Buy Indian Act'."

The Board does not agree that the facts here present a compelling case for the application of the doctrines of estoppel and equitable estoppel. Because of the reasons set forth above, the Board finds these contentions to be without merit.

Accordingly, the appeal should be dismissed and the decision of the Area Director, Juneau Area Office, dated March 31, 1975, affirmed.

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), the appeal is DISMISSED and the decision of the Area Director, Juneau Area Office, dated March 31, 1975, is AFFIRMED.

This decision is final for the Department.

Done at Arlington, Virginia.

\_\_\_\_\_  
//original signed  
Mitchell J. Sabagh  
Administrative Judge

I concur:

\_\_\_\_\_  
//original signed  
Alexander H. Wilson  
Chief Administrative Judge