



INTERIOR BOARD OF INDIAN APPEALS

Jake Ahtone, et al. v. Acting Deputy Assistant Secretary - Indian Affairs (Operations)  
and Deputy Commissioner of Indian Affairs

8 IBIA 278 (04/20/1981)

Judicial review of this case:

Dismissed as moot, *Kiowa Business Committee v. U.S. Department of the Interior*,  
No. CIV-81-386-D (W.D. Okla. Sept. 10, 1982)



# United States Department of the Interior

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

JAKE AHTONE, EVERETT	:	Notice of Docketing and
RHOADES, MAE JOHNSON,	:	Order Dismissing Appeal
LINN PAUAHTY, OSCAR TSOODLE	:	
	:	
v.	:	
	:	
JAMES A. CANAN, ACTING DEPUTY	:	Docket No. IBIA 81-22-A
ASSISTANT SECRETARY - INDIAN	:	
AFFAIRS, AND THEODORE C.	:	
KRENZKE, ACTING DEPUTY	:	
COMMISSIONER OF INDIAN AFFAIRS	:	April 20, 1981

On April 10, 1981, Jake Ahtone, Everette Rhoades, Mae Johnson, Linn Pauahy and Oscar Tsoodle, through counsel, Phil Lujan, Esq., Noble, Oklahoma, filed a notice of appeal with the Board of Indian Appeals dated April 7, 1981, from an action taken by James A. Canan, Acting Deputy Assistant Secretary - Indian Affairs, dated January 22, 1981, concluding that the Anadarko Area Court of Indian Offenses lacks jurisdiction over election disputes within the Kiowa Tribe of Oklahoma and directing the Commissioner of Indian Affairs to decide which persons the Department should recognize as duly constituted members of the Kiowa Business Committee, and from a written decision entered February 20, 1981, by Theodore C. Krenzke, Acting Deputy Commissioner of Indian Affairs, recognizing those persons elected at the June 7, 1980 Kiowa General Election as lawful members of the Kiowa Business Committee with whom the Department should deal in its government-to-government relationship with the Tribe. Appellants are Kiowa tribal members who failed to obtain re-election to the Kiowa Business Committee at the June 7, 1980 general election. The subject appeal is hereby docketed under the above case name and docket number. However, for reasons set forth below the appeal is dismissed.

New procedural rules governing proceedings before the Board of Indian Appeals were published January 23, 1981. See 46 Fed. Reg. 7334 (1981), a copy of which is enclosed for non-governmental parties. Section 4.330 of the foregoing regulations (to be codified in Volume 43, Code of Federal Regulations at Part 4) prescribes the nature of cases appealable to the Board of Indian Appeals from administrative actions taken by officials of the Bureau of Indian Affairs or by the Assistant Secretary - Indian Affairs. This section states in pertinent part:

- (a) These regulations apply to the practice and procedure for (1) appeal to the Board of Indian appeals from administrative actions or decisions of officials of the Bureau of Indian Affairs in cases involving determinations, findings and orders protested as a violation of a right or privilege of the appellant; and
- (2) administrative review by the Board of Indian Appeals of other matters pertaining to Indians which

are referred to it for exercise of review authority of the Secretary, the Assistant Secretary for Indian Affairs, or the Commissioner of Indian Affairs.

(b) Except as otherwise permitted by the Secretary, the Assistant Secretary for Indian Affairs or the Commissioner of Indian Affairs by special delegation or request, the Board shall not adjudicate --- (2) matters decided by the Bureau of Indian Affairs through exercise of its discretionary authority ---.

As applied to the circumstances surrounding the notice of appeal before us, the above regulatory provisions require dismissal of this case. With respect to appellants' challenge to the determination of the Acting Deputy Assistant Secretary - Indian Affairs that the Anadarko Area Court of Indian Offenses lacks jurisdiction to resolve the election dispute at issue, the Board is not vested with authority to review determinations of the Assistant Secretary - Indian Affairs except as otherwise allowed by the Assistant Secretary by special referral, delegation or request. 1/ The Assistant Secretary's Office has not, to the Board's knowledge, authorized us to review its decision of January 22, 1981.

As to the Acting Deputy Commissioner's decision to recognize those persons elected at the June 7, 1980 Kiowa General Election as "the lawfully constituted Kiowa Business Committee," Mr. Krenzke noted in this determination that it was rendered on the basis of "discretionary authority" and that the decision was therefore "final for the Department." Decision at p. 4. Pursuant to the provisions of section 4.330 above, and 25 CFR 2.19, the Board of Indian Appeals lacks jurisdiction to review this discretionary decision of the Commissioner's Office in the absence of a certification that the matter may be reviewed by the Board.

ORDER

The notice of appeal docketed as IBIA No. 81-22-A is dismissed for lack of jurisdiction.

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//original signed  
Wm. Philip Horton  
Chief Administrative Judge

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//original signed  
Franklin Arness  
Administrative Judge

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1/ The Assistant Secretary may also use rulemaking to designate a class of decisionmaking reviewable by the Board. See, e.g., 25 CFR 13.15.