



INTERIOR BOARD OF INDIAN APPEALS

Robert Burnette v. Assistant Secretary - Indian Affairs

11 IBIA 75 (03/03/1983)



United States Department of the Interior

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

ROBERT BURNETT : Order Docketing and Dismissing
: Appeal
v. :
: Docket No. IBIA 83-18-A
ASSISTANT SECRETARY FOR :
INDIAN AFFAIRS : March 3, 1983

On February 18, 1983, the Board of Indian Appeals received a notice of appeal from Robert Burnett, appearing pro se, from a December 29, 1982 decision of the Assistant Secretary for Indian Affairs. That decision concerned the Rosebud Sioux tribal election held October 22, 1981.

This appeal is docketed under the above case name and number which should be used in all future inquiries and correspondence concerning the matter.

Procedural regulations for administrative appeals to the Board are found in 43 CFR Part 4, Subpart D. A copy of these regulations is enclosed for non-Governmental parties.

As was recently discussed in Kenneth Willie et al. v. Commissioner of Indian Affairs and Anne Begay v. Commissioner of Indian Affairs, 10 IBIA 135 (1982), under 43 CFR 4.330 the Board has jurisdiction over decisions of the Assistant Secretary for Indian Affairs only if those decisions are referred to it on a case-by-case basis or through rulemaking. See, e.g., Juanita Melsheimer v. Assistant Secretary for Indian Affairs, IBIA 82-59-A, docketed Sept. 29, 1982, and 25 CFR 13.15. In the absence of such referrals, decisions of the Assistant Secretary, a Secretarial-level official, are final for the Department.

Because the decision being appealed was rendered by the Assistant Secretary for Indian Affairs, and in the absence of a proper referral of the matter to the Board, the Board is not the proper forum to reach the issues raised in this appeal. The appeal must, therefore, be dismissed for lack of jurisdiction.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals, 43 CFR 4.1(b), this appeal is dismissed.

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Wm. Philip Horton
Chief Administrative Judge

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Jerry Muskrat
Administrative Judge

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Franklin D. Arness
Administrative Judge