



INTERIOR BOARD OF INDIAN APPEALS

City of Escanaba, Michigan v. Acting Minneapolis Area Director,
Bureau of Indian Affairs

19 IBIA 247 (02/28/1991)



United States Department of the Interior

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

CITY OF ESCANABA, MICHIGAN,	:	Order Docketing and Dismissing
Appellant	:	Appeal
	:	
v.	:	
	:	Docket No. IBIA 91-47-A
ACTING MINNEAPOLIS AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	February 28, 1991

On February 26, 1991, the Board of Indian Appeals received a notice of appeal from the City of Escanaba, Michigan, seeking review of a January 23, 1991, letter of the Acting Minneapolis Area Director, Bureau of Indian Affairs, which notified appellant that a 19.84 acre parcel of land in Delta County, Michigan, would be acquired in trust status for the Sault Ste. Marie Tribe of Chippewa Indians. Although the Acting Area Director's letter stated that it could be appealed to the Board, the Board finds that this appeal must be dismissed.

In April 1990, the Area Director recommended to the Assistant Secretary - Indian Affairs that the trust acquisition request be approved. By memorandum of November 1, 1990, the Assistant Secretary responded:

We have reviewed your memorandum of April 27, 1990, and its attached documentation regarding the subject fee to trust acquisition. Your request is made pursuant to 54 BIAM Bulletin No. 2, signed on April 20, 1990, which requires review by the Secretary of all off-reservation fee trust land acquisitions, with the exception of those for housing, for Oklahoma tribes and individuals.

* * * * *

We have determined the proposed acquisition is consistent with applicable guidelines and would be in the best interest of the Sault Ste. Marie Tribe of Chippewa Indians in Michigan. Therefore, you are authorized to accept the subject conveyance to the United States in trust for the Sault Ste. Marie Tribe of Chippewa Indians in Michigan, subject to the receipt of satisfactory title evidence in accordance with 25 CFR 151.121.

It is clear that, although the Acting Area Director notified appellant of the decision, the decision itself was made by the Assistant Secretary - Indian Affairs. The Board does not have jurisdiction to review decisions made by the

Assistant Secretary, which are final for the Department of the Interior unless the Assistant Secretary provides otherwise in his decision. 25 CFR 2.6(c); see, e.g., Spokane Tribe of Indians v. Acting Assistant Secretary - Indian Affairs, 18 IBIA 379 (1990).

Even if the Acting Area Director's January 23, 1991, letter is construed as a decision made by the Area Director, the Board would lack jurisdiction over this appeal under 43 CFR 4.331, which provides:

Any interested party affected by a final administrative action or decision of an official of the Bureau of Indian Affairs issued under regulations in Title 25 of the Code of Federal Regulations may appeal to the Board of Indian Appeals, except--

* * * * *

(b) Where the decision has been approved in writing by the Secretary or Assistant Secretary - Indian Affairs prior to promulgation.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the interior, 43 CFR 4.1, this appeal is dismissed for lack of jurisdiction.

//original signed
Anita Vogt
Administrative Judge

//original signed
Kathryn A. Lynn
Chief Administrative Judge