



INTERIOR BOARD OF INDIAN APPEALS

Kiowa Tribe of Oklahoma v. Acting Anadarko Area Director, Bureau of Indian Affairs

20 IBIA 27 (05/08/1991)



# United States Department of the Interior

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

IOWA TRIBE OF OKLAHOMA,	:	Order Docketing and Dismissing
Appellant	:	Appeal
	:	
v.	:	
	:	Docket No. IBIA 91-80-A
ACTING ANADARKO AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	May 8, 1991

On May 7, 1991, the Board of Indian Appeals (Board) received a copy of a notice of intent to appeal that was transmitted to it by the Anadarko Area Director, Bureau of Indian Affairs (Area Director). The notice had been filed by the Iowa Tribe of Oklahoma (appellant), through counsel, David McCullough, Esq., Oklahoma City, Oklahoma, and was addressed to the Secretary of the Interior, the Assistant Secretary - Indian Affairs, the Anadarko Area Director, and the Southwest Regional Solicitor. Appellant sought review of a March 29, 1991, decision issued by the Acting Area Director concerning the authority of the Iowa Business Committee to enact a housing ordinance without ratification by the Iowa Tribal Council.

The appeal is docketed under the above case name and number which should be cited in all future correspondence or inquiries regarding the matter. The Board finds, however, that the circumstances of this case require that the appeal be dismissed with prejudice.

The Acting Area Director's decision concludes:

This decision may be appealed to the Interior Board of Indian Appeals, 4015 Wilson Boulevard, Arlington, Virginia 22203, in accordance with the regulations in 43 CFR 4.310-4.340. Your notice of appeal to the Board must be signed by you or your attorney and must be mailed within 30 days of the date you receive this decision. \* \* \* You must send copies of your notice of appeal to (1) the Assistant Secretary - Indian Affairs, \* \* \* (2) each interested party known to you, and (3) this office. Your notice of appeal sent to the Board must certify that you have sent copies to these parties. \* \* \*

If no appeal is timely filed, this decision will become final for the Department of the Interior at the expiration of the appeal period. No extension of time may be granted for filing a notice of appeal.

Appellant has failed to file a timely notice of appeal. The Acting Area Director's decision clearly informed appellant that its notice of appeal was to be filed with the Board, and that copies were to be sent to the Assistant Secretary, the Anadarko Area Office, and interested parties. Appellant, however, chose to file its appeal with the four officials listed above, without sending even a copy of the notice to the Board. The Board has consistently held that a notice of appeal is not timely when the appellant is given the proper appeal information, but files its notice of appeal with an official other than the Board. The filing of a timely notice of appeal in the office designated in the regulations is jurisdictional. See, 43 CFR 4.332(a); Smith v. Muskogee Area Director, 20 IBIA 1 (1991); Maynard v. Acting Assistant Aberdeen Area Director, Indian Programs, 19 IBIA 273 (1991), and cases cited therein. 1/

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, this appeal from the Acting Anadarko Area Director's March 29, 1991, decision is dismissed with prejudice as not being timely filed.

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//original signed  
Kathryn A. Lynn  
Chief Administrative Judge

\_\_\_\_\_  
//original signed  
Anita Vogt  
Administrative Judge

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1/ In the memorandum transmitting the copy of the notice to the Board, the Area Director stated: "It appears that the Notice is timely filed." For the reasons discussed in this order, the Area Director's statement is not correct.