



INTERIOR BOARD OF INDIAN APPEALS

Edgar A. Bowen v. Acting Portland Area Director, Bureau of Indian Affairs

20 IBIA 263 (09/23/1991)



# United States Department of the Interior

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

EDGAR A. BOWEN

v.

ACTING PORTLAND AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS

IBIA 91-2-A

Decided September 23, 1991

Appeal from a decision concerning a tribal election.

Affirmed.

1. Indians: Tribal Government: Generally

In furthering the doctrines of tribal sovereignty and self-determination, the Department of the Interior has recognized the right of Indian tribes to resolve their own internal disputes.

APPEARANCES: Edgar A. Bowen, pro se.

## OPINION BY CHIEF ADMINISTRATIVE JUDGE LYNN

Appellant Edgar A. Bowen seeks review of an August 16, 1990, decision of the Acting Portland Area Director, Bureau of Indian Affairs (BIA; Area Director), concerning an April 8, 1990, tribal election for the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians. For the reasons discussed below, the Board of Indian Appeals (Board) affirms the Area Director's decision.

### Background

Appellant states that he is a Coos tribal member. He challenges the April 1990 tribal election on the grounds that the election violated the tribal constitution, the election procedures were irregular, and the determination of the tribal roll was irregular. By letter dated April 17, 1990, the Superintendent, Siletz Agency, BIA, responded to appellant's initial challenge to the election. The Superintendent stated that the concept of tribal sovereignty included a tribe's right to interpret its own governing documents, and urged appellant to seek resolution of the problems he raised through the internal remedies and procedures established in the tribal constitution.

Appellant, stating that internal tribal remedies were to no avail, appealed this decision to the Area Director. In a letter dated August 16, 1990, the Area Director dismissed appellant's appeal:

Your protest-challenge of the April 8, 1990, tribal election revolves from the Tribal Council's interpretation of the tribe's constitution and implementation of tribal election laws pursuant to that interpretation. Indian tribes have the primary responsibility for interpreting their own governing documents. See Tom v. Sutton, 533 F.2d 1101, 1106 (9th Cir. 1976); Cohen, Handbook of Federal Indian Law, p. 126 (1942) (Tribal sovereignty includes "the power to interpret its own laws and ordinances, which interpretations will be followed by the federal courts."). See also Davis v. Commissioner, 4 IBIA 228 (November 25, 1975); Hopi Tribe v. Commissioner, 4 IBIA 134 [82 I.D. 452] (September 26, 1975). Our office has generally deferred to the tribe in matters such as this on the basis that the interpretation of tribal constitutional provisions or laws should be made by the tribe or its tribal council rather than the [BIA].

The Board received appellant's appeal from this decision on September 17, 1990. Only appellant filed a brief on appeal.

#### Discussion and Conclusions

The materials in the administrative record indicate that appellant is a former Tribal Chief, who was out of office at the time of the April 1990 election. There is some indication that appellant sought to run for Chief again in that election, but was found ineligible to run for office because he had previously been removed from office for cause. Nothing in either the record or appellant's filings indicates that he is contesting the tribal determination that he was not eligible to run for office. Instead, all of appellant's filings are addressed to questions about the constitutionality of the election, the procedures under which the election was conducted, and the membership roll used for determining eligibility to vote.

[1] Consequently, this case must be considered in the context of prior Board rulings concerning standing of tribal members. In Redfield v. Acting Deputy Assistant Secretary - Indian Affairs (Operations), 9 IBIA 174, 177, 89 I.D. 67, 70 (1982), the Board stated that "[t]he Department has never recognized \* \* \* any right of an individual member of a tribe to bring an action for the tribe based on a personal assessment of what is or is not in the tribe's best interest." The Board has thus dismissed appeals brought by tribal members under such circumstances. See, e.g., Stoner v. Muskogee Area Director, 19 IBIA 277 (1991) (election controversy); Wright v. Aberdeen Area Director, 17 IBIA 296 (1989) (revision of tribal constitution); Frease v. Sacramento Area Director, 17 IBIA 250, 256 (1989) (conditional approval of a bingo management contract opposed by former tribal officials).

This rule is intended to further the goals of tribal sovereignty and self-determination by allowing tribes to resolve their own internal disputes. Both BIA and the Board attempt to refrain from becoming involved in such intra-tribal disputes unless a Federal question is raised which requires the Department to take action or make an administrative decision.

If true, the allegations appellant raises would be serious. The matter should, however, be presented to the appropriate tribal forum, not to the Department. 1/

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the August 16, 1990, decision of the Acting Portland Area Director is affirmed.

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//original signed

Kathryn A. Lynn  
Chief Administrative Judge

I concur:

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//original signed

Anita Vogt  
Administrative Judge

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1/ As noted above, appellant stated in his appeal to the Area Director that tribal remedies were to no avail. He did not allege, however, that he had attempted to pursue tribal remedies, and the record does not reflect any such attempts on his part. The Board has held that it cannot entertain an appeal in a case where the appellant has failed to exhaust tribal remedies. Totenhagen v. Minneapolis Area Director, 16 IBIA 9 (1987). Further, a bare allegation that tribal remedies are to no avail is insufficient to show that an appellant has exhausted tribal remedies. Cf. Martin v. Billings Area Director, 19 IBIA 279, 291-92, 98 I.D. 200, 206-07 (1991).