



INTERIOR BOARD OF INDIAN APPEALS

Native Village of Kwigillingok v. Deputy Commissioner of Indian Affairs

21 IBIA 157 (01/14/1992)



# United States Department of the Interior

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

NATIVE VILLAGE OF KWIGILLINGOK, : Order Affirming Decision  
Appellant :  
 :  
v. :  
 :  
 : Docket No. IBIA 91-120-A  
JUNEAU AREA DIRECTOR, :  
BUREAU OF INDIAN AFFAIRS, :  
Appellee : January 14, 1992

Appellant Native Village of Kwigillingok sought review of a June 20, 1991, decision of the Juneau Area Director, Bureau of Indian Affairs (BIA; Area Director), denying its application for funding under the Small Tribes Program. <sup>1/</sup> On appeal appellant contends that because the Bethel Agency, BIA, did not indicate that there were any problems with or deficiencies in its application, the application was complete, and that, if there were problems, the agency should have given it technical assistance sufficient to enable its application to be funded.

Although the agency recommended that appellant's application be funded at a reduced level, the Area Director was not required to follow this recommendation. Here, the Area Director found there were problems with the application that the agency had not considered. The Board rejects appellant's argument that its application was complete because the agency did not inform it that it was not complete.

The Board has previously considered BIA's technical assistance to grant applicants. In Nambe Pueblo v. Deputy Assistant Secretary--Indian Affairs (Operations), 13 IBIA 53, 56 (1984), the Board stated: "Receiving technical assistance from BIA in the preparation of a grant application does not guarantee that the application will be accepted." See also Washoe Tribe of Nevada and California v. Acting Phoenix Area Director, 19 IBIA 190, 192

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<sup>1/</sup> The Area Director contends that appellant's notice of appeal was not timely, and the appeal should, therefore, be dismissed. The administrative record shows that appellant received the Area Director's June 20, 1991, decision letter on June 26, 1991. Appellant's notice of appeal was dated July 24, 1991, and was received by the Area Director on July 29, 1991. Appeals under this program are governed by the provisions of 25 CFR Part 2. See 56 FR 3958, sec. C(5) (Jan. 31, 1991). 25 CFR 2.13(a)(2) provides that a "document is considered filed by mail on the date that it is postmarked." The envelope in which appellant's notice of appeal was mailed is not in the administrative record. Therefore, in light of the closeness of the dates involved, the Board declines to dismiss this appeal as being untimely.

(1991). Thus, even if appellant had received technical assistance from BIA, there is no guarantee that its application would have been funded.

However, the administrative record in this case indicates that appellant did not seek technical assistance prior to submitting its grant application. There is no requirement that BIA provide technical assistance to a grant applicant after it has filed an application. In fact, such assistance would be in direct violation of BIA's duty to give fair and equitable consideration to all grant applications. Once an application is filed in a competitive grant program, BIA must consider only the information in that application. Caddo Indian Tribe of Oklahoma v. Acting Anadarko Area Director, 18 IBIA 63 (1989).

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the Area Director's June 20, 1991, denial of appellant's Small Tribes Program grant application is affirmed.

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//original signed

Kathryn A. Lynn  
Chief Administrative Judge

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//original signed

Anita Vogt  
Administrative Judge