



INTERIOR BOARD OF INDIAN APPEALS

Elk Valley Rancheria v. Deputy Commissioner of Indian Affairs

21 IBIA 159 (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

ELK VALLEY RANCHERIA,	:	Order Affirming Decision
Appellant	:	
	:	
v.	:	
	:	Docket No. IBIA 91-122-A
DEPUTY COMMISSIONER OF	:	
INDIAN AFFAIRS,	:	
Appellee	:	January 14, 1992

Appellant Elk Valley Rancheria seeks review of a June 26, 1991, decision of the Deputy Commissioner of Indian Affairs, Bureau of Indian Affairs (BIA), denying appellant's grant application under the Small Tribes Program. The Deputy Commissioner's decision states:

The Rancheria's application did not rank high enough among the 109 tribal applications received to be considered for a grant under the terms of the announcement. The Rancheria's application was weak or deficient in these areas:

While the Rancheria's application appeared to be consistent with the program purpose, to establish or maintain sound administrative/management practices, only about half of the budget is to be used toward this end. The grant funds would be used to support existing positions at 25 percent of the time for office manager and 50 percent of the time for bookkeeping. Given the number of goals/objectives and activities to be performed under the grant, the amount of time appears to be inappropriate.

The monitoring is to be done by the "office manager" who is a staff person for the grant 25 percent of the time. Monitoring should be by someone who is not working on grant activities.

Initially, the Board notes that its role in reviewing BIA decisions concerning grants under the Small Tribes Program is not to substitute its judgment for that of BIA, but rather to ensure that proper consideration was given to all legal prerequisites to the exercise of discretion. Furthermore, the Board has held that the appellant bears the burden of proving error in the decision not to fund its application. Sauk-Suiattle Indian Tribe v. Portland Area Director, 20 IBIA 238 (1991), and cases cited therein.

Appellant contends that its estimation of the time to be spent on grant programs by its office manager and bookkeeper should be accepted by BIA;

nothing in its application indicated that the office manager and bookkeeper would be restricted in the amount of time they spend on grant programs; and its decision to meet program objectives by employing tribal staff, rather than hiring consultants, should result in a higher ranking.

BIA is entitled to rely on its expertise in considering the amount of time that it reasonably anticipates will be required to perform program objectives in deciding whether a grant application is acceptable. Furthermore, it can only rely upon the information presented in the application in making its evaluations. Appellant's application did not suggest that the office manager and bookkeeper would spend more than the time to be funded by this grant on its programs. In a competitive grant program, BIA can consider only the information that is included with the original grant application. If BIA were to consider additional information presented after the time for filing an application, it would violate its duty to give fair and equitable consideration to all grant applicants. Thus, while the inclusion in the original application of a statement that the office manager and bookkeeper would spend more than the time funded by this grant on programs under it might have changed appellant's score, such an assertion cannot be considered at this time. Caddo Tribe of Oklahoma v. Acting Anadarko Area Director, 18 IBIA 63 (1989).

Appellant also argues that it is not inappropriate for the office manager to monitor the program because all work under the program is subject to the review and final approval of the tribal council. Appellant states that "[t]he Office Manager is only authorized to direct the program and report to the council the progress in meeting project goals and objectives" (Notice of Appeal at page 4).

The involvement of a person funded under a program with any kind of monitoring of progress under that program constitutes at least a potential conflict of interest that BIA was entitled to consider in evaluating appellant's application. The fact that the tribal council is ultimately responsible for program monitoring would not necessarily overcome the fact that the office manager was the person preparing the information for the tribal council's consideration. BIA did not commit reversible error by concluding that program monitoring should be conducted by a person not funded under the program.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the June 26, 1991, decision of the Deputy Commissioner of Indian Affairs is affirmed.

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//original signed  
Kathryn A. Lynn  
Chief Administrative Judge

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//original signed  
Anita Vogt  
Administrative Judge