



INTERIOR BOARD OF INDIAN APPEALS

Tunica-Biloxi Tribe v. Deputy Commissioner of Indian Affairs

22 IBIA 43 (05/01/1992)



United States Department of the Interior

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

TUNICA-BILOXI TRIBE

v.

DEPUTY COMMISSIONER OF INDIAN AFFAIRS

IBIA 91-124-A

Decided May 4, 1992

Appeal from a denial of an application for funding under the Small Tribes Program.

Vacated and remanded.

1. Indians: Financial Matters: Financial Assistance

It is improper for the Bureau of Indian Affairs to deny an application for financial assistance for reasons that were not set forth in the announcement of the program under which assistance was sought.

APPEARANCES: Donald Juneau, Esq., Hammond, Louisiana, for appellant.

OPINION BY CHIEF ADMINISTRATIVE JUDGE LYNN

Appellant Tunica-Biloxi Tribe seeks review of a June 26, 1991, decision of the Deputy Commissioner of Indian Affairs, Bureau of Indian Affairs (Deputy Commissioner; BIA), denying its application for funding under the FY 1991 Small Tribes Program. For the reasons discussed below, the Board of Indian Appeals (Board) vacates that decision, and remands this matter to the Deputy Commissioner for further consideration.

Background

The availability of Small Tribes Program funding for FY 1991 was announced in the Federal Register on January 31, 1991. 56 FR 3958. Appellant submitted a timely application, seeking \$34,950. By letter dated June 26, 1991, the Deputy Commissioner denied appellant's application. As relevant to the decision, the Deputy Commissioner's letter states:

The Tribe'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 Tribe's application was weak or deficient in these areas:

The needs/problems statement was a series of claims with no supportive documentation. The work plan objectives

were oriented to the ongoing staff duties and did not address problems cited in the needs/problems statement.

Budget other than staff positions lacked sufficient justification. [1/]

Appellant's notice of appeal was filed with the Deputy Commissioner, and was transferred to the Board on August 13, 1991. Appellant's opening brief, which was due on or before October 20, 1991, was received on November 7, 1991. Appellant asks that the Board accept the late filing because of failure to involve the tribal attorney in the matter until the opening brief was due. The Board notes that most of the issues raised in the opening brief, minus the legal analysis, were also raised in the notice of appeal. The Board accepts the late-filed brief.

Discussion and Conclusions

Appellant contends that the Federal Register announcement did not state that documentation of the issues set forth in the needs/problems statement was required. The Board agrees that Section D of the announcement, 56 FR 3959, which describes the contents of an application, does not state that documentation of the needs/problems is required. However, under Section E(2), 56 FR 3959, the announcement states that applications will be rated on a competitive basis and that, as to the needs/problems statement, the applicant must be able to "document or demonstrate it has 5 or more of the needs contained in Section B above." Although the announcement is not a model of clarity on this issue, the Board believes that, under the circumstances of this competitive grant process, documentation in support of the narrative needs/problems statement should be understood to strengthen an application.

The Deputy Commissioner also determined that the work plan objectives were oriented to on-going staff duties rather than to the needs/problems statement. Appellant contends that its needs/problems statement reflects its need for on-going staff support, and that nothing in the announcement indicates that utilization of funds for employing on-going staff is unacceptable under the program.

The Board has reviewed the comments submitted by the rating panel. 2/ One panel member commented adversely under the purpose section: "In general, this is a continuation Core Mgm't program which the tribe expects/hopes will also be continued in future years as needed. There is no noted/stated ability to maintain without continuing federal support. No permanent improvement will be derived."

1/ Appellant does not contest this finding. Review of the comments submitted by the rating panel shows that its members were concerned only with the amount requested for travel expenses, which they considered to be high.

2/ The photocopy of the comments made by one panel member was totally illegible.

[1] The Board has carefully examined the Federal Register announcement. In Section A(5), the announcement states that one purpose of a grant under this program could be to “[e]mploy staff to address specific and/or identifiable managerial problem under a one time only grant.” With this possible exception, the announcement does not indicate that a tribe must show that, through receiving a grant, it will no longer need Federal support, or that on-going staff duties cannot be the basis for an application if those duties are related to the purposes of the program. In fact, Section A states that maintenance of sound management and administrative practices is an acceptable purpose for a grant, and Section B(4)(h) provides that one of the qualifying needs/problems can be that a tribe is largely dependent upon Federal grants or contracts to provide programs, services, income, and job opportunities. The Board concludes that the fact that an application may show a need for on-going support is not disqualifying under the terms of the announcement of this program. Sac and Fox Tribe of Missouri v. Deputy Commissioner of Indian Affairs, 21 IBIA 196, 197 (1992).

For this reason, the Deputy Commissioner's decision must be vacated and this matter remanded to him for further proceedings. The Deputy Commissioner should determine whether, but for the improperly considered matter, appellant's application would have been approved. Further, if he concludes that appellant's application would have been approved, the Deputy Commissioner shall further determine an appropriate remedy if, as the Board assumes, funds for the FY 1991 Small Tribes Program have all been distributed. 3/

3/ On Apr. 28, 1992, the Board received a copy of the Deputy Commissioner's decision on remand in Sac and Fox, supra. In regard to the decision reached in Sac and Fox, and repeated here, the Deputy Commissioner stated:

“As to the first reason, the purpose of the grant, not being a valid reason, we believe this is a narrow interpretation of the provision in the announcement. The purpose was broader in scope than merely enabling tribes to establish or maintain sound management system. Taken in the context of the whole of the announcement, we feel it is clear that the grants are for tribes having specific needs/problems willing to commit to addressing the problems cited. If we were to apply only the ‘to establish or maintain’ language, a successful applicant for any given year could expect to receive a grant thereafter ‘to maintain’ their management system. We could hardly justify this eventuality for a small discretionary/competitive grant program where less than half the tribal applicants receive grants.”

The Deputy Commissioner concluded by stating that his decision was rendered pursuant to his authority under 25 CFR 2.20.

The Deputy Commissioner has no authority under 25 CFR 2.20. That section is addressed to the authority of the Assistant Secretary - Indian Affairs. The position of Deputy Commissioner is not equivalent to that of Assistant Secretary.

The Deputy Commissioner is bound by the Board's analysis of the Federal Register announcement whether or not he agrees with it. 43 CFR 4.1. Similarly, the fact that the Board may understand and sympathize with the sentiments expressed in the Deputy Commissioner's second Sac and Fox decision

Accordingly, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the Deputy Commissioner's June 26, 1991, decision is vacated, and this matter is remanded to him for future consideration.

//original signed
Kathryn A. Lynn
Chief Administrative Judge

I concur:

//original signed
Anita Vogt
Administrative Judge

fn. 3 (continued)
does not mean that those ideas can be retroactively read into the announcement. The Department is bound by the terms of the announcement as it was made to the public. If the Deputy Commissioner disagrees with the Board's analysis sufficiently, he can attempt to alter the language of any future announcements.