



INTERIOR BOARD OF INDIAN APPEALS

Kaye E. Buckles, et al. v. Acting Aberdeen Area Director, Bureau of Indian Affairs

24 IBIA 13 (05/24/1993)

Related Board case:
23 IBIA 243



United States Department of the Interior

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

KAYE E. BUCKLES, RUTH M. HOLTHUS, : Order Docketing Appeal and
and MARIA A. BUCKLES, : Affirming Decision
Appellants :
v. :
ACTING ABERDEEN AREA DIRECTOR, : Docket No. IBIA 93-87-A
BUREAU OF INDIAN AFFAIRS, :
Appellee : May 24, 1993

Present appellants and the Abbott Bank sought a loan guaranty in the amount of \$2.8 million from the Aberdeen Area Office, Bureau of Indian Affairs (BIA). Appellants stated that they intended to use the guaranteed loan funds to construct a motel in Alliance, Nebraska. They also stated that they intended to schedule tours from the motel to the Pine Ridge Reservation in South Dakota.

On June 3, 1992, the Aberdeen Area Director (Area Director) 1/ denied the application. The Abbott Bank appealed the denial to the Board and, on March 22, 1993, the Board vacated the Area Director's decision and remanded the matter to him for reconsideration because of his failure to give reasons for his conclusion that appellant's project would have insufficient economic impact upon an Indian reservation. In remanding the matter, the Board stated that if the Area Director again reached the same conclusion, he must give reasons for that conclusion. Abbott Bank v. Aberdeen Area Director, 23 IBIA 243 (1993).

The Acting Area Director issued a new decision on April 19, 1993, in which he addressed the issue of reservation economic impact as follows:

1. Proximity:

A. Tourist Destination: The applicants are trying to justify Title 25, code of Federal Regulations, Part 103.2(a), which states “. . . for financing economic enterprises which contribute beneficially to the economy of an Indian reservation,” by promoting and giving tours to the reservation. [2/] Alliance

1/ As used herein, the term “Area Director” refers to both the Aberdeen Area Director and the Acting Aberdeen Area Director.

2/ 25 CFR 103.2 (a) provides: “It is the purpose of this part 103 to prescribe the terms, conditions, and provisions under which loans made to eligible tribes, Indian organizations and individual Indians for financing economic enterprises which contribute beneficially to the economy of an Indian reservation or for housing on a reservation may be guaranteed or insured by the United States.”

is about two hours from the reservation line and could have a small impact on the reservation economy, however, not enough to justify a \$2.8 million project. We are convinced that we should keep our "very limited" funding on or very near the reservation. By doing this we can insure a growth in the economy, whereas [a project located] two hours off the reservation would have a minimum impact. Nearly all the benefits of this project would fall within the city of Alliance and the State of Nebraska. We also believe, that if people stay in Alliance, they will want to take their own vehicle to the reservation, then continue on to the Black Hills or wherever their final destination may be. In this case, there are alternative places to lodge in the vicinity.

B. Available lodging closer to the Pine Ridge Reservation than Alliance, Nebraska: Kadoka, Wall, Martin, Hot Springs, Rapid City, Hill City, Custer, Philip, Edgemont, Keystone, Interior, all in South Dakota. Closer Nebraska lodgings include: Rushville, Chadron and Gordon. If Alliance, Nebraska, is ruled "on or near the reservation," then every town or city in the state of South Dakota should be eligible. [3/] Virtually every town or city in South Dakota is at least this distance from one reservation or another.

2. Reservation Tours:

We have determined that the "Break Down of Economic Impact" provided by the applicants not only fails to reinforce the applicants' claim that the motel has sufficient reservation economic impact, but also strengthens our position that the motel business, by itself, has little if any impact. The projections address only the impact of the tour business. The majority of these projections are based on spin-off businesses not yet in existence. The concept of a tour business being a viable part of a motel business is purely conjecture and secondary to the initial intent of the application. If the Plains Inn is opened for business, the Bureau of Indian Affairs may consider a separate "reservation tour" business at that time. The proposal in question is considered a motel business with, at best, potential for a reservation tourism side business.

The Acting Area Director again denied the loan guaranty application, and appellants filed a notice of appeal with the Board. Appellants discuss the Area Director's analysis at length. It is evident that they disagree strongly with that analysis.

^{3/} The Board has not been able to find any specific requirement in 25 CFR Part 103 that an economic enterprise be located on or near an Indian reservation in order to be eligible for a loan guaranty. Cf. 25 CFR 286.7, which contains such a requirement for grants under the Indian Business Development Program.

As the Board stated in Abbott Bank , BIA's decision to grant or deny a loan guaranty is based on the exercise of discretion. When a BIA decision is so based, the Board does not substitute its judgment for BIA's. It does not matter, therefore, whether the Board would reach the same conclusion that the Area Director reached. As long as the Area Director has complied with the legal prerequisites to the issuance of a discretionary decision and explained the reasons for his decision, and as long as his analysis is not unreasonable, his decision will be affirmed.

It appears that the Area Director may have mistakenly assumed that the regulations in 25 CFR Part 103 require that an economic enterprise be located on or near an Indian reservation. The Board concludes that, if he did make such an assumption, it was harmless error. It is apparent that the bulk of his analysis is based upon the requirement in 25 CFR 103.2(a) that an economic enterprise contribute beneficially to the economy of an Indian reservation. And, clearly, proximity to a reservation is one factor to be considered in analyzing reservation impact.

The Area Director concluded that appellants had shown a possible impact on the reservation by the proposed tour business but not by the motel itself, which was the project for which the loan guaranty was sought. Further, he concluded that the distance of the proposed motel from the reservation and the competition for tourist lodging from motels closer to the reservation would impair the ability of appellants' business to provide an economic benefit to the reservation.

Appellants state that they would not need financial assistance to establish the tour business but contend that construction of the motel is necessary for success of the tour business. They appear to concede that the motel per se would not have an appreciable economic impact on the reservation.

Although appellants clearly do not agree with the Area Director, they have not shown that his analysis is unreasonable. The Area Director has now complied with the Board's directive to explain the reasons for his decision. The Board finds that his decision should be affirmed.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, this appeal is docketed, and the Area Director's April 19, 1993, decision is affirmed.

//original signed

Anita Vogt
Administrative Judge

//original signed

Kathryn A. Lynn
Chief Administrative Judge