



## INTERIOR BOARD OF INDIAN APPEALS

Winnifred S. Feezor, et al.; Susan Totenhagen; Shawn Bielke, et al.;  
and Joseph W. Brewer v. Acting Minneapolis Area Director,  
Bureau of Indian Affairs

25 IBIA 296 (04/28/1994)

### Judicial review of this case:

Remanded, *Feezor v. Babbitt*, 953 F.Supp. 1 (D.D.C. 1996)  
Decision by Assistant Secretary - Indian Affairs, Feb. 2, 1999

### Related judicial case:

*Shakopee Mdewakanton Sioux (Dakota) Community v. Babbitt*, 906 F.Supp. 513  
(D. Minn. 1995)  
Affirmed, 107 F.3d 667 (8th Cir. 1997)



## United States Department of the Interior

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

WINNIFRED S. FEEZOR, et al., Appellants	:	Order Docketing and Dismissing Appeals
SUSAN TOTENHAGEN, Appellant	:	
SHAWN BIELKE, et al. Appellants	:	Docket Nos. IBIA 94-36-A IBIA 94-49-A
JOSEPH W. BREWER, Appellant	:	IBIA 94-55-A IBIA 94-56-A
v.	:	
ACTING MINNEAPOLIS AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS, Appellee	:	April 28, 1994

On December 20, 1993, the Board of Indian Appeals received a notice of appeal from Winnifred S. Feezor, Louise B. Smith, Leonard R. Prescott, and Patricia A. Hove, who stated that they were members of the Shakopee Mdewakanton Sioux Community (Community). Appellants sought review of a November 12, 1993, decision of the Acting Minneapolis Area Director, Bureau of Indian Affairs (Area Director; BIA), approving the Community's Ordinance No. 10-27-93-002, entitled "Gaming Revenue Allocation Amendments to Business Proceeds Distribution Ordinance."

On December 20, 1993, and December 30, 1993, the Board received two notices of appeal from the Community, seeking review of November 12, 1993, and December 13, 1993, decisions of the Area Director, disapproving two adoption ordinances enacted by the Community, Ordinances Nos. 10-27-93-001 and 11-30-93-002. The Community indicated that its two appeals were related to the appeal filed by Feezor et al. The Community's appeals have been assigned docket numbers IBIA 94-37-A and IBIA 94-38-A.

On January 14, 1994, the Board received a notice of appeal from Susan Totenhagen, who stated that she was the Community's enrollment officer. She sought review of the December 13, 1993, decision disapproving Ordinance No. 11-30-93-002.

On January 21, 1994, the Board received two more notices of appeal from individuals, also seeking review of the December 13, 1993, decision disapproving Ordinance No. 11-30-93-002. One notice of appeal was filed by Shawn Bielke, James Bigley, Robert Bigley, Clarence Enyart, Stephen Florez,

David Matta, Don Matta, Melinda Stade, Elizabeth Totenhagen, Rob Totenhagen, and Melissa Vig. These individuals stated that they were not members of the Community but were lineal descendants of members. They further stated that they met the eligibility standards for adoption under the disapproved ordinance. The second notice of appeal was filed by Joseph W. Brewer, who stated that he was an enrolled member of the Community and was filing his appeal on behalf of his minor children, who were not members but who met the eligibility standards for adoption under Ordinance No. 11-30-93-002.

In light of the large number of individual appellants, and the distinct possibility, under the Board's decisions in this area, that some or all of these individuals would be found to lack standing to pursue their appeals, the Board determined that the matter of their standing would best be addressed at an early stage in the proceedings. Accordingly, the Board issued an order on January 26, 1994, allowing the individual appellants to file briefs in support of their standing and allowing responses by other interested parties.

Briefs were filed by Feezor et al., Brewer, the Community, and the Area Director. Feezor et al. and Brewer argue on behalf of their own standing. The Community and the Area Director contend that all of the individual appellants lack standing.

Feezor et al. devote most of their brief to a discussion of the merits of the Area Director's approval of Ordinance No. 10-27-93-002. It is their position that certain individuals presently considered members of the Community are not qualified to be members. Thus, Ordinance No. 10-27-93-002, which provides for distribution of gaming proceeds to Community members, would, in these appellants' view, allow distribution of gaming proceeds to unqualified individuals. Feezor et al. contend that they themselves are qualified members and that the Area Director's approval of the ordinance therefore affects their interests. It is apparent from their brief, however, that their real complaint is not with the Area Director's action here but with the Community's practices with respect to membership and distribution of gaming proceeds over a period of years.

The background of Ordinance No. 10-27-93-002 is briefly described in an advisory opinion issued by the Community Court on February 11, 1994. That opinion states:

For many years, the Community has made payments from its gaming revenues to a list of persons that included individuals that were not members of the Community. This arrangement, which was the result of painstaking negotiations among various groups within the Community over many years, was utterly disrupted in 1993 when the Bureau of Indian Affairs, implementing guidance from Assistant Secretary of the Interior for Indian Affairs Eddie Brown, required the Community to amend its ordinances, and refused to approve the Community's payment of gaming revenues to non-members.

In re: Advisory from the Business Council -- Payment of Revenue Allocation to Thirty-one Members, Court File 037-94 (Shakopee Mdewakanton Sioux Community Court, Feb. 11, 1994), at 1-2.

Ordinance No. 10-27-93-002 states that it amends the Community's Business Proceeds Distribution Ordinance in order to comply with the requirements of the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2701. The amendment, unlike the original Business Proceeds Distribution Ordinance, restricts payment of gaming revenues to members of the Community. <sup>1/</sup> As noted above, however, Feezor et al. contend that some of those considered members by the Community, and who would thus receive payments under the approved amendment, are not qualified to be members.

Feezor et al. have filed suit in the Community Court. Smith v. Shakopee Mdewakanton Dakota (Sioux) Community, Case No. 038-94. There they raise the same membership issues they seek to raise in this appeal. Clearly, the Community Court, or other tribal forum, is a more appropriate place in which to resolve these issues than is this Board. See, e.g., Santa Clara Pueblo v. Martinez, 436 U.S. 49, 72 n.32 (1978) ("A tribe's right to define its own membership for tribal purposes has long been recognized as central to its existence as an independent political community. \* \* \* [T]he judiciary should not rush to create causes of action that would intrude on these delicate matters.")

The Board has stated on a number of occasions that tribal members lack standing to appeal a BIA action to the Board based on a personal assessment of what is or is not in the best interest of the tribe. E.g., Stops v. Billings Area Director, 23 IBIA 282 (1993); Frease v. Sacramento Area Director, 17 IBIA 250 (1989). The Board has also held that a tribal corporation lacks standing to challenge BIA's approval of a tribal ordinance, even where the ordinance directly affects the corporation. Little Six, Inc. v. Minneapolis Area Director, 24 IBIA 50 (1993). The guiding principle of these decisions is the Federal policy of respect for tribal self-government, which counsels that the Department refrain from interfering in intra-tribal matters. Where a tribal forum is available, as it is in this case, it is particularly inappropriate for the Board to intrude. See, e.g., Wells v. Acting Aberdeen Area Director, 24 IBIA 142 (1993) (Intra-tribal controversies concerning the validity of tribal council actions are properly resolved in tribal courts or other tribal forums). This is true here even though, as Feezor et al. contend, the IGRA requires Departmental approval of the Community's gaming revenue distribution ordinance. See, e.g., Cheyenne River Sioux Tribe v. Aberdeen Area Director, 24 IBIA 55 (1993) (Even where Departmental approval of tribal enactments is required by statute, review should be undertaken in such a way as to avoid unnecessary interference with tribal self-government).

---

<sup>1/</sup> This restriction evidently led to the Community's attempt to enact an adoption ordinance which would allow the Community to accept into membership those individuals who had lost their eligibility to receive per capita payments. Both of the Community's attempts were disapproved by the Area Director. These disapprovals are at issue in Docket Nos. IBIA 94-37-A and 94-38-A.

Finally, even if it were to find that it had jurisdiction over this appeal, the Board might appropriately abstain from exercising that jurisdiction in deference to the tribal forum. Burlington Northern Railroad v. Acting Billings Area Director, 25 IBIA 79 (1993).

For these reasons, the Board finds that the appeal of Feezor et al. should be dismissed for lack of standing.

The individual appellants in Docket Nos. IBIA 94-49-A, 94-55-A and 94-56-A, all of whom seek to challenge the Area Director's disapproval of Ordinance No. 11-30-93-002, have also failed to show that they have standing here. Neither Totenhagen nor Bielke et al. filed any response to the Board's order for briefs on standing. Although Brewer filed a brief, he did not show that he has any interest that would grant him standing here under the Board's decisions in Stops and Frease. The Board finds that Docket Nos. IBIA 94-49-A, 94-55-A and 94-56-A should be dismissed for lack of standing. 2/

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the appeals in Docket Nos. IBIA 94-36-A, 94-49-A, 94-55-A and 94-56-A are docketed and dismissed for lack of standing.

\_\_\_\_\_  
//original signed  
Anita Vogt  
Administrative Judge

\_\_\_\_\_  
//original signed  
Kathryn A. Lynn  
Chief Administrative Judge

---

2/ The interests of these appellants will undoubtedly be represented by the Community in its appeal from the same decision.