



INTERIOR BOARD OF INDIAN APPEALS

Billy Evans Horse v. Anadarko Area Director, Bureau of Indian Affairs

29 IBIA 175 (04/30/1996)



United States Department of the Interior

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

BILLY EVANS HORSE,	:	Order Docketing and Dismissing
Appellant	:	Appeal
	:	
v.	:	
	:	Docket No. IBIA 96-50-A
ANADARKO AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	April 30, 1996

Appellant Billy Evans Horse sought review of a January 9, 1996, letter from the Anadarko Area Director, Bureau of Indian Affairs (Area Director; BIA), concerning which of the three tribes has jurisdiction over individual allotments within the former Kiowa-Comanche-Apache (KCA) reservation in Oklahoma.

The Area Director's January 9, 1996, letter contains a general discussion of the issue of tribal jurisdiction within the former KCA reservation. It states: "Your [appellant's] concern has been that [BIA] acknowledges the jurisdiction of the Comanche Tribe over the allotment of Markovits, Comanche 762. You, a member of the Kiowa Tribe, are the Indian owner of a tract of land that was part of the Markovits allotment" (Letter at 1). The letter ends: "It is my conclusion that the application of the laws and ordinances of the Comanche Tribe to tracts of land within the former [KCA] Reservation which are designated as Comanche allotments is a reasonable exercise of that tribe's authority. As we discussed, you are provided the following appeal rights" (Letter at 3; emphasis omitted).

Appellant's notice of appeal states at page 2:

The question underlying the Area Director's decision is one of great significance to the tribes involved. As such, it must be resolved. But, its resolution is properly made in a forum other than in an administrative decision by the Area Director who is forced to rely upon implications, however reasonably drawn, from legal acts and enactments which do not directly address the question.

Accordingly, the Area Director's decision must be vacated. Resolution of the question must be left to forums more appropriate to the nature of this issue.

After reviewing the Area Director's letter and appellant's notice of appeal, the Board issued an order to show cause on February 13, 1996. The Board noted:

There is no evidence in either the Area Director's decision or appellant's notice of appeal that BIA has taken any action against appellant based upon its interpretation of which tribe has jurisdiction on the Markovits, or any other, allotment. Accordingly, there is no evidence that there is a case in controversy between appellant and the Area Director. In fact, one inference that could be drawn from the combination of the Area Director's letter and appellant's notice of appeal is that appellant asked the Area Director to issue a "decision" which he could then appeal to the Board.

The question of jurisdiction over the former KCA reservation arose when the three tribes adopted separate constitutions. It is understandable that appellant, as well as others, might wish the matter to be finally resolved. However, the Board is not a court of general jurisdiction. It has only the authority delegated to it by the Secretary of the Interior. The Board has not been delegated authority to issue advisory opinions; *i.e.*, opinions determining the legal rights of parties in the absence of--or in advance of--an actual case in controversy regarding those rights. Grand Traverse Band of Ottawa and Chippewa Indians v. Acting Deputy to the Assistant Secretary - Indian Affairs (Tribal Services), 18 IBIA 450 (1990). Because there is no evidence presently before the Board that BIA has taken any action against appellant based upon its interpretation of tribal jurisdiction over any land owned by appellant, appellant will be required to show that there is an actual case in controversy, and that he is not merely requesting an advisory opinion.

Furthermore, and perhaps more importantly, the Area Director's [letter] suggests that any actual controversy would be between appellant and the Comanche Tribe. Because appellant's position as Chairman of the Kiowa Tribe is prominently mentioned twice in his notice of appeal, it appears that appellant may view any such controversy as being between the Kiowa Tribe and the Comanche Tribe.

Regardless of how appellant views the matter, the question of jurisdiction over the common former KCA reservation is essentially an inter-tribal dispute among the Kiowa, Comanche, and Apache Tribes. As such, it should be resolved among the tribes, not in a Federal forum. Keweenaw Bay Indian Community v. Minneapolis Area Director, 29 IBIA 72 (1996). Therefore, assuming that appellant is able to show that there is an actual case in controversy between himself and the Area Director, he will also be required to show why the appeal should be resolved in a Federal forum rather than in the appropriate tribal forums.

(Order at 1-2).

The Board gave appellant until March 20, 1996, to make the required showings. No response has been received.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, this appeal from the Anadarko Area Director's January 9, 1996, letter is docketed but dismissed for failure to show cause.

//original signed

Kathryn A. Lynn
Chief Administrative Judge

//original signed

Anita Vogt
Administrative Judge