



INTERIOR BOARD OF INDIAN APPEALS

United Keetoowah Band of Cherokee Indians in Oklahoma
v. Acting Muskogee Area Director, Bureau of Indian Affairs

29 IBIA 229 (06/27/1996)



United States Department of the Interior

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

UNITED KEETOOWAH BAND OF	:	Order Affirming Decision
CHEROKEE INDIANS IN OKLAHOMA,	:	
Appellant	:	
	:	
v.	:	Docket No. IBIA 95-154-A
	:	
ACTING MUSKOGEE AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	June 27, 1996

This is an appeal from a July 21, 1995, decision of the Acting Muskogee Area Director, Bureau of Indian Affairs, declining to establish fees for processing fee-to-trust land acquisition requests. For the reasons discussed below, the Board affirms the Area Director's decision.

On June 21, 1995, appellant's Chief, John Ross, wrote to the Area Director stating that he believed that two recently enacted Federal statutes authorized BIA to take land in trust for appellant within the boundaries of the Cherokee Nation (Nation) without the consent of the Nation.

Appellant cited the FY 1992 Interior Department Appropriations Act, which contained the proviso:

[U]ntil such time as legislation is enacted to the contrary, none of the funds appropriated in this or any other Act for the benefit of Indians residing within the jurisdictional service area of the Cherokee Nation of Oklahoma shall be expended by other than the Cherokee Nation, nor shall any funds be used to take land into trust within the boundaries of the original Cherokee territory in Oklahoma without the consent of the Cherokee Nation.

Act of Nov. 13, 1991, 105 Stat. 990, 1004. Appellant contended that the second part of this proviso authorizes BIA to take land into trust within the Nation's territory without the consent of the Nation as long as appropriated Federal funds are not used to process the acquisition request.

Appellant also cited sec. 5(b) of the Act of May 31, 1994, 108 Stat. 707, 709, which added two subsections to 25 U.S.C. § 476. The new subsections provide:

(f) Privileges and immunities of Indian tribes; prohibition on new regulations

Departments or agencies of the United States shall not promulgate any regulation or make any decision or determination pursuant to the Act of June 18, 1934 (25 U.S.C. 461 et seq.,

48 Stat. 984) as amended, or any other Act of Congress, with respect to a federally recognized Indian tribe that classifies, enhances, or diminishes the privileges and immunities available to the Indian tribe relative to other federally recognized tribes by virtue of their status as Indian tribes.

(g) Privileges and immunities of Indian tribes; existing regulations

Any regulation or administrative decision or determination of a department or agency of the United States that is in existence or effect on May 31, 1994, and that classifies, enhances, or diminishes the privileges and immunities available to a federally recognized Indian tribe relative to the privileges and immunities available to other federally recognized tribes by virtue of their status as Indian tribes shall have no force or effect.

Appellant contended that the 1994 amendment to 25 U.S.C. § 476 "clearly limits the discretion of the Secretary of the Interior in matters of taking land into U.S.A. in trust based on the form of the organization of a tribe relative to others" (Appellant's June 21, 1995, Letter at 2).

Appellant continued:

We therefore respectfully request you (and your Contractor) to provide us the rates you charge to analyze and process requests to take specific land into U.S.A. in trust. We believe you will be fulfilling your trust responsibility and complying with the letter of the law if you establish reasonable rates, reimbursed by [appellant] to analyze [appellant's] request for land to be placed into U.S.A. in trust without the consent of the [Nation].

(Id.)

The Area Director responded to appellant's request on July 21, 1995. His decision stated at page 1:

There are currently no established rates for such actions for the Bureau of Indian Affairs or, to the best of our knowledge, the Cherokee Nation. Even if the reimbursement of such charges to the Bureau or the Cherokee Nation would eliminate the prohibition imposed by [the FY 1992 Appropriations Act], and that is not certain, it will not eliminate the requirement under 25 CFR 151.8 to acquire consent for trust acquisitions within Cherokee Nation jurisdictional boundaries.

The Area Director next found that the 1994 amendment to 25 U.S.C. § 476 did not preclude "the application of 25 CFR 151.8 to [appellant's] requests for land acquisitions within the jurisdictional boundaries of the Cherokee Nation" (Id. at 2).

"Accordingly," the Area Director concluded, "we decline to establish rates for charges to process fee-to-trust land acquisition requests" (Id.).

In its notice of appeal to the Board, appellant contended:

The basis for our appeal is that the Area office has arbitrarily decided our request without benefit of the appropriate legal opinion required to fairly consider our case. We believe that the Muskogee Area Office continues its tradition of deciding any issue involving our Band on the basis of prejudice and politics and not on facts. It is clear to us that we raised legal issues that the Area Office is not competent to handle.

Our requested relief is that someone competent seriously examine the legal issues we raise.

Although advised of its right to file a brief and of the fact that it bore the burden of proving error on the Area Director's decision, appellant did not file a brief.

The Board has stated that an appellant fails to carry its burden of proof when it makes only general allegations of error in a BIA decision and fails to offer any support for those allegations. Miami Tribe of Oklahoma v. Muskogee Area Director, 27 IBIA 123, recon. denied 27 IBIA 153 (1995). Arguably, this appeal is subject to summary disposition because of appellant's failure to support its general allegations of error. However, giving appellant the benefit of the doubt, the Board assumes that appellant intended to reassert the contentions it made before the Area Director. Therefore, the Board considers the merits of this matter.

It is clear that appellant's ultimate aim is to have land taken in trust for it within the Nation's boundaries, and the arguments appellant made before the Area Director concerned BIA's authority in this regard. However, appellant's actual request to the Area Director was that BIA establish rates for processing trust acquisition requests.

25 U.S.C. § 413 provides:

The Secretary of the Interior is hereby authorized, in his discretion, and under such rules and regulations as he may prescribe, to collect reasonable fees to cover the cost of any and all work performed for Indian tribes or for individual Indians, to be paid by vendees, lessees, or assignees, or deducted from the proceeds of sale, leases, or other sources of revenue: Provided, That the amounts so collected shall be covered into the Treasury as miscellaneous receipts, except when the expenses of the work are paid from Indian tribal funds, in which event they shall be credited to such funds.

Assuming arguendo that this provision authorizes the collection of fees for processing trust acquisition requests, the Board notes that the statute requires that any such collection be further authorized in regulations pre-

scribed by the Secretary. 1/ As the Area Director's decision indicates, there are presently no regulations concerning the collection of fees for processing trust acquisition requests. 2/ Appellant's request, then, should have been submitted as a petition for rulemaking under 5 U.S.C. § 553(e). The procedures for filing such petitions in the Department of the Interior are set out in 43 CFR Part 14. During the consideration of any such petition, the question of whether 25 U.S.C. § 413 authorizes the collection of fees for processing trust acquisition requests could be thoroughly addressed. However, because appellant's request did not comport with the requirements of 43 CFR Part 14, the Area Director properly denied the request.

In the absence of regulations concerning the collection of fees for processing trust acquisition requests--and, specifically, regulations which would entirely eliminate the necessity for expenditure of Federal funds to process appellant's requests for land within the Nation's boundaries--there is no need to consider any of appellant's other contentions, because the trust acquisitions appellant seeks are unquestionably subject to the statutory prohibition in the FY 1992 Appropriations Act. 3/

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the Area Director's July 21, 1995, decision is affirmed.

//original signed
Anita Vogt
Administrative Judge

//original signed
Kathryn A. Lynn
Chief Administrative Judge

1/ See also 31 U.S.C. § 9701, which provides in part:

"(b) The head of each agency * * * may prescribe regulations establishing the charge for a service or thing of value provided by the agency. Regulations prescribed by the heads of executive agencies a subject to policies prescribed by the President and shall be as uniform as practicable. Each charge shall be--

"(1) fair; and

"(2) based on--

"(A) the costs to the Government;

"(B) the value of the service or thing to the recipient;

"(C) public policy or interest served; and

"(D) other relevant facts."

2/ By contrast, the collection of fees for processing lease documents is specifically authorized in 25 CFR 162.13(b). For the history of this regulation, see Welk Park North v. Acting Sacramento Area Director, 29 IBIA 213, 222-224 (1996).

3/ The Board does not hold that the statutory prohibition would be inapplicable if BIA's entire costs were reimbursed by appellant. Nor does it hold that 25 CFR 151.8 no longer applies to appellant's trust acquisition requests. It simply finds that it need not reach those questions in this case.