



INTERIOR BOARD OF INDIAN APPEALS

Henry Kostzuta, et al. v. Southern Plains Regional Director, Bureau of Indian Affairs

35 IBIA 205 (09/26/2000)



United States Department of the Interior

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

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|----------------------------|---|-------------------------|
| HENRY KOSTZUTA et al., | : | Order Dismissing Appeal |
| Appellants | : | as Moot |
| | : | |
| v. | : | |
| | : | Docket No. IBIA 00-46-A |
| SOUTHERN PLAINS REGIONAL | : | |
| DIRECTOR, BUREAU OF INDIAN | : | |
| AFFAIRS, | : | |
| Appellee | : | September 26, 2000 |

This is an appeal from a January 14, 2000, decision of the Southern Plains Regional Director, Bureau of Indian Affairs (Regional Director; BIA), concerning the June 19, 1999, recall of members of the Business Committee of the Apache Tribe of Oklahoma. Appellants are Henry Kostzuta, Alonzo Chalepah, Emily Saupitty, and Mary Rivera. For the reasons discussed below, the Board dismisses this appeal as moot.

The Regional Director contended in his answer brief that the appeal had become moot because the terms of office of all Appellants had expired and because a tribal election was held on April 15, 2000, in which the positions formerly held by Appellants were filled. The Regional Director noted that, under the Apache Constitution, Business Committee members are elected for two-year terms. He furnished a copy of a certification of election results showing that Appellants were elected to their positions on April 11, 1998, more than two years before the April 15, 2000, election. ^{1/}

Appellants did not file a reply brief and so did not respond to this contention. Therefore, the Board ordered them to show why the appeal should not be dismissed as moot.

In their response, Appellants argued that the appeal is not moot because the April 15, 2000, election was invalid. The Board therefore asked the Regional Director to state whether protests to that election had been resolved and whether BIA had recognized the results of the election. The Board also gave other parties an opportunity to respond to the arguments made by Appellant on the mootness question.

^{1/} He also noted that two of the Appellants were re-elected in the Apr. 15, 2000, election.

The Regional Director states that all election protests have been resolved and that BIA has recognized the results of the April 15, 2000, election. No responses have been received from any other parties.

In Hamilton v. Acting Sacramento Area Director, 29 IBIA 122 (1996), the Board held that, where a question arises as to whether a dispute concerning the removal of a tribal official has been made moot by a subsequent tribal election, the person who opposes a finding of mootness must show one of the following:

- (1) that the [subsequent] election has been determined invalid in a tribal forum;
- (2) that a challenge to the [subsequent] election is presently pending in a tribal forum;
- (3) that BIA has declined to recognize the results of the [subsequent] election; or
- (4) that BIA has recognized the results of the [subsequent] election, but an appeal from that recognition is presently pending.

29 IBIA at 123.

Appellants have not made any of these showings. Nor is there any indication in the other materials before the Board that any of these circumstances exist.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, this appeal is dismissed as moot.

//original signed
Anita Vogt
Administrative Judge

//original signed
Kathryn A. Lynn
Chief Administrative Judge