



INTERIOR BOARD OF INDIAN APPEALS

Mellette County, South Dakota and State of South Dakota
v. Great Plains Regional Director, Bureau of Indian Affairs

37 IBIA 301 (06/27/2002)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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MELLETTE COUNTY, SOUTH DAKOTA,	:	Order Affirming Decision
and STATE OF SOUTH DAKOTA,	:	
Appellants	:	
	:	
	:	Docket Nos. IBIA 02-105-A
v.	:	IBIA 02-111-A
	:	
GREAT PLAINS REGIONAL DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	June 27, 2002

These are appeals from an April 10, 2002, decision of the Great Plains Regional Director, Bureau of Indian Affairs, to take land in Mellette County, South Dakota, 1/ into trust for the Rosebud Sioux Tribe under the Act of Dec. 11, 1963, Pub. L. No. 88-196, 77 Stat. 349 (Isolated Tracts Act). The appeal filed by Mellette County (Docket No. IBIA 02-105-A) was received by the Board on May 1, 2002. The appeal filed by the State of South Dakota (Docket No. IBIA 02-111-A) was received by the Board on May 13, 2002.

Both Appellants were ordered to show why the Regional Director’s decision should not be summarily affirmed under South Dakota and Mellette County, South Dakota v. Aberdeen Area Director (South Dakota), 35 IBIA 16 (2000), and Todd County, South Dakota v. Aberdeen Area Director, 33 IBIA 110 (1999). In South Dakota, the Board held that the Isolated Tracts Act is applicable to Mellette County. In Todd County, South Dakota, the Board held that acquisitions under the Isolated Tracts Act are “mandated by legislation” within the meaning of 25 C.F.R. § 151.10.

Both Appellants have responded to the Board’s orders. The County contends that the Regional Director erred in holding that this acquisition is mandated by the Isolated Tracts Act but offers no support for that bare contention.

1/ The land is known as the Stromer Tract and is described as: Lots 1, 2, 3, and 4, S½ NE¼, S½ NW¼, sec. 3, T. 42 N., R. 28 W., Sixth Principal Meridian, Mellette County, South Dakota.

The State contends that the Board “incorrectly determined [South Dakota].” State’s Response to Order to Show Cause at 1. It then asserts: “The [Board], specifically, failed to adequately consider the fact that Mellette County is not within the Rosebud Sioux Reservation.” Id.

South Dakota included an extensive discussion of the reasons why the Board found Mellette County to be “on the Rosebud Sioux Reservation” for purposes of the Isolated Tracts Act. The State fails to show how the Board’s analysis was inadequate. Instead, like the County, it simply makes a broad, unsupported allegation.

The State also contends that the Board has not addressed at least two constitutional arguments which, it asserts, are applicable to off-reservation trust acquisitions in South Dakota. Although it is not entirely clear, the State’s contention here may be that the Board erred in South Dakota in not considering arguments the State made in that case.

As noted above, the Board held in South Dakota that Mellette County was on-reservation for purposes of the Isolated Tracts Act. Thus, the trust acquisition at issue there was an on-reservation acquisition, rather than an off-reservation one. Under South Dakota, the present acquisition is also an on-reservation acquisition.

If the State believed that the Board erred in its holding in South Dakota, its remedy was to seek review of the Board’s decision in that case. Neither the State nor the County sought Board reconsideration of the decision. Nor, as far as the Board is aware, did either seek judicial review. The Board’s decision in South Dakota is final for the Department of the Interior, and issues decided there will not be revisited in this case.

Neither the State nor the County contends that the acquisition at issue here may be distinguished from the acquisition upheld in South Dakota.

The Board finds that neither Appellant has shown any reason why the Regional Director’s April 10, 2002, decision should not be summarily affirmed.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Regional Director’s April 10, 2002, decision is affirmed.

//original signed
Anita Vogt
Administrative Judge

//original signed
Kathryn A. Lynn
Chief Administrative Judge