



INTERIOR BOARD OF INDIAN APPEALS

Jackson County, Kansas v. Acting Southern Plains Regional Director,  
Bureau of Indian Affairs

39 IBIA 78 (06/19/2003)



## United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
801 NORTH QUINCY STREET  
SUITE 300  
ARLINGTON, VA 22203

JACKSON COUNTY, KANSAS,	:	Notice of Docketing and
Appellant	:	Order Dismissing Appeal
	:	
v.	:	
	:	Docket No. IBIA 03-85-A
ACTING SOUTHERN PLAINS REGIONAL	:	
DIRECTOR, BUREAU OF INDIAN	:	
AFFAIRS,	:	
Appellee	:	June 19, 2003

On April 18, 2003, the Board of Indian Appeals (Board) received a filing from the Prairie Band Potawatomi Nation (Nation). The filing contended that Jackson County, Kansas, had failed to file a timely notice of appeal in regard to a trust land acquisition decision. The Nation attached a copy of the County's notice of appeal to its filing. The appeal related to the "First Bank FSB" tract of land, described as the W $\frac{1}{2}$  W $\frac{1}{2}$  NW $\frac{1}{4}$  NE $\frac{1}{4}$ , sec. 4, T. 9 S., R. 15 E., 6th Principal Meridian, Jackson County, Kansas, containing 10 acres, more or less. The Nation's filing indicated that the Southern Plains Regional Director, Bureau of Indian Affairs (Regional Director; BIA), had issued a decision relating to the trust acquisition on March 5, 2003. For the reasons below, the Board docketed this appeal but dismisses it as untimely.

The County's notice of appeal stated that it was appealing from a November 17, 2000, decision issued by the Horton Agency, BIA. The County's "notice of appeal" is headed "Before the Department of the Interior Bureau of Indian Affairs." It contains a distribution list that begins with the statement: "I hereby certify that the foregoing Notice of Appeal was filed with the Interior Board of Indian Appeals, 801 North Quincy Street, MS-300-QC, Arlington, Virginia, 22203 \* \* \* by first class mail on the 9 day of April, 2003." The notice then lists distribution to parties other than the Board.

The Board requested information from BIA, including whether or not the Regional Office had received the notice of appeal. On April 23, 2003, the Regional Office faxed to the Board copies of the County's notice of appeal; the Regional Director's March 5, 2003, decision; and the return receipt card for the County's receipt of that decision. The return receipt card shows that the County received the Regional Director's March 5, 2003, decision on March 13, 2003. The decision clearly states that any appeal was to be filed with the Board within 30 days of receipt of the decision, and gives the Board's correct mailing address.

The Board received the County's notice of appeal on April 18, 2003, when it was submitted by the Nation. The Board has consistently held that notices of appeal are not timely if the appellant is given correct appeal information, but files its notice of appeal with an office or official other than the Board and the notice is received by the Board outside the time for filing a notice of appeal. See, e.g., Wilkins v. Rocky Mountain Regional Director, 39 IBIA 21 (2003). The County's appeal should have been received by the Board by April 14, 2003, in order for it to be timely as the appeal was not filed directly with the Board.

On April 29, 2003, the Board ordered the County to present evidence to show that its appeal from the March 5, 2003, decision was timely. Because the Board did not receive a notice of appeal from the County, it noted that, in order to make this showing, the County would have to present evidence in addition to the standard certificate of service that showed the notice of appeal was actually timely mailed to the Board. American Land Development Corp. v. Acting Phoenix Area Director, 25 IBIA 120, recon. denied, 25 IBIA 197 (1994), and Crow Flies High v. Rocky Mountain Regional Director, 38 IBIA 3 (2002). The County was to provide this information to the Board by June 6, 2003. The County did not respond to the Board's order.

Accordingly, the Board finds that the County has failed to show that its notice of appeal was timely filed.

Pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C. F. R. § 4.1, the appeal of the Regional Director's March 5, 2003, is docketed but dismissed as untimely.

\_\_\_\_\_  
//original signed  
Kathleen R. Supernaw  
Acting Administrative Judge

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