INTERIOR BOARD OF INDIAN APPEALS

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

41 IBIA 133 (07/11/2005)

United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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JACKSON COUNTY, KANSAS, Appellant,	:	Order Affirming Decision
v.	:	Docket No. IBIA 03-86-A
ACTING SOUTHERN PLAINS REGIONAL DIRECTOR, BUREAU OF INDIAN AFFAIRS, Appellee.	:	July 11, 2005

Jackson County, Kansas (Appellant) appeals from a March 12, 2003, decision of the Acting Southern Plains Regional Director, Bureau of Indian Affairs (Regional Director; BIA), concerning a trust acquisition for the Prairie Band Potawatomi Nation (Nation). The subject property is known as the "Rafferty" tract and is described as the NE 1/4, sec. 1, T. 8 S., R. 14 E., 6th Principal Meridian, Jackson County, Kansas, containing 160 acres, more or less. The Regional Director's decision affirmed an April 25, 2001, decision of the Acting Field Representative, Horton Field Office, BIA, to take the property into trust.

Appellant's notice of appeal included a statement of reasons in which it listed, but did not develop, seven arguments: (1) The Nation already has many tracts of trust land and does not need more for the use of tribal members; (2) the Indian Reorganization Act (IRA) violates the Tenth Amendment to the United States Constitution, as does the Regional Director's decision; (3) the Regional Director's decision violates the separation of powers doctrine; (4) the Regional Director's decision violates the equal footing doctrine; (5) the IRA authorizes only acquisitions for landless Indians for agricultural purposes; (6) Appellant will suffer loss of tax revenues, as well as of zoning and land use controls, when the property is taken into trust; and (7) Appellant is not aware that any cross-deputization agreement between Appellant and the Nation has been reached.

Although advised of its right to file a brief, Appellant did to[*] do so.

Appellant's second, third, fourth, and fifth arguments, all involving legal issues, were addressed and rejected in Kansas v. Acting Southern Plains Regional Director, 36 IBIA 152 (2001), a case in which Appellant was an interested party. Those arguments will not be revisited here.

[* So in original; should read "did not do so."]

Appellant's first, sixth, and seventh arguments allude to BIA's analysis of the trust acquisition under 25 C.F.R. § 151.10 and concern conclusions reached by BIA in the exercise of its discretionary authority. With respect to these arguments, Appellant's burden is to show that BIA did not properly exercise its discretion. Id. at 157. Appellant's bare assertions are not sufficient to show that BIA did not properly exercise its discretion.

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 March 12, 2003, decision is affirmed.

I concur:

// original signed
Anita Vogt
Senior Administrative Judge

// original signed
Steven K. Linscheid
Chief Administrative Judge