



INTERIOR BOARD OF INDIAN APPEALS

Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas v. Southern Plains
Regional Director, Bureau of Indian Affairs

42 IBIA 258 (03/29/2006)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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KICKAPOO TRIBE OF INDIANS OF	:	Order Affirming Decision
THE KICKAPOO RESERVATION	:	
IN KANSAS,	:	
Appellant,	:	
	:	
v.	:	Docket No. IBIA 04-98-A
	:	
SOUTHERN PLAINS REGIONAL	:	
DIRECTOR, BUREAU OF INDIAN	:	
AFFAIRS,	:	
Appellee.	:	March 29, 2006

The Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas (Tribe) seeks review of an April 2, 2004 decision of the Southern Plains Regional Director, Bureau of Indian Affairs (Regional Director; BIA), in which the Regional Director concluded that BIA was not statutorily required to accept certain property in trust for the Tribe. The property at issue consists of three tracts of land, consisting of 74.81 acres, more or less, located in Brown County, Kansas. The property is generally referred to as the “Highway 75 (Simon) tract.” For the reasons discussed below, we affirm the Regional Director’s decision.

Background

On January 5, 1979, the United States Court of Claims awarded judgment to the Tribe in Indian Claims Commission Docket No. 315, see The Kickapoo Tribe of Kansas, The Kickapoo Tribe of Oklahoma v. United States, 219 Ct. Cl. 719, 618 F.2d 119 (1979), and Congress subsequently appropriated funds to pay the judgment. As required by the Indian Tribal Judgment Funds Use or Distribution Act, 25 U.S.C. § 1401–1408 (Distribution Act), the Secretary of the Interior prepared and published a plan for the use and distribution of the Tribe’s judgment funds (Distribution Plan). See 45 Fed. Reg. 19,619 (Mar. 26, 1980). The Distribution Plan provided, in relevant part:

Land Acquisition Program. Of the funds * * * apportioned [to the Tribe], fifteen (15) percent of the total share to the tribe, including the

interest and investment income accrued thereon, shall be utilized in a Land Acquisition Program. The administrative guidelines for the program shall be developed by the Tribal Council for a five-year period and shall be subject to approval by the Secretary.

Of said fifteen percent portion seventy-five (75) percent of such funds, including the interest and investment income thereon, shall be utilized in land loan payments and land purchases.

Id. col. 3.

Subsequently, the Tribe adopted administrative guidelines for the land acquisition program established by the Distribution Plan. The guidelines provided, in pertinent part:

The land acquisition program of the [Tribe] shall be for the purpose of acquiring land in the name of the tribe and to enhance the total economic resources of the tribe and its members. Lands may be acquired for, but not limited to, the following[:] the development of agriculture, housing projects, recreational facilities, leasing, rental, industry and/or any other lawful purpose. Upon request of the [Tribe], subject to the approval of the Secretary of the Interior, the land acquisitions, heretofore mentioned may be made in the name of the United States of America in trust for the [Tribe].

Administrative Guidelines for the Kickapoo Tribe in Kansas 20 Percent Program (Guidelines), at 1. BIA approved the Guidelines on June 6, 1980. 1/

In 1990, the Tribe purchased the Highway 75 (Simon) tract. On December 27, 1990, the Tribal Council adopted Resolution No. KT91-22, which recited the Tribe's purchase of the property and "resolved" that BIA place the land in trust on behalf of the Tribe.

At a date not disclosed in the record, BIA began to process the Tribe's request to have the Highway 75 (Simon) tract taken into trust as a discretionary acquisition. On June 3, 2003, the BIA Horton Agency Field Representative notified State and County officials to inform them of the Tribe's request and permit them to comment. The State and County objected to the trust acquisition.

1/ It appears that the Tribe's land acquisition program plan was modified and extended on several occasions.

On October 24, 2003, the Tribe wrote to the Regional Director to request that the trust acquisition be treated as mandated by legislation. The Tribe also argued that the Highway 75 (Simon) property should be considered as “on reservation.” See 25 C.F.R. §§ 151.10 & 151.11 (distinguishing between on-reservation and off-reservation trust acquisitions).

On April 2, 2004, the Regional Director responded to the Tribe’s request. The Regional Director concluded that there was nothing in either the Distribution Act or the Distribution Plan that required BIA to accept the property in trust. The Regional Director noted that BIA would continue to process the proposed trust acquisition (pursuant to BIA’s discretionary authority), but denied the Tribe’s request that BIA accept the property as a mandatory trust acquisition.

The Tribe appealed to the Board. The Tribe, the Regional Director, and the State of Kansas (State) filed briefs.

Discussion

The Tribe contends that the Distribution Act, the Distribution Plan, the Guidelines, and the Federal trust responsibility, either separately or taken together, require BIA to accept the Highway 75 (Simon) tract in trust for the Tribe. We disagree. We assume, solely for purposes of deciding this appeal, that the Tribe purchased the Highway 75 (Simon) tract with judgment funds allocated to its land acquisition program in the Distribution Plan. None of the authorities relied upon by the Tribe, however, contains language that would make trust acquisition of the property mandatory.

First, the Distribution Act itself contains no such language. That Act is a general statute that applies broadly to the distribution and use of judgment funds awarded to Indian tribes and groups. As discussed above, it requires the Secretary, after consulting with the affected tribe or group, to develop a plan for the use and distribution of judgment funds. See 25 U.S.C. §§ 1402(a), 1403. It does not, however, require that the judgment funds be used for any specific purpose, and there is no language in the Act that shows any congressional intent to require the Secretary to accept land in trust for a tribe simply because the land was purchased with judgment funds. Compare Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians v. Portland Area Director, 27 IBIA 48, 56 (1994) (Coquille Restoration Act, 25 U.S.C. § 715c(a) required the Secretary to accept certain property in trust), with Confederated Salish and Kootenai Tribes of the Flathead Reservation v. Northwest Regional Director, 35 IBIA 226 (2000), aff’d, 343 F.3d 1193 (9th Cir. 2003) (Act of July 18, 1968, Pub. L. No. 90-402, 82 Stat. 356, authorized, but

did not require, the Secretary to take land in trust for the Confederated Salish and Kootenai Tribes of the Flathead Nation). 2/

The Tribe seeks to distinguish Confederated Salish and Kootenai Tribes by arguing that it did not involve land that was within the tribe's reservation. In this case, the Tribe contends that the Highway 75 (Simon) tract is within an 1854 treaty area and contiguous to current reservation lands as prescribed in an 1862 treaty. The statutory interpretation in Confederated Salish and Kootenai Tribes did not rely on an on-reservation/off-reservation distinction, but even if it had, the distinction would be irrelevant here because the Distribution Act is devoid of language regarding land acquisition — on-reservation or off-reservation, in fee or in trust — and therefore cannot be construed as mandating a trust acquisition. 3/

The Tribe also argues that the Wyandotte case involving the Huron Cemetery in Kansas City, Kansas had “much less compelling facts” than this case, Reply Brief at 3, and that there are “no discernable facts that would prevent the Kickapoo from receiving the same treatment of their land as the Wyandottes did,” Notice of Appeal at 2. In that case, the Federal appeals court held that the statute governing a Claims Commission award to the Wyandottes contained mandatory language — “shall be held in trust by the Secretary” — and therefore “imposed a nondiscretionary duty on the Secretary to acquire land in trust for the Wyandotte Tribe.” See Sac and Fox Nation of Missouri v. Norton, 240 F.3d 1250, 1253, 1261-62 (10th Cir. 2001) (quoting Pub. L. No. 98-602, 98 Stat. 3149 (1984)). Here, we must look at the specific language of the Distribution Act, which is different from the statute at issue in the Wyandotte case and, as noted above, contains no mandatory language. Thus, regardless of whether the facts of this case warrant BIA's acceptance of the Highway 75 (Simon) tract as an exercise of discretion, the Distribution Act, which applies here, does not mandate such a trust acquisition.

2/ The Tribe argues that “a long-standing principle of law” requires that statutes be interpreted in a manner most favorable to tribes. Reply Brief at 2. The principle of statutory construction to which the Tribe alludes is that ambiguities in statutes enacted for the benefit of Indians are to be resolved in their favor. The Distribution Act is not ambiguous and therefore the principle does not apply. See Confederated Salish and Kootenai Tribes, 35 IBIA at 239 n.18 (principle of resolving statutory ambiguities in favor of the Indian beneficiaries is not applicable when a statute is not ambiguous).

3/ We express no opinion whether the Highway 75 (Simon) tract should be treated as on-reservation or off-reservation for purposes of a discretionary trust acquisition for the Tribe under 25 C.F.R. Part 151.

Second, the Distribution Plan contains no language that would require the trust acquisition of the Highway 75 (Simon) tract. The Distribution Plan only requires that a certain percentage of the judgment funds be used for land acquisition. It does not state whether the land is to be owned in fee by the Tribe or placed in trust. Even assuming a distribution plan could bind the Secretary to future unspecified trust acquisitions of land purchased with judgment funds, nothing in the language of the Plan in this case suggests any such intent.

Third, similarly assuming that the Tribe's land acquisition administrative Guidelines, which were approved by BIA, could bind the Secretary to future unspecified trust acquisitions of land purchased with the judgment funds, the Guidelines in this case contain no such mandatory language. In fact, the language reflects a clear understanding that trust acquisitions under the Guidelines, and therefore under the Distribution Plan, are discretionary and not mandatory. The Guidelines provide that "[u]pon request" of the Tribe and "subject to the approval of the Secretary," the land acquisitions "may be made in the name of the United States of America in trust for the [Tribe]." (Emphasis added.)

Finally, we reject the Tribe's argument that BIA's trust responsibility makes acquisition of this land into trust mandatory. The Tribe argues that the purpose of the land acquisition plan was to promote the Tribe's self-governance and that the land at issue in this appeal currently has a truck plaza which generates much-needed economic benefit to the Tribe. The Tribe contends that "BIA has a fiduciary role to protect Indian preservation and self-determination," Reply Brief at 2, and therefore the trust acquisition of the Highway 75 (Simon) tract is required. Carried to its logical conclusion, the Tribe's argument suggests that BIA would always be required to accept property in trust when the purpose is for tribal self-determination or economic development. That argument cannot be reconciled with the trust acquisition regulations, which clearly make the acquisition decision a discretionary one, even when tribal self-determination and economic development are the reason for the acquisition. See 25 C.F.R. § 151.3(a)(3). BIA's role to foster and support tribal self-governance and economic development may be relevant to its decision whether to acquire the Highway 75 (Simon) property as an exercise of discretion, but that role does not make the trust acquisition mandatory.

The Regional Director correctly concluded that the trust acquisition of the Highway 75 (Simon) tract is not mandated by law.

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 2, 2004 decision is affirmed. 4/

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

// original signed
Amy B. Sosin
Acting Administrative Judge

4/ Except for one paragraph, the State's brief consists entirely of a variety of arguments that are either beyond the jurisdiction of the Board to decide (e.g., that taking land into trust for Indian tribes is unconstitutional) or not within the scope of this appeal (e.g., taking the land into trust would be an abuse of discretion). Consistent with the scope of this appeal, our decision is limited to holding that BIA is not legally required to take this property into trust.