INTERIOR BOARD OF INDIAN APPEALS

Ramah Navajo Chapter v. Deputy Assistant Secretary for Policy and Economic Development - Indian Affairs and Assistant Secretary - Indian Affairs

49 IBIA 10 (03/17/2009)

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

RAMAH NAVAJO CHAPTER, Appellant,	)	Order Docketing and Dismissing Appeal
v.	)	
DEPUTY ASSISTANT SECRETARY FOR POLICY AND ECONOMIC DEVELOPMENT - INDIAN AFFAIRS and ASSISTANT SECRETARY - INDIAN AFFAIRS, Appellees.	)	Docket No. IBIA 09-059
	)	March 17, 2009

Appellant Ramah Navajo Chapter (Chapter) seeks review from the Board of Indian Appeals (Board) of a decision rendered February 6, 2009, by the Deputy Assistant Secretary for Policy and Economic Development - Indian Affairs (Deputy Assistant Secretary) George T. Skibine, and a decision rendered May 23, 2008, by the Assistant Secretary - Indian Affairs (Assistant Secretary) Carl J. Artman. The February 6 decision reaffirmed the May 23 decision, in which the Assistant Secretary declined the Chapter's request to allow all of the trust and land records involving the Chapter to remain under Tribal Code designation 722 for purposes of recordkeeping within the Department of the Interior's (Department) Trust Asset [and] Accounting Management System (TAAMS).[1] Instead, the Chapter will be designated Tribal Code 780, to ensure that Chapter community members are properly identified as members of the Navajo Nation, although the Land code for tracts identified within the Ramah Community area will remain under Land Code 722. We docket this appeal but dismiss it for lack of jurisdiction.

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[1] TAAMS is an electronic information system used "to access, create, and modify records in the [Bureau of Indian Affairs] data base for land ownership, contracts and leases, and beneficial owners." *See* http://www.doi.gov/ocio/privacy/PDF/PublicPIA_BIA_TAAMS_02_08 .pdf at 3.

Background

Artman was confirmed as Assistant Secretary by the U.S. Senate on March 5, 2007, and served in this capacity until he departed office on May 23, 2008. Apparently, one of his last acts as Assistant Secretary was to sign one of the letters at issue in this appeal. That letter, dated May 23, 2008, declined the Chapter's request to allow Chapter land recordation to remain under a Tribal Code designation of 722 for all Bureau of Indian Affairs (BIA) trust and land records involving the Chapter. According to the Assistant Secretary, the "Chapter will be designated Tribal Code 780[, and] the Land code for any tracts identified within the Ramah Community area will remain as 722." Letter from Assistant Secretary to the Chapter, May 23, 2008, at 1. The Assistant Secretary explained that the decision to designate the Chapter as Tribal Code 780 is to enable BIA to identify the Chapter members as members of the Navajo Nation.

Also on May 23, 2008, following Artman's departure, the Deputy Secretary of the Department delegated authority to Skibine to temporarily assume, until further notice, the responsibilities of the Assistant Secretary. At that time, Skibine was the Acting Deputy Assistant Secretary for Policy and Economic Development - Indian Affairs.[2] No new Assistant Secretary has been confirmed since Artman's departure, and notice has not been issued that rescinds the temporary delegation to Skibine or redelegates the responsibilities of the Assistant Secretary to another individual.

On August 1, 2008, the Chapter apparently wrote to the Deputy Assistant Secretary and requested that he reconsider the Assistant Secretary's May 23 decision. By letter dated February 6, 2009, the Deputy Assistant Secretary notified the Chapter that the May 23 decision was "affirmed." This appeal followed.

Discussion

Because we lack jurisdiction to review decisions by the Assistant Secretary, we are compelled to dismiss this appeal.

As we explained in *Hall v. Assistant Secretary - Indian Affairs*, 46 IBIA 77 (2007):

> The Board's jurisdiction is limited to the authority vested in it by regulation or otherwise delegated to it by the Secretary of the Interior. *See*

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[2] Subsequently, Skibine apparently was formally appointed to the position of Deputy Assistant Secretary.

> 43 C.F.R. § 4.1(b)(2); *State of California v. National Indian Gaming Commission*, 44 IBIA 22 (2006). The Board has very limited jurisdiction to review decisions of the Assistant Secretary. *See*, *e.g.*, 25 C.F.R. § 83.11 (decisions on petitions for Federal tribal acknowledgment); 43 C.F.R. § 4.330 (matters specifically referred to the Board by the Assistant Secretary for review). The Board does not have general authority to review decisions of the Assistant Secretary. . . . *Pendleton v. Assistant Secretary - Indian Affairs*, 45 IBIA 133 (2007).

See also Deganawidah-Quetzalcoatle University v. Assistant Secretary - Indian Affairs, 39 IBIA 265 (2004); *Shawnee Tribe v. Assistant Secretary - Indian Affairs*, 39 IBIA 4 (2003). Similarly, the Board lacks authority to review decisions of those acting in the position of Assistant Secretary. *Standing Rock Sioux Tribe v. Acting Assistant Secretary - Indian Affairs*, 41 IBIA 188 (2005); *Three Irons v. Acting Assistant Secretary - Indian Affairs*, 19 IBIA 46, 47 (1990). Therefore, it is well established that, except in limited circumstances, the Board lacks authority to review decisions by the Assistant Secretary or Acting Assistant Secretary. In contrast, the Board may review a decision of a Deputy Assistant Secretary to the Assistant Secretary - Indian Affairs, other than the Deputy Assistant Secretary - Indian Education. *See* 25 C.F.R. § 2.4(e).

It is clear from the above discussion that the Board has no authority, as a general matter, to review the May 23 decision of the Assistant Secretary. In addition, there is no specific regulation that addresses tribal codes or their assignment, let alone a regulation that delegates authority to the Board to review decisions concerning the assignment of tribal codes. The Assistant Secretary did not expressly authorize the Board to review this matter nor has the Deputy Assistant Secretary subsequently authorized the Board to do so.

We also determine in this case that we lack authority to review the February 6 decision by Deputy Assistant Secretary Skibine because he has been delegated the authority and responsibilities of the Assistant Secretary. Thus, although he signed the February 6 decision as "Deputy Assistant Secretary," it cannot be said that he acted as a subordinate to the Assistant Secretary because he was the de facto, if not de jure, Assistant Secretary.

Even if we had authority to review the February 6 decision, we would dismiss because we cannot grant the relief requested. The Chapter requests that we reverse not only the Deputy Assistant Secretary's decision, but the Assistant Secretary's May 23 decision as well. Because it is well established that we have no authority to review the Assistant Secretary's decision, that decision would remain intact even assuming we had authority to review and were to reverse the Deputy Assistant Secretary's decision. Therefore, review of

the February 6 decision by the Board would be a futile act as the Chapter cannot obtain the relief it seeks from this forum, which is the restoration of a code designation of 722 for all trust and land records involving the Chapter. Therefore, we must dismiss this appeal. *See, e.g., Estate of Jonah Crosby*, 2 IBIA 289, 292 (1974) (where the requested relief is beyond the authority of the Board, the Board must dismiss the appeal), *remanded on other grounds, Price v. Morton*, No. 74-0-89 (D.Neb. Dec. 16, 1975).

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 docketed but dismissed for lack of jurisdiction.[3]

I concur:

// original signed
Debora G. Luther
Administrative Judge

// original signed
Steven K. Linscheid
Chief Administrative Judge

[3] We also note that it is doubtful that the Chapter has standing to challenge these decisions because the use of "tribal codes" appears to be for administrative convenience and would not appear to adversely affect any legally-protected interest of the Chapter. *See* 25 C.F.R. § 2.2 (incorporated by reference in 43 C.F.R. § 4.330(a) to define "interested party" for purposes of standing before the Board). Moreover, we are not aware of any standards by which the selection of tribal codes may be reviewed, thereby suggesting that this matter may be committed to the discretion of the agency and not subject to review by the Board. *See* 43 C.F.R. § 4.330(b)(2).