



INTERIOR BOARD OF INDIAN APPEALS

Edson G. Gardner and Lynda M. Kozlowicz v. Uintah and Ouray Agency
Superintendent, Bureau of Indian Affairs; and Uintah and Ouray Tribal
Business Committee of the Ute Indian Tribe

51 IBIA 166 (03/12/2010)

Related Board cases:

50 IBIA 201

51 IBIA 220



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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SUITE 300
ARLINGTON, VA 22203

EDSON G. GARDNER AND)	Order Docketing and
LYNDA M. KOZLOWICZ,)	Dismissing Appeal
Appellants,)	
)	
v.)	
)	
UINTAH AND OURAY AGENCY)	
SUPERINTENDENT, BUREAU)	Docket No. IBIA 10-062
OF INDIAN AFFAIRS; AND)	
UINTAH AND OURAY TRIBAL)	
BUSINESS COMMITTEE OF)	
THE UTE INDIAN TRIBE,)	
Appellee.)	March 12, 2010

On February 16, 2010, the Board of Indian Appeals (Board) received a notice of appeal filed by Edson G. Gardner, Uintah Indian Advocate, and Lynda M. Kozlowicz, Ute Tribal Advocate, of Kozlowicz & Gardner Advocate, Inc.¹ The appeal was addressed to the Departmental Cases Hearings Division in the Office of Hearings and Appeals, which transmitted it to the Board for review as a matter possibly within the Board's jurisdiction. We docket the appeal, but dismiss it because we lack jurisdiction over the subject matter of the appeal — tribal membership criteria and enrollment — and over the officials who appear to be the objects of the complaint — the Uintah and Ouray Superintendent of the Bureau of Indian Affairs (Superintendent; BIA), and the Uintah and Ouray Tribal Business Committee (Business Committee) of the Ute Indian Tribe of the Uintah and Ouray Reservation (Tribe).

¹ It is not clear whether the appeal was filed on behalf of Kozlowicz & Gardner Advocate, Inc., as an entity, or on behalf of Gardner and Kozlowicz as individuals. No other potential appellants are identified. Because the subject matter involves enrollment matters, the Board has captioned the case identifying Gardner and Kozlowicz as the Appellants. Because we dismiss on other jurisdictional grounds, we do not address whether Appellants would otherwise have standing to bring the appeal. *See* 25 C.F.R. § 2.2 (definition of interested party); 43 C.F.R. § 4.331 (who may appeal to the Board).

The subject matter of the appeal appears to be the eligibility criteria for enrolling in the Tribe. Attached to the appeal is an unnumbered and unsigned Business Committee resolution (Resolution) which, by its terms, would request a Secretarial election² to remove a 5/8 degree Ute Indian blood quantum requirement from the Tribe's constitution, and replace it by allowing membership to "[a]ll lineal descendants of Ute Indians derived from the blood quantum of Ute Indians whose names appear on the Full Blood Roll of March 27, 1956."³ The appeal contends that "[o]n or about 2008,"⁴ the Business Committee "took action" — apparently referring to the Resolution — but failed to submit the matter for an election. Notice of Appeal at 3. The appeal alleges that the Superintendent did not provide any explanation about the Resolution, and Appellants apparently seek to appeal from inaction by the Superintendent and the Business Committee, pursuant to 25 C.F.R. § 2.8 (Appeal from inaction of official). The appeal also requests clarification from the Board regarding the all-lineal-descendants language in the Resolution and possibly related enrollment matters, with specific reference to 25 C.F.R. Part 61 (Preparation of Rolls of Indians).

The Board lacks jurisdiction over an appeal from a Superintendent's alleged action or inaction. See *Kozlowicz & Gardner Advocates, Inc. v. Superintendent, Uintah and Ouray Agency*, 50 IBIA 201, 202 (2009). Therefore, to the extent this appeal seeks review of the Superintendent's failure to provide an explanation concerning the Resolution the Board lacks authority to consider the appeal. The same is true with respect to allegations in the notice of appeal against the Business Committee — whether for action or inaction — because the Board lacks jurisdiction to review appeals from action or inaction of tribal officials. See *Schmitges v. Skull Valley Band of Goshute Indians of Utah*, 41 IBIA 138 (2005).

In addition, the Board lacks jurisdiction over appeals from enrollment determinations made under 25 C.F.R. Part 61, see 25 C.F.R. §§ 61.12, 61.13, 62.10; and over tribal enrollment disputes, see 43 C.F.R. § 4.330(b)(1). And even if that were not the case, or if portions of the notice of appeal could be construed as seeking "clarification" of

² A Secretarial election is a Federal election conducted by BIA acting pursuant to authority delegated to BIA by the Secretary of the Interior. See, e.g., 25 C.F.R. Parts 81 and 82.

³ In 1954, Congress enacted legislation under which the Ute Tribe was divided into two classes of membership, characterized as "mixed-bloods" and "full-bloods," and the Indian status of the "mixed-bloods" was terminated. See 25 U.S.C. §§ 677 - 677d; see generally *Chapoose v. Clark*, 607 F. Supp. 1027 (D. Utah 1985).

⁴ The Resolution is dated 2008, but the day and month are blank.

matters outside the scope of Part 61 or not involving an enrollment dispute, the Board would still dismiss this appeal because the appeal suggests no factual or legal basis for the Board's jurisdiction. The Board is not a court of general jurisdiction. *In re Ute Tribal Water Compact*, 50 IBIA 250 (2009). Nor does it issue advisory opinions. *See United Keetoowah Band of Cherokee Indians v. Eastern Oklahoma Regional Director*, 47 IBIA 87, 89 (2008).

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 Board docket this appeal but dismisses it for lack of jurisdiction.⁵

I concur:

 // original signed
Steven K. Linscheid
Chief Administrative Judge

 // original signed
Sara B. Greenberg
Administrative Judge*

* Interior Board of Land Appeals, sitting by designation.

⁵ The notice of appeal also requests clarification or information from the Intermountain Regional Solicitor. Because this portion of the notice of appeal is not directed to the Board, we do not address it.