



INTERIOR BOARD OF INDIAN APPEALS

Pat Duncan v. Portland Area Director, Bureau of Indian Affairs

33 IBIA 220 (04/01/1999)



# United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
4015 WILSON BOULEVARD  
ARLINGTON, VA 22203

PAT DUNCAN, Appellant	:	Order Dismissing Appeal
	:	
	:	
v.	:	
	:	Docket No. IBIA 98-126-A
	:	
PORTLAND AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS, Appellee	:	April 1, 1999

This is an appeal from an August 10, 1998, letter written by the Portland Area Director, Bureau of Indian Affairs (Area Director; BIA), in response to a request that BIA call and conduct a special election for the Confederated Tribes of Siletz Indians of Oregon (Tribe) for the purpose of filling four Tribal Council vacancies. In his letter, the Area Director stated that BIA would not become involved in an intra-tribal political dispute. He also stated that he believed actions taken by the Tribal Council in the matter were reasonable and prudent and had "allowed the tribal council to proceed as an effective, workable tribal organization."

During preliminary proceedings in this appeal, the Area Director contended that his letter was not an appealable decision. He asked, however, that the Board place the letter into immediate effect if the Board considered it to be subject to Board review.

On November 4, 1998, after receipt of responses by the other parties, and upon concluding that the Tribe needed to have a functioning tribal government, recognized by the Federal government as authorized to act for the Tribe, during the period of appeal, the Board placed the Area Director's August 10, 1998, letter into immediate effect.

For purposes of its November 4, 1998, order, the Board assumed, without deciding, that the Area Director's letter was a reviewable decision. In his answer brief, the Area Director again argues that his August 10, 1998, letter was not a decision appealable to the Board. His argument, however, demonstrates that he has confused the strictly procedural question of whether his letter is subject to appeal under 25 C.F.R. Part 2 with the more substantive question of whether the Board would find that it had jurisdiction over the issues raised in the appeal.

The Area Director's August 10, 1998, letter had the clear effect of denying Appellant's request for a BIA-conducted tribal election. Arguably, it also had the effect of putting BIA's imprimatur on the actions taken by the Tribal Council. A BIA letter which has the effect of

denying relief to someone is appealable under 25 C.F.R. Part 2, whether or not it is considered by BIA to be a "decision." Oglala Sioux Tribe v. Aberdeen Area Director, 16 IBIA 201, recon. denied, 16 IBIA 224 (1988). Accordingly, the Area Director's August 10, 1998, letter was a decision appealable to the Board.

Appellant's allegations in this appeal are diffuse and far-ranging. It appears, however, that her primary objections are to a recall election in which four Tribal Council members were recalled, and to the events which followed Appellant's own resignation from office.

The recall election was held on March 23, 1998. However, the election was not completed until July 27, 1998, because of a challenge filed in Siletz Tribal Court. Upon completion of the election process, four of the nine Tribal Council members had been recalled from office.

On August 1, 1998, Appellant resigned from her position as Tribal Chairman and from her position on the Tribal Council. Her resignation left the Tribal Council without a quorum. Because tribal law did not include procedures applicable to the situation facing them, the four remaining Tribal Council members sought approval by the Tribal Court for a course of action they proposed. The Tribal Court ratified their proposal on August 3, 1998. In re Delores Pigsley et al., No. TC 98-11. In accordance with the ratified proposal, the four remaining Tribal Council members appointed one replacement member by consensus, in order to establish a quorum. Once that appointment had been made, the reconstituted Tribal Council filled the remaining vacancies under the procedures established in the Tribal Constitution.

The Area Director's letter was issued shortly after these events. Undoubtedly, the Tribal Council actions to which the Area Director referred were the actions taken to fill the vacated positions.

On September 15, 1998, the Siletz Court of Appeals issued a final decision upholding the validity of the recall election. Duncan v. Siletz Election Board, No. TC 98-02AP. That decision is controlling here on the question of the validity of the recall election. E.g., Bucktooth v. Acting Eastern Area Director, 29 IBIA 144, 149 (1996) and cases cited therein (When an intra-tribal dispute concerning the proper composition of a tribe's governing body has been resolved in a tribal forum, the results are binding on BIA and the Board).

Following the conclusion of briefing in this appeal, the Tribe submitted a copy of another decision of the Siletz Court of Appeals, this one issued on January 27, 1999, in In re Delores Pigsley et al., No. TC 98-11AP(1) (Appellant's appeal from the Tribal Court's August 3, 1998, decision in No. TC 98-11, supra). In its January 27, 1999, decision, the Court of Appeals affirmed the Tribal Court's decision, stating: "The Tribal Council acted appropriately in seeking to obtain judicial approval of a reasonable course of action in light of the constitutional crisis. No other guidance existed in either the Siletz Constitution or code of laws to assist the Tribal Council." Jan. 27, 1999, Opinion at 17.

In light of the Court of Appeals' decision, the Board ordered Appellant to show why this appeal should not be dismissed. In her response, Appellant contends that the Court of Appeals' decision is not on point here and that the Board does not have jurisdiction to consider it.

Clearly, however, the Court of Appeals' decision is precisely on point. The very procedures to which Appellant objects in this appeal are the procedures approved in that decision. Under the principles discussed in Bucktooth, supra, the Board is bound by the decision of the Court of Appeals in No. TC 98-11AP(1).

Appellant attempts to describe her appeal as one concerning improper actions by BIA officials. It is readily apparent, however, that the actions to which she objects are tribal actions. It is also apparent that, because matters at issue in this appeal have been resolved in Tribal Court, this appeal is moot.

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 dismissed as moot.

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//original signed

Anita Vogt  
Administrative Judge

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//original signed

Kathryn A. Lynn  
Chief Administrative Judge