



INTERIOR BOARD OF INDIAN APPEALS

Thlopthlocco Tribal Town v. Eastern Oklahoma Regional Awarding Official,
Bureau of Indian Affairs

40 IBIA 144 (11/04/2004)



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

THLOPTHLOCCO TRIBAL TOWN,
Appellant,

v.

EASTERN OKLAHOMA REGIONAL
AWARDING OFFICIAL, BUREAU
OF INDIAN AFFAIRS,
Appellee.

: Order Dismissing Appeal
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: Docket No. IBIA 05-10-A
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: November 4, 2004

On November 1, 2004, the Board of Indian Appeals (Board) received a notice of appeal from Thlopthlocco Tribal Town, Oklahoma (Tribe), through counsel, appealing an October 8, 2004, decision of the Eastern Oklahoma Regional Awarding Official, Bureau of Indian Affairs (Regional Awarding Official; BIA). The October 8 decision notified the Tribe that BIA intends to reassume, on a non-emergency basis, operation of programs contracted to the Tribe under the Indian Self-Determination Act (ISDA), 25 U.S.C. §§ 450–450n (2000), because of the Tribe's failure to submit its required single audit report for fiscal year 2002. ^{1/} For the reasons discussed below, the Board dismisses this appeal as premature.

The Tribe's notice of appeal describes the appeal to the Board as protective in nature, and requests a stay to allow resolution of the dispute without litigation. Enclosed with the appeal is a copy of an October 28, 2004, letter addressed to the Regional Awarding Official, in which the Tribe requested an informal conference concerning the dispute, pursuant to 25 C.F.R. § 900.154.

Under the ISDA regulations, when an agency issues a decision to reassume a contracted program, on a non-emergency basis, the agency is required to advise the contracting tribe of the tribe's right to "request an informal conference under 25 CFR 900.154, *or* appeal [the] decision under 25 CFR 900.158 to the Interior Board of Indian Appeals." 25 C.F.R. § 900.152 (emphasis added). An informal conference is "a way to resolve issues as quickly as possible, without the need for a formal hearing." *Id.* § 900.153. An informal conference is

^{1/} Non-emergency reassumptions of ISDA-contracted programs are governed by 25 U.S.C. § 450m and 25 C.F.R. §§ 900.246–900.251. Statutory reporting and audit requirements are addressed in 25 U.S.C. § 450c.

conducted by a designated representative for the Secretary, who must prepare a written report and recommended decision at the conclusion of the informal conference. Id. § 900.156. If the tribe is dissatisfied with the recommended decision, it may still appeal the initial decision to the Board, and does not lose any right it has to a hearing on the record. Id. §§ 900.156–900.158.

In the present case, the Tribe has requested an informal conference to attempt to resolve the dispute, and requests that the Board stay its appeal, pending efforts to resolve the issues without litigation. The regulations, however, do not authorize tribes to request an informal conference and simultaneously file an appeal with the Board. See 25 C.F.R. § 900.152 (tribe may either request an informal conference “or” immediately appeal to the Board). And because the informal conference procedures are designed to avoid the necessity of a formal hearing, the regulations clearly anticipate that, when requested, an informal conference will precede any appeal to the Board. As such, the Board concludes that when a tribe simultaneously requests an informal conference and files an appeal with the Board, the proper course is for the Board to dismiss the appeal as premature, and for the informal conference to proceed as required under 25 C.F.R. §§ 900.155–900.156. The tribe’s right to appeal the initial decision, after the informal conference has concluded, remains fully protected. See id. § 900.157.

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 dismisses this appeal as premature.

// original signed
Steven K. Linscheid
Chief Administrative Judge

// original signed
Colette J. Winston
Administrative Judge