INTERIOR BOARD OF INDIAN APPEALS

Pueblo de San Ildefonso Council of Principally by and through J. Gilbert Sanchez, Head Principally v. Acting Southwest Regional Director, Bureau of Indian Affairs

54 IBIA 253 (02/13/2012)

United States Department of the Interior

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

PUEBLO DE SAN ILDEFONSO COUNCIL OF PRINCIPALLY by and through J. GILBERT SANCHEZ, HEAD PRINCIPALLY, Appellant,	)	Order Vacating Decisions
v.	)	Docket No. IBIA 09-138
ACTING SOUTHWEST REGIONAL DIRECTOR, BUREAU OF INDIAN AFFAIRS, Appellee.	)	February 13, 2012

J. Gilbert Sanchez (Sanchez), acting on behalf of the Pueblo de San Ildefonso Council of Principally (Principally or Appellant),[1] appeals to the Board of Indian Appeals (Board) from a July 30, 2009, decision (Decision) of the Acting Southwest Regional Director (Regional Director), Bureau of Indian Affairs (BIA). The Regional Director affirmed a decision by the Superintendent of BIA's Northern Pueblo Agency (Superintendent) dated March 21, 2008 (Superintendent's Decision), to "acknowledge" the results of an election for Governor of the Pueblo of San Ildefonso (Pueblo) for the 2008-09 term.[2] Appellant appealed the Superintendent's Decision on the ground that the election

[1] The Board has captioned this case in accordance with the representation made by Appellant's counsel concerning the identity of Appellant and the authority of Sanchez to bring this appeal on behalf of the Council of Principally. The Board's caption for this case shall not be construed as indicating any views on the underlying merits of Appellant's claims, on Sanchez's authority to file this appeal on behalf of the Council of Principally, or on the existence or legitimacy of the Council of Principally.

[2] The Superintendent qualified her acknowledgment on the grounds that it was made "in the absence of any formal challenge to the election and installation of the [newly elected

(continued...)

was held without following the procedure outlined in a tribal document dated January 28, 1958 (1958 Agreement), pursuant to which the Principally plays a large role in the selection of the Pueblo's tribal council and elections for Pueblo Governor.

The Regional Director determined that a tribal court had held that the 1958 Agreement was no longer in effect and the Principally was dissolved. The Regional Director also exhaustively reviewed the conduct of the election and concluded that the election was valid. The Regional Director defends the merits of his decision before the Board but also seeks dismissal of the appeal on mootness grounds in light of a subsequent election held by the Pueblo on January 7, 2010.

We deny the Regional Director's motion to dismiss because, while the results of the 2008-09 election may be moot as well as the portion of the Decision to recognize those results, the underlying issue raised by Appellant and decided by the Regional Director — whether the 1958 Agreement remains in effect and is binding on the Pueblo for purposes of determining the governance of the Pueblo — is either not moot or would fall within the exception-to-mootness doctrine. However, while the exception-to-mootness doctrine does not bar our review of the merits, we conclude that we need go no farther in our review than BIA's failure to address a threshold predicate: In the absence of an essential Federal purpose, intra-tribal governance disputes must be resolved in tribal forums and not by BIA. Here, we find no evidence of an essential Federal purpose that necessitated the Regional Director's analysis of the issue of tribal law raised by Appellant. Therefore and without addressing the underlying issues raised by Appellant, we vacate the decisions issued by the Regional Director and the Superintendent.

Background

The Principally is (or was) a group comprising the former Governors of the Pueblo.[3] The 1958 Agreement formally granted the Principally the power to select the candidates for

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[2](...continued)
tribal officials]." Superintendent's Decision at 2. The Superintendent also acknowledged in her decision that while she was not then aware of any dispute concerning the election, such disputes routinely arose at the Pueblo.

[3] In response to a request from the Regional Director for information, Sanchez contended that BIA has no right to any information regarding the individual(s) who identify themselves as members of the Principally. For purposes of this appeal, we assume that there is a group of individuals who associate as the Principally.

the Pueblo's gubernatorial elections and to appoint the Tribal Council. Appellant maintains that the 1958 Agreement and its grant of power to the Principally remain in effect notwithstanding a 1995 Tribal Council Resolution that purportedly dissolved the Principally and divested it of its duties. *See* Tribal Council Resolution No. SI-R95-036 (1995 Resolution).

What seemingly is undisputed is that in the wake of the 1995 Resolution, the incumbent Tribal Council now agrees upon new election procedures for each election shortly before it is held. For each election held since the 1996-97 election, the two kivas[4] apparently have exercised duties originally delegated to the Principally in the 1958 Agreement.

After the elections for the 2008-09 term, the newly elected Governor, Leon Roybal (Roybal), submitted notices and a certification of the election results to the Superintendent. The Superintendent, with the understanding that the election results were not disputed, replied to Roybal "acknowledg[ing] the tribal administration identified in [his submission]." Superintendent's Decision at 2 (unnumbered). However, the Superintendent cautioned that,

> the role of [BIA] is limited with regard to internal matters of the Tribe. The United States Supreme Court cautioned the BIA against intrusion in internal tribal matters in *Santa Clara Pueblo v. Martinez*, 436 U.S. 46 (1978). As a general principle, the Department of the Interior and . . . BIA do not become involved in the internal governmental disputes of [t]ribes. The [Board] opined that, under the general principles governing the Department of the Interior and the BIA, the BIA is discouraged from such involvement in internal tribal disputes. As sovereign nations, [t]ribes have not only the right but the responsibility to resolve their internal disputes without interference from the BIA. Furthermore, it is the right and responsibility of [t]ribes to interpret tribal laws, ordinances, and other organic documents. Should disputes occur, they are most appropriately addressed in the tribal forum.

Id. at 1 (unnumbered). She concluded by stating that "in the absence of any formal challenge to the election and installation of the 2008-2009 Governor and Tribal Council in a tribal forum," she would "acknowledge" the tribal administration identified by Roybal.

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[4] The Pueblo is politically divided between the North Kiva and the South Kiva. *See Naranjo v. Albuquerque Area Director*, 23 IBIA 291, 292 (1993).

Id. at 2 (unnumbered). The Superintendent did not identify any Federal need or purpose that motivated her decision.

Nearly one year later and after first requesting the Superintendent to rescind her "decision," Appellant appealed the Superintendent's Decision to the Regional Director. *See* Notice of Appeal, Feb. 25, 2009.[5] Appellant claimed that the 2008-09 election was held in contravention of the 1958 Agreement and thus was invalid. Appellant asked the Regional Director to rescind the Superintendent's acknowledgment and to consider the Principally to be the governing body for purposes of government-to-government relations. The Regional Director responded by asking both Appellant and Roybal for documentation concerning the legitimacy of the 2008-09 election to assist him in determining its validity. The Regional Director asserted that he would recognize the Roybal government in the interim "for fiduciary purposes." Letter from Regional Director to Sanchez and Roybal, June 25, 2009, at 2. The Regional Director did not identify any specific "fiduciary purposes" or otherwise indicate that there was a specific Federal need to recognize the tribal officials.

Both parties responded to the Regional Director's request for information, and the Regional Director issued his Decision on July 30, 2009. The Regional Director exhaustively reviewed the history of the 1958 Agreement; the ensuing years under that Agreement; the adoption of the 1995 Resolution; a tribal court proceeding against Sanchez that addressed the status of the Principally, *see San Ildefonso Pueblo v. Sanchez*, No. CV-96-62 (San Ildefonso Pueblo Tribal Court Feb. 21, 1997); and events subsequent to the tribal court's 1997 decision, including the conduct of the 2008-09 election. The Regional Director analyzed the documentation submitted to him, and determined that the Principally had been dissolved by the 1995 Resolution and that the election of Roybal was valid. In particular, the Regional Director stated that, based on the 1995 Resolution, the 1997 tribal court decision in *Sanchez*, "and in the absence of any contradicting evidence provided by the parties, . . . BIA has no choice but to accept that the Council of Principal[ly] was dissolved." Decision at 4. Therefore, the Regional Director affirmed the Superintendent's acknowledgment of the 2008-09 Governor and Tribal Council. The Regional Director did not identify in his Decision any pending Federal action that would require BIA to identify tribal officials and he did not discuss the need for Appellant to exhaust tribal remedies.

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[5] Apparently, the Superintendent's Decision was not sent to Sanchez or to the Principally nor did it contain appeal instructions, for which reason Appellant's appeal to the Regional Director was not untimely. *See* 25 C.F.R. § 2.7; *Emm v. Western Regional Director*, 50 IBIA 311, 317-18 (2009).

Appellant then appealed the Regional Director's Decision to the Board. The parties have briefed the merits of the appeal as well as the merits of the Regional Director's motion to dismiss the appeal as moot in the wake of a subsequent election and the installation of new governing officials for the Pueblo.

Discussion

At the outset, we deny BIA's motion to dismiss this appeal as moot because the Decision — that the 1958 Agreement is no longer in effect and that the Principally was dissolved — is not limited to the 2008-09 election but, presumably, will affect BIA's evaluation of future leadership decisions for the Pueblo. And that is also the basis on which Appellant apparently has asked BIA for a decision.

But, while we conclude that the appeal is not moot, we also reject Appellant's attempt to engage us on the merits of whether the 1958 Agreement remains in effect. Here, the Regional Director overlooked the qualified nature of the Superintendent's response and purported to adjudicate the issue of tribal law without identifying any Federal need to do so, for which reason we vacate his Decision. In addition, we also vacate the Superintendent's Decision because, by its terms, the Superintendent's "acknowledgment" was predicated on the absence of any dispute over the election. And because BIA has not identified any need for Federal action, we do not remand this matter. We turn to a discussion of these points, beginning with the Regional Director's motion to dismiss.

I. Mootness

The Regional Director moves to dismiss Appellant's appeal on the grounds that it is moot. The Regional Director argues that a new election has been held, Roybal is no longer in office, and a new government is now in place. We deny the motion because Appellant contends that, unless or until the terms of the 1958 Agreement are followed, BIA recognition of *any* government for the Pueblo other than the Principally is unsupportable and thus the Regional Director's Decision continues to adversely affect Appellant.

An appeal becomes moot when nothing turns on its outcome, which usually occurs when superseding events have taken place. *See In re Legal Status of Crow Tribal Chairmanship*, 53 IBIA 25, 25 n.2 (2011). A new election can moot a pending appeal from a recognition decision based upon a past election, and where mootness has been raised, as here, by the Regional Director, Appellant bears the burden of showing otherwise. *See, e.g., Boland v. Pacific Regional Director*, 42 IBIA 236, 239 (2006). But an appeal is not moot "where there is a potentially recurring question raised by short-term orders, capable of repetition, yet evading review," and we may continue to exercise jurisdiction over such an

appeal. *Penney v. Aberdeen Area Director*, 20 IBIA 90, 92 (1991); *see also Northrup v. Acting Western Regional Director*, 42 IBIA 136, 140 (2006).

In the present appeal, the new election does not moot Appellant's claim that unless and until the Pueblo's government is chosen in accordance with the 1958 Agreement, BIA must recognize the Principally for government-to-government purposes. In addition, there is a "reasonable expectation" that Appellant will be subjected to the same decision again in the pending challenge to BIA's recognition of the 2012 election results,[6] i.e., a determination that the Principally was dissolved and no longer plays a role in the governance of the Pueblo. *See Northrup*, 42 IBIA at 140. Therefore, while that portion of the Regional Director's Decision to affirm the Superintendent's "acknowledgment" of the Roybal government may have been superseded by the subsequent election, the controversy upon which Appellant's appeal is based is not moot. Thus, something still turns on the outcome of the appeal.[7]

Although we conclude that this appeal is not moot, we nevertheless find it unnecessary to reach the merits of the Regional Director's Decision because we cannot discern a present need for BIA to take any Federal action as a predicate for reaching the merits of this intra-tribal matter.

II. BIA's Decisions

When a BIA tribal government recognition decision comes before the Board, our threshold inquiry is to determine whether there was any Federal need for action that compelled BIA to decide whom to recognize as a tribe's representative(s) or to declare a particular election valid or invalid. Where, as here, there was no evident Federal need for the Regional Director to adjudicate the issue of tribal law presented by Appellant, the

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[6] Attached to Appellant's reply brief was a copy of an appeal to the Regional Director that challenged the results of the 2010 election. *See* Reply Br., Exh. A. However, it is not clear from that appeal that BIA had actually made any decision to recognize the results of the 2010 election. *Id*.

[7] Our decision in *Smith v. Acting Pacific Regional Director*, 42 IBIA 224 (2006), is not to the contrary. In that appeal, the appellant had challenged an election on the grounds that ineligible individuals were being permitted to run for office and vote in the tribe's elections, and he argued that these individuals continued to be recognized as eligible in subsequent elections. However, no appeal was filed with BIA upon its recognition of the results of the subsequent election. Therefore, we dismissed the appeal in *Smith* as moot. *Id*. at 225.

appropriate course is to exercise restraint and defer to tribal mechanisms for the resolution of intra-tribal disputes. This policy is borne out of Congress' oft-stated support for and emphasis on tribal self-determination, *see, e.g.*, Indian Self-Determination Act, 25 U.S.C. § 450a, Indian Reorganization Act, 25 U.S.C. § 476, and BIA has implemented this policy directive through, *inter alia*, a course of noninterference in internal government disputes, deferring instead to the tribes' sovereign right to determine for themselves the manner and means of resolving such disputes. *See Housing Authority of the Kiowa Tribe of Oklahoma v. Southern Plains Regional Director*, 37 IBIA 142, 143 (2002). Previously, the Board has explained:

> As an initial matter, it is well established that tribal governance disputes are to be resolved by tribal procedures, not by the federal government. *See, e.g.*, *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 65 (1978); *Fisher v. District Court*, 424 U.S. 382, 386-89 (1976); *Smith v. Babbitt*, 100 F.3d 556, 559 (8th Cir. 1996); *Wheeler v. US. Dept. of the Interior, Bureau of Indian Affairs*, 811 F.2d 549 (10th Cir. 1987). Federal interference in internal tribal affairs would interfere with powers of self-governance conferred on tribes by the federal government, would subject disputes arising on reservations among reservation Indians to a forum other than the one they established for themselves, and would risk conflicting adjudications and diminish the tribal courts' authority. *See Fisher*, 424 U.S. at 387-88. Thus, the Board has ruled that neither BIA nor the Board should generally decide disputes that are intra-tribal in nature. *See, e.g.*, *Cahto Tribe of the Laytonville Rancheria v. Pacific Regional Director*, 38 IBIA 244, 249 (2002); *Carrigan v. Acting Eastern Oklahoma Area Director*, 36 IBIA 87, 88 (2001); *John v. Acting Eastern Area Director*, 29 IBIA 275, 277-78 (1996).

Wasson v. Western Regional Director, 42 IBIA 141, 157 (2006).

We have not examined the merits of the Regional Director's adjudication of Appellant's challenge to the 2008-09 election and we express no opinion on that analysis. However, we have thoroughly examined both his Decision and the record in support of his Decision, and we find no mention of any Federal need for action that would justify the Regional Director's intrusion into tribal affairs. It is on this basis that we vacate his Decision and the Superintendent's Decision. The cornerstone of any decision by BIA to recognize a tribal government should be a present Federal need to do so, not an anticipated need at a future date. The mere invocation of "fiduciary purposes," without more, is insufficient to support the Regional Director's Decision. He must identify a concrete and essential Federal purpose for formally recognizing a tribal official or government. *See*

Wadena v. Acting Minneapolis Area Director, 30 IBIA 130, 145 (1996). And, in the absence thereof, the appropriate response by the Regional Director to Appellant's appeal would have been — consistent with the Superintendent's own qualified response — to simply vacate the Superintendent's Decision and direct Appellant to pursue the matter within the Pueblo.

Because we are unable to identify any specific Federal purpose requiring BIA — at the time of the Superintendent's or the Regional Director's decisions — to recognize Roybal or the tribal council, we vacate the decisions of the Regional Director and the Superintendent. In the absence of any pending Federal action identified by the parties, there is no "matter" to remand. *Del Rosa v. Acting Pacific Regional Director*, 51 IBIA 317, 319 (2010).

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 vacates the Regional Director's July 30, 2009, decision and the Superintendent's March 21, 2008, decision.

I concur:

// original signed
Debora G. Luther
Administrative Judge

// original signed
Steven K. Linscheid
Chief Administrative Judge