



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

SEP 04 2012

Mr. Richard Schadewald
P.O. Box 2206
Fond du Lac, Wisconsin 54936-2206

Dear Mr. Richard Schadewald:

On April 15, 1980, the Department received a letter of intent from the Brothertown Indians of Wisconsin (Brothertown) to petition for Federal acknowledgment.¹ In 1996, the Department received documents from Brothertown in support of its petition. On June 23, 2008, the Department placed Brothertown on active consideration.

The Assistant Secretary – Indian Affairs issued a Proposed Finding on August 17, 2009 (Proposed Finding), which was published in the Federal Register on August 24, 2009. The Proposed Finding explained that Brothertown did not satisfy the requirements for Federal acknowledgment under the Department's regulations at 25 C.F.R. Part 83.

This letter constitutes the Department's Final Determination of Brothertown's petition for acknowledgment under 25 C.F.R. Part 83.

Decision

After a careful review of all materials in the record, we have determined that the Brothertown was the subject of congressional legislation that expressly terminated or forbade the Federal relationship (5 Stat. 349). Because of this Congressional action, the Department lacks the authority and jurisdiction to extend acknowledgment as an Indian tribe to the Brothertown pursuant to 25 C.F.R. Part 83. Therefore, the Department cannot acknowledge the tribal existence of the Brothertown and restore a government-to-government relationship between the United States and the Brothertown.

The reasons for our decision are set forth below.

Background

The Brothertown has its headquarters in Fond du Lac, Wisconsin. Its current organization was established in 1980. It has a governing document and membership criteria. According to its 2008 membership list (the most current membership list submitted by the petitioner), Brothertown has 3,137 members.

¹ The petitioning group has submitted documents under the name of "Brotherton Indians of Wisconsin," as well as "Brothertown Indian Nation."

At a prior point in history, the United States formally had acknowledged the Brothertown Indian Tribe. A United States Senate proviso to the Treaty of February 8, 1831, established a reservation for the Brothertown Indian Tribe of Wisconsin, and the Senate confirmed that reservation by ratification of the Treaty of October 27, 1832.

In 1839, Congress passed an Act “for the relief of the Brothertown Indians,” which permitted the Brothertown to distribute its reservation lands to individual citizens (Act of 1839). The Act of 1839 included a condition that if the Brothertown distributed the land, then its citizens would become citizens of the United States. It also provided that upon compliance with the provisions of the Act of 1839, its rights as a tribe, vis-à-vis the United States, and its inherent power to act as an independent political and governmental entity, would cease. *See* Proposed Finding at 133.

The Brothertown Indian Tribe, through its elected board of commissioners, then divided its lands among individual tribal citizens pursuant to the Act. The Tribe’s elected board of commissioners prepared a report of its activities, with a list and map of lands that it distributed. It then submitted the report to the President of the United States. Proposed Finding at 138. In 1842, the General Land Office acknowledged the Tribe’s report, considered it to have complied with the provisions of the Act of 1839, and issued patents to those individuals listed in the report. *Id.*

In the August 17, 2009 Proposed Finding, the Department reached the conclusion that the Act of March 3, 1839, and Brothertown’s compliance with that Act, constituted “congressional legislation that has expressly terminated or forbidden the federal relationship,” pursuant to 25 C.F.R. § 83.7(g). *See* Proposed Finding at 149.

Analysis

The Federal acknowledgment regulations, 25 C.F.R. Part 83, establish the procedures by which a non-federally recognized group may seek Federal acknowledgment as an Indian tribe and a government-to-government relationship with the United States. To be entitled to such a political relationship with the United States, the petitioner must submit evidence documenting that the group meets all seven mandatory criteria set forth at 25 C.F.R. § 83.7. Failure to meet any one of the mandatory criteria will result in a determination not to recognize the tribal status of the petitioning group and establish a government-to-government relationship between it and the United States.

One of these criteria, expressed at 25 C.F.R. § 83.7(g), provides, “[n]either the petitioner nor its members are the subject of congressional legislation that has expressly terminated or forbidden the Federal relationship.”

This criterion is unique amongst the seven mandatory criteria because it speaks to the authority of the Department to acknowledge a petitioner for Federal acknowledgment where Congress already has spoken to the tribal status of the petitioning group. In other words, the criterion expressed at 25 C.F.R. § 83.7(g) relates to the jurisdiction of the Department to consider and approve such a petition. This conclusion is reinforced by the clear language of 25 C.F.R. 83.3(g), which deals with the scope of Part 83: “[f]urther, groups which are, or the members of

which are, subject to congressional legislation terminating or forbidding the Federal relationship may not be acknowledged under this part.”

In this instance, the Department previously concluded that the Act of 1839 effectively terminated the tribal status of Brothertown. As stated in the Proposed Finding:

By expressly denying the Brothertown of Wisconsin any Federal recognition of a right to act as a tribal political entity, Congress has forbidden the Federal Government from acknowledging the Brothertown as a government and from having a government-to-government relationship with the Brothertown as an Indian tribe.

Proposed Finding at 149.

For purposes of this Final Determination, we adopt both the analysis and conclusion contained in the Proposed Finding from pages 133 to 149 insofar as they relate to the criterion delineated in 25 C.F.R. § 83.7(g).

Conclusion

It is our Final Determination that the Act of 1839 precludes the Department from exercising jurisdiction to acknowledge the tribal status of Brothertown. 25 C.F.R. §§ 83.7(g) and 83.10(m). The criterion delineated in 25 C.F.R. § 83.7(g) is one of seven mandatory criteria that petitioning groups must satisfy pursuant to our regulations. Our lack of authority to acknowledge the tribal status of Brothertown, pursuant to the Act of 1839 and 25 C.F.R. § 83.7(g), makes it unnecessary to determine whether Brothertown satisfies any or all of the other criteria expressed at 25 C.F.R. § 83.7. Therefore, the Department withdraws all of the factual findings, analysis, and conclusions contained in the Proposed Finding of August 17, 2009, that do not directly pertain to 25 C.F.R. § 83.7(g). Neither the Department nor any other party should rely upon the factual findings, analysis, and conclusions in the Proposed Findings that do not directly pertain to 25 C.F.R. § 83.7(g).

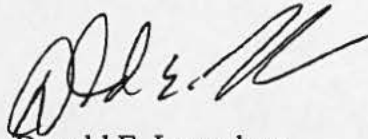
Because Congress acted to terminate the tribal status of the Brothertown through the Act of 1839, the Department cannot restore that tribal status. Only Congress may restore the tribal status of the Brothertown Indian Nation under Federal law, as well as its government-to-government relationship with the United States.

After publication of the notice of this Final Determination in the Federal Register, the Brothertown, or any interested party, may file a request for reconsideration with the Interior Board of Indian Appeals (IBIA) under the procedures specified at 25 C.F.R. § 83.11. The IBIA must receive this request for reconsideration no later than 90 days after publication of

the notice of this Final Determination. This Final Determination will become effective 90 days from its publication in the Federal Register, unless the petitioner or an interested party files a request for reconsideration pursuant to 25 C.F.R. § 83.11.

Under 83.10(n), “[i]f the Assistant Secretary declines to acknowledge that a petitioner is an Indian tribe, the petitioner shall be informed of alternatives, if any, to acknowledgment under these procedures.” The Brothertown may wish to seek restoration through Congress.

Sincerely,



Donald E. Laverdure
Acting Assistant Secretary – Indian Affairs

cc: The Honorable Governor Scott Walker
The Honorable Attorney General J.B. Van Hollen
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