SHOSHONE-BANNOCK TRIBAL TAX COMMISSION Appellant	:	Order Docketing and Dismissing Appeal
v.	:	Docket No. IBIA 97-87-A
ACTING PORTLAND AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS, Appellee	:	February 21, 1997

The Shoshone-Bannock Tribal Tax Commission (Tax Commission), through two of its Commissioners, Maxine Edmo and Sherwin Racehorse, seeks review of a December 5, 1996, memorandum from the Acting Portland Area Director, Bureau of Indian Affairs (Area Director; BIA), concerning Shoshone-Bannock Ordinance FHBC-96-S1O (ordinance), which was enacted by the Fort Hall Business Council (Business Council) of the Shoshone-Bannock Tribes of the Fort Hall Reservation (Tribes). For the reasons discussed below, the Board of Indian Appeals (Board) dismisses this appeal.

The Superintendent, Fort Hall Agency, BIA, disapproved the ordinance. The Area Director's December 5, 1996, memorandum rescinded that disapproval, and approved the ordinance. The memorandum states in pertinent part:

> The ordinance amends the existing tax code by eliminating the Tax Commission and substitutes a Revenue Director to exercise substantially the same powers as formerly exercised by the three member Tax Commission. Additionally, the Revenue Director and staff shall be subject to the Tribes' Personnel Policy and Procedures Manual. Under the former tax code provisions, the Commissioners were not subject to the Manual. The ordinance does not make any substantive changes to existing taxes, rates, or rights of people and businesses subject to tribal taxes.
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> * * * From the materials it appears that the Business Council amended the ordinance in response to a resolution adopted at a meeting of the general membership. Pursuant to Article VI, Section 5 of the Tribes' constitution, the Business Council is directed to heed the wishes of the people as expressed in resolutions adopted at general meetings. Further, the Business Council provided at least two opportunities for comments about the proposed ordinance prior to its adoption.

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> * * * [T]he Business council clearly has the authority to amend the tax code, including provisions concerning the administration of the tax laws of the Tribes. See Article VI, Section 1(h), (k), (l), and (r).

On January 7, 1997, the Board required the Tax Commission to show that it was a proper appellant. Both the Tax Commission and the Business Council responded to the Board's order. After reviewing the responses, the Board concludes that the Tax Commission lacks authority under tribal law to challenge BIA's approval of an ordinance enacted by the Business Council.

Article III of the Tribes' Constitution designates the Business Council as the Tribes' governing body. The powers of the Business Council are set forth in Article VI of the Constitution. Pursuant to those powers, the Business Council enacted a Tax Code. Chapter 1, section 101, of the Tax Code states in part:

> This Code is enacted pursuant to the inherent sovereign tribal powers expressly delegated to the Fort Hall Business Council in Article VI, Section 1(h) of the Tribal Constitution, which authorizes the Fort Hall Business Council to levy taxes upon members of the Tribes and to levy taxes or license fees upon non-members doing business within the Reservation; and pursuant to the inherent sovereign tribal powers expressly delegated to the Fort Hall Business Council in Article VI, Sections 1(h), (i), (k), (l), (m), (r) and (s) of the Tribal Constitution.

Chapter 3 of the Tax Code creates the Tax Commission. The Tax Commission was therefore created by legislation enacted by the Tribes constitutionally established governing body.

The Tax Commission cites several provisions of the Tax Code as authorizing it to bring this appeal. After reviewing those provisions, the Board finds that they authorize the Tax Commission to enforce the Tax Code, but do not authorize it to file suit against BIA's approval of an ordinance enacted by the Business Council. 1/

The Business Council states that it "is aware of no tribal law which vests in the Tax Commission authority to challenge the enactment of a Tribal ordinance or [BIA] approval of the ordinance." Answer of Interested Party at 7. The Business Council also notes "that at the December 31, 1996 meeting of the Council, a motion was made to support the [Tax Commission] in [its] Appeal. This motion failed for lack of a second." Id.

In its independent review of the materials before it, the Board has found no provision of tribal law authorizing the Tax Commission to appeal

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1/ The Tax Commission also cites its own regulations as authority to bring an appeal. Because the Tax Commission could not grant itself more authority than was contained in the legislation creating it, the Board finds the Tax Commissions regulations irrelevant to this discussion.

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BIA approval of an ordinance enacted by the Business Council. Accordingly, the Board concludes that the Tax Commission is not authorized under tribal law to bring this appeal.

The Tax Commission notes that in 1991 it joined the Tribes in an appeal to the Board, and that the Assistant Secretary - Indian Affairs assumed jurisdiction over that appeal. Presumably, the unarticulated argument is that because the Tax Omrdssion was allowed to appeal on one occasion, it must be allowed to appeal now.

Both because the Tribes unquestionably had authority to file the 1991 appeal and because the Assistant Secretary assumed jurisdiction over the case, the Board never addressed the question of the Tax Commission's right to appeal on its own behalf. Furthermore, there is a distinct difference between a situation in which a legislatively created tribal governmental entity joins in an appeal filed by its constitutional tribal government, and one in which that subordinate entity seeks independently to appeal BIA approval of an ordinance enacted by its tribal government. The Board concludes that the Tax Commission's participation with the Tribes in a previous appeal does not authorize it to file an appeal on its own behalf under the circumstances of this case.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, this appeal from the Acting Portland Area Director's December 5, 1996, decision is docketed and dismissed.

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Kathryn A. Lynn
Chief Administrative Judge

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Anita Vogt
Administrative Judge

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