

VERNON MILLER

IBLA 72-211

Decided December 4, 1972

Appeal from decision (I-3203) of Idaho State Office, Bureau of Land Management, rejecting petition-application for sale of land under the Unintentional Trespass Act.

Set aside and remanded.

Public Sales: Sales Under Special Acts

Since the Unintentional Trespass Act authorizes the Secretary on his own motion to offer qualified land for sale, an application should not be rejected solely because it is made by a person who may not be the "owner" of contiguous land as that term is used in the Act. The determination of whether the land in question can be classified for public sale is based on clearly established criteria; it should not be made strictly on a basis of whether an applicant is an owner of contiguous land.

APPEARANCES: John B. Kugler, Esq., Pocatello, Idaho, for appellant.

OPINION BY MR. RITVO

Vernon Miller has appealed to the Board of Land Appeals from a decision of November 16, 1971, of the Idaho State Office, Bureau of Land Management, rejecting his petition for classification of land for sale under the Unintentional Trespass Act of September 26, 1968, (43 U.S.C. §§ 1431-35 (1970)). The reason given for the rejection was that appellant was not qualified under the Act to file a petition since he was not an owner of contiguous land.

The Unintentional Trespass Act of September 26, 1968, authorizes the Secretary of the Interior to dispose of certain tracts of public lands, not exceeding 120 acres, where such lands are not needed for public purposes and upon which there was an unintentional trespass on or before September 26, 1968. The purpose of the Act was to provide a method for disposition of lands not covered by other statutes. H.R. Rep No. 1791, 90th Cong., 2nd Sess.; 3 U.S.C. Cong. & Admin. News (1968) 3612.

Under the Act, sale of the land can be initiated by the Secretary on his own motion or upon application of an owner of contiguous lands. In addition to their having been affected by an unintentional trespass, some of the lands in the tract must be shown to have been or be able to be put to cultivation. If the Secretary determines that the lands are not needed for a public purpose, they will be sold at a public auction to the highest bidder. 43 U.S.C. § 1431 (1970). Another section of the Act (43 U.S.C. § 1432) guarantees the preference right of owners of contiguous lands to buy the tract at the highest bid. The authority granted by the Act expired three years from the date of its enactment, subject to the right to consummate sales for which application had been filed prior to the expiration date. 43 U.S.C. § 1435 (1970).

In appellant's amended Public Sale Application, Form 2710-1 (July 1969), question 7 asked, "Are you the sole owner of whole title in fee of land contiguous to the land described in Item 1," to which appellant checked "No" and added "Contract purchaser, contract escrowed, First Security Bank * * *." The State Office rejected the application on the basis that appellant as a contract purchaser was not an owner of whole fee title and therefore, was not eligible.

The term "owner" as employed by the statute is not defined therein, nor has it been defined by the implementing regulations (43 CFR 2243.3 (1970)), or by case law relating to the statute. In order to affirm the decision below we would have to define the term as exclusive of the interest asserted by the appellant in the contiguous land. In light of our findings we will not do so in this instance. We must observe, however, that the regulations provide authority for the sale of public land affected by unintentional trespass to "the owner or user of contiguous lands * * *". 43 CFR 2243.3-1(a) and 2243.3-2(a) (1970). (Emphasis added.)

We find the rejection of Miller's application improper and unnecessary. The purpose of the Act is not directed so much to who is a contiguous owner of land as it is to the disposal by the Secretary of the Interior of certain tracts of public land. Since the Act authorizes the Secretary on his own motion to offer qualified land for sale under the Act, an application should not be rejected solely because it is made by a person who may not be the owner of contiguous land. Such an application should be considered as a petition to the Secretary (or his delegate) to act as he determines in his discretion to be proper. In other words, the determination of whether the land in question can be classified for public sale is based on clearly established criteria (set out in 43 U.S.C. § 1431); it should not be made merely on a basis of whether an applicant is an owner of contiguous land. If the Secretary (or his delegate) determines that there is some reason why the land should not be classified, he, of course, may refuse to undertake the classification procedure. But

the possible lack of qualification of the applicant as an owner is not by itself sufficient reason to refuse to consider the question of whether the land should be classified.

Once the land has been classified and offered for sale, it may be disposed of to the highest bidder. Thus the classification will not be a meaningless act, even if the person who called the situation to the Department's attention is not an owner of contiguous land. The question of ownership of contiguous land would become important only if one or more owners attempted to assert the preference right provided for by the Act. It is accordingly unnecessary at this time to define the meaning of "owner" as set out in the Unintentional Trespass Act.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. 4.1, the decision of the State Office is set aside and the case remanded for appropriate action in accordance with this decision.

Martin Ritvo, Member

We concur:

Douglas E. Henriques, Member

Edward W. Stuebing, Member

