

SOLID ROCK MINISTRIES, INC.

IBLA 72-323

Decided March 27, 1973

Appeal from decision of Alaska State Office denying request for extension of time (A-030331).

Dismissed.

Rules of Practice: Appeals: Standing to Appeal -- Recreation and Public Purposes Act

An interlocutory decision is not appealable to the Board of Land Appeals. A decision by a State Office denying appellant's request for an extension of time to correct a situation which placed appellant in apparent violation of a reversionary clause in its patent issued under the Recreation and Public Purposes Act, but rendering no final determination on the status of the land, is an interlocutory decision.

APPEARANCES: Burton C. Biss, Esq., Anchorage, Alaska, for appellant.

OPINION BY MR. STUEBING

Solid Rock Ministries, Inc., appeals from a decision of the Alaska State Office dated February 16, 1972, denying its request for an extension of time to comply with a notice of the State Office issued September 2, 1971. This notice allowed appellant 90 days from its receipt of the notice to correct a situation which placed it in violation of a reversionary clause in its patent issued pursuant to the Recreation and Public Purposes Act, as amended 43 U.S.C. § 869 (1970).

The patent (#1227561) was originally issued to the Kenai Peninsula Fundamental Fellowship in 1962 for 69.93 acres of land. The patent contained a reversionary clause which stated that if, after issuance of the patent, the patentee or its successor attempted to transfer title to or control over the lands to another, or if the lands were devoted to a use other than for religious training and recreation without the consent of the Secretary of the Interior, title to the lands would revert to the United States.

Solid Rock Ministries, Inc., received a Certificate of Approval of Transfer for the land on March 6, 1964, from the Bureau of Land Management. The corporation operated radio station KSRM on the property covered by the patent. The station was used primarily for dissemination of religious training and education. On March 11, 1970, due to the poor financial state of this radio station, Solid Rock assigned its license to operate the station to KSRM, Inc., which was incorporated under the provisions of the Alaska Business Incorporation Act. KSRM, Inc., broadcasted from the same facility on the patented land. There is no record in the Bureau's files to indicate that Solid Rock sought approval of this transfer. On September 2, 1971, the State Office issued its notice stating that the operation of a commercial radio station on the property covered by the patent placed Solid Rock in violation of the terms of the patent. This notice allowed Solid Rock 90 days from the receipt of the notice to correct the situation.

In order to comply with the notice Solid Rock organize a nonprofit corporation, Kenai-Soldotna Radio Management, Inc., to operate the radio station. Solid Rock began to transfer all of the assets and business of KSRM, Inc., to the nonprofit corporation, but this transfer could not be completed until the renewal and transfer were approved by the Federal Communications Commission. Because of the time necessary to satisfy the Commission's procedural requirements for transfer, Solid Rock requested a 90-day extension of time which the Land Office approved in its decision of December 2, 1971. An additional extension of time was requested and denied by the State Office in its decision of February 16, 1972. Solid Rock, in a timely appeal from that decision, contends that it is moving the radio station from the patented land to another location and that it needs additional time to obtain the proper authorization for the new operation from the Federal Communications Commission.

43 CFR 4.28 states that there shall be no interlocutory appeals from a ruling of an examiner unless permission is first obtained from the Board and the examiner has certified the ruling or abused his discretion in refusing a request to so certify. Although this regulation is directed to interlocutory appeals from the rulings of hearing examiners, the principle applies with equal force to non-final decisions of Bureau officials. Anna A. Madros, 7 IBLA 323 (1972).

The main holding in the State Office's decision of February 16, 1972, is the denial of appellant's request for an extension of time. The decision offered no final determination as to the status of the land; therefore, such decision is interlocutory and is not appealable to this Board prior to the rendering of a decision on the merits by

the State Office. Golden Grigg, A-30908 (April 1, 1968). See also, Newell A. Johnson, 70 I.D. 388 (1963); United States v. The Dredge Corporation, 76 I.D. 23 (1969); Paul Unruh v. Wesley Laverne Edwards, A-31083 (April 9, 1970).

In his transmittal of the case record to this Board, the State Director requested referral of the case to the Solicitor in the event that we determined that it is not properly a matter for our consideration. Accordingly, the case record will be referred to the Office of the Solicitor of this Department rather than remanded to the Alaska State Office.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appeal is dismissed.

Edward W. Stuebing, Member

We concur:

Newton Frishberg, Chairman

Frederick Fishman, Member
(Concurring specially)

VIEWS OF FREDERICK FISHMAN

Solid Rock Ministries, Inc. appealed from a decision denying it an extension of time to bring itself within compliance of a patent and instrument of transfer. Those documents required that if the land were used otherwise "title to the lands shall revert to the United States."

The record indicates that appellant used the land as a site for a commercial radio station, KSRM, an apparent violation of the terms of the patent and of the transfer to appellant from the patentee, Kenai Peninsular Fundamental Fellowship.

In its letter of January 26, 1972, appellant requested an extension of time until September 30, 1972, in order to have time to meet the Federal Communication Commission's processing time for the approval of the transfer of the radio station to another site. Since the period of the requested extension of time, *i.e.*, until September 30, 1972, has expired, the appeal is moot and should be dismissed on that basis. See Ashland Oil, Inc., 6 IBLA 187 (1972). That is the action I would take in this case.

I am informally advised by the Federal Communications Commission that on February 7, 1972, appellant filed an application with that agency to change the sites of the transmitter and main studio to Mile 6, Kalifonsky Beach Road in Soldotna. The application was granted on May 31, 1972. We do not know whether the offending use of the patented land has ceased. If it has, then the decision would also be mooted on that basis.

Although the main opinion seemingly holds that an appeal from an interlocutory decision is not justiciable, such an appeal may be entertained where the permission of the Board is obtained therefor and the Board finds that disposition of such appeal may materially advance the final decision. Cf. United States v. Merle I. Zweifel, 3 IBLA 1 (1971).

In the circumstances, I believe that refusal to consider the appeal because it is addressed to an interlocutory order is not a proper basis in this situation for disposition of the appeal.

Although the main opinion does not raise the issue, I believe we need not reach the question whether the reverter clause has already operated by its own force. Presumably this question will be considered by the Bureau of Land Management. I would remand the case to the Bureau for that purpose.

