

**Editor's note: Appealed -- aff'd, Civ. No. LV-2137 (D. Nev. Dec. 7, 1973)**

BEVERLY HARRELL

IBLA 72-83

Decided July 31, 1973

Appeal from a decision of the Bureau of Land Management holding small tract lease N-4590 for cancellation.

Affirmed.

Small Tract Act: Generally

A small tract lease issued pursuant to 43 U.S.C. §682a will be canceled where it is committed to a use which constitutes a nuisance per se under state law.

APPEARANCES: Harry E. Clairborne, Esq., Las Vegas, Nevada, for appellant; James A. Coda, Esq., Office of the Solicitor, United States Department of the Interior.

OPINION BY MR. FRISHBERG

Beverly Harrell has appealed from a decision of the Nevada State Director, Bureau of Land Management, dated August 25, 1971, holding her small tract lease for cancellation 30 days after receipt of said decision. This action was premised upon an allegation that the appellant was operating a house of prostitution on the leased land, and that such use constituted a nuisance per se under applicable state law, citing the Nevada State Attorney General's Opinion No. 34, July 27, 1971; Cunningham v. Washoe County, 66 Nev. 60, 203 P.2d 611 (1949); Kelly v. Clark County, 61 Nev. 293, 127 P.2d 221 (1942). Thus, since appellant's use of the leased lands was unlawful and, therefore, in violation of the lease terms, the State Office held the lease for cancellation. 1/

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1/ The lease provides in pertinent part that:

"2. The lessee agrees: \* \* \* (b) to observe all Federal, State, County, and other laws, regulations, and ordinances which are applicable to the premises. \* \* \* (e) To conduct all business operations, if authorized by this lease, in an orderly manner and in accordance with all applicable Federal, State, County, and other laws, regulations, and ordinances \* \* \*

Appellant has never denied that she does, in fact, operate a house of prostitution. Rather, she takes vigorous exception to the conclusion of the State Office that a house of prostitution is a nuisance per se under Nevada law. Appellant's contentions can be summarized as follows: She distinguishes the above-cited decisions of the Nevada State Supreme Court on the ground that they antedated a 1967 legislative amendment to NRS §193.050 abolishing common law crimes and a 1971 amendment to NRS §244.345, which, she alleges, now permits counties (with exceptions not relevant here) to license houses of prostitution. These, she argues, completely erode the basis of the earlier Nevada Supreme Court decisions, with the result that a house of prostitution is no longer a nuisance per se in Nevada. 2/

These contentions, however, are flatly contradicted by the opinion of July 27, 1971, of the Nevada Attorney General, which held that houses of prostitution remain nuisances per se in Nevada notwithstanding recent legislation. In the absence of any contrary state court decisions adjudicating this issue, this Board will follow the interpretation of the Attorney General. Thus, the State Office was correct in holding this lease for cancellation. 3/ Appellant has shown no acceptable reason why the lease should not be canceled.

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fn. 1 (cont.)

"8. This lease may be cancelled by the lessor for failure of the lessee to perform or observe any of the terms of conditions hereof, or of the regulations issued under the Act of June 1, 1938, as amended where default continues for 30 days after written notice by the lessor."

2/ The 1971 amendment to NRS §244.345 provides:

"8. In any county having a population of 200,000 or more, as determined by the last preceding national census of the Bureau of the Census of the United States Department of Commerce, the [county] license board shall not grant any license to a petitioner for the purpose of operating a house of ill fame or report or any other business employing any female for the purpose of prostitution."

We note that appellant's leased land is situated in Esmeralda County with a population of under 700. Appellant, however, does not have a county license authorizing the operation of a house of prostitution (or ill fame); she merely has a general business license to conduct a place of "amusement, entertainment and recreation." It is questionable whether such a general license encompasses the licensing of a house of prostitution. Because of our disposition of the case, supra, we need not pass on this issue.

3/ This conclusion makes it unnecessary to determine other questions we have relating to validity of the lease ab initio.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed and the small tract lease N-4590 was properly canceled.

Newton Frishberg, Chairman

We concur:

Joan B. Thompson, Member

Martin Ritvo, Member

