

Editor's note: Appealed – remanded, Civ. No. A74-103 (D.Alaska May 6, 1976), transferred to Hearings Division by order dated Aug. 26, 1976 – See 16 IBLA 228A below; decision on judicial remand – See US v. Stratman, 37 IBLA 352; Appealed – aff'd, Civ.No. A74-103 (D.Alaska Aug. 7, 1979)

OMAR STRATMAN

IBLA 74-160

Decided July 8, 1974

Appeal from a decision of the Alaska State Office, Bureau of Land Management, rejecting in part an application to purchase a trade and manufacturing site (A-062517).

Affirmed.

Alaska: Trade and Manufacturing Sites—Rules of Practice: Hearings

Where a claimant's application to purchase a trade and manufacturing site shows on its face that the site has been occupied and maintained for the purpose of a cattle feedlot, cattle handling facilities, grain storage and logging operations for ranch and feedlot materials, a request for a hearing is properly denied and the purchase application is properly rejected because a cattle feedlot operation does not fall within the statutory requisite of "trade manufacture, or other productive industry," as used in the Act of May 14, 1898, as amended, 43 U.S.C. § 687a (1970).

APPEARANCES: Richard F. Lytle, Esq., Houston & Lytle, Anchorage, Alaska, for appellant.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

Omar Stratman has appealed from a decision dated November 9, 1973, of the Alaska State Office, Bureau of Land Management, which rejected his application for purchase of a trade and manufacturing site on Kodiak Island, Alaska, but allowed him an opportunity to apply for a portion of the tract as a headquarters site because it contained improvements which represented a major capital investment by the claimant. 1/

1/ Appellant challenged what he characterized as an "assumption" that his feedlot operation could be run within the tract allowed by the State Office, which included his grain bins, corral and loading chute. How-

Stratman originally applied to purchase the disputed tract on May 25, 1970, as a trade and manufacturing site, pursuant to the Act of May 14, 1898, as amended, 43 U.S.C. § 687a (1970). His application was informal, and the Alaska State Office allowed him an additional opportunity to submit proof of the business conducted on the premises. This further proof included three letters from persons who knew of his use of the premises, copies of statements and invoices of beef sold to an Anchorage merchant, and advertising material.

Mr. Stratman has advanced several reasons for his appeal of the decision of the Alaska State Office. These reasons include general charges that he was denied a fair evaluation of his application because the report of the Government's investigator was erroneous, and certain issues. The first of these is whether the Bureau of Land Management should be estopped from denying claimant a patent to the land. The second, aside from a challenge to the report of the realty specialist, which is in the record, is that the finding by the Alaska State Office that claimant used his land in an agricultural manner was not supported by evidence admissible in a court of law, or an invocation of the legal residuum rule. The third point is that the Act of May 14, 1898, as amended, 43 U.S.C. § 687a (1970), provides for trade and manufacturing sites where "other productive industry" has been undertaken, and that appellant's activities fall within this category.

The challenge based on a supposed estoppel against the Bureau of Land Management was set forth in an allegation that:

* * * [t]he Bureau of Land Management at Anchorage, Alaska, being advised by OMAR STRATMAN of his use of the land, allowed him to file on the land and further was fully aware of the costs, in time, labor, and materials that would be necessarily expended by him on the land prior to the granting of a patent.

Such arguments, advanced by claimants seeking some benefit from the Government, have been heard and rejected by this Board in the past. A right which is not legally authorized cannot be conferred by erroneous advice given by personnel of the Bureau of Land Management, Southwest Salt Co., 2 IBLA 81, 78 I.D. 82 (1971), nor can the action or inaction of federal employees bar the Secretary of the Interior and his delegates, under the doctrines of estoppel or laches, from discharging their duty as to the public lands.

fn. 1 (continued)

ever, it does not appear that appellant is challenging the portion of the State Office decision permitting him a headquarters site for the tract with these improvements.

Cf. Utah Power & Light Co., 6 IBLA 79, 79 ID. 397 (1972). Furthermore, an applicant asserting a claim to receive the benefits of an Act of Congress has the burden of presenting sufficient evidence of his entitlement of such benefits. Faydrex, Inc., 14 IBLA 194, 198 (1974).

As for the second point, the Alaska State Office found that appellant's purchase application characterized his use and occupancy as primarily agricultural, i.e., "for the purpose of a 'cattle feedlot, cattle handling facilities, grain storage, and logging operation for ranch and feedlot materials.'" The State Office noted that a field examination confirmed these agricultural uses and rejected the application for that reason. This finding of fact and this conclusion of law were attacked by appellant's counsel on the grounds that the field examination is legally and factually insufficient to support the factual and legal determinations.

Counsel for claimant has cited the case of Carroll v. Knickerbocker Ice Co., 113 N.E. 507 (N. Y. 1916), for the proposition that an administrative finding must be supported by some evidence admissible in a jury trial. (This is called the legal residuum rule.) Specifically, the report in the record, by a Realty Specialist with the Bureau of Land Management, assertedly is incorrect, too broad in its assumptions of facts and conclusions, and is based upon information not obtained by first-hand knowledge. Appellant complains that the appealed decision does not specifically state what portions of the field investigation report have been relied upon.

The crux of the challenged decision is that appellant's use and occupation of the tract was agricultural and so not within the statutory requisites. Appellant does not challenge the character of his use and occupation as reported by the field investigator, but only the extent of use and occupation reported.

The challenged portion of the decision of the State Office does not touch on the extent of appellant's use and occupation, but rather its character as agricultural. Furthermore, the chief commentators on the legal residuum rule have characterized it as "logically unsound and administratively impractical." The residuum rule mechanically prohibits uncorroborated hearsay, and ignores the manner in which hearsay, generally admissible in administrative proceedings, is given varying amounts of weight as determined by its reliability. See McCormick on Evidence Sec. 352, at 847-48 (2d Ed. 1972). Therefore, the decision of the Alaska State Office, Bureau of Land Management, is supported by evidence of sufficient competency for an administrative proceeding.

As for the weight to be accorded the report of the field investigator, we note that a report, based upon a field examination of a trade and manufacturing site, is not evidence upon which to base a cancellation. Don E. Jonz, 5 IBLA 204 (1972). However, where defects appear on the face of the application, no opportunity for a hearing is necessary. Id. at 207. If prima facie compliance with the law is not shown on the face of the record, a contest procedure need not be employed. See Martha J. Jillson, 6 IBLA 150 (1972).

As already noted, appellant's application indicated his primary use and occupancy for cattle feeding and handling, and incidental feed storage and logging.

Thus we reach the remaining issue of substance, a consideration of the terms of the Act. Section 10 of the Act of May 14, 1898, as amended, 43 U.S.C. § 687a (1970), followed the Act of March 3, 1891, sections 12-14, 26 Stat. 1095, 1100. However, where the former Act spoke in terms of "for the purpose of trade or manufacture," the 1898 Act, in section 10, added a provision, which resulted in the phrase "for the purpose of trade, manufacture, or other productive industry." Simply stated, the issue thus is whether a cattle feedlot operation comes within any of these terms in the latter Act. Reference to the legislative history, as disclosed in Yukon Fur Farms, Inc., 56 I.D. 215, 216-17 (1937), reveals that the insertion of the words "or other productive industry" broadened the range of those activities which formerly had to fit within the categories of trade or manufacture. Specifically, the inserted provision was intended to meet the problem of fish canneries in Alaska, which the Department of the Interior had found not to be within the "requisite trade or manufacture." The additional phrase found in the 1898 Act was used by the Department in Yukon Fur Farms, Inc., supra, to conclude that "the raising of foxes was a legitimate enterprise coming within the purview" of the Act. Id. at 216.

More recently, a case involving the use of land for the propagation and growing of plants in greenhouses and hothouses was found not to fall within the terms of "other productive industry." Monte L. Lyons, 74 I.D. 11 (1967). Although the claimant in that case argued that he did not use the soil of the site which he claimed, the decision found that Congress had clearly distinguished between the agricultural use of land and its use for "trade, manufacturing, and other industrial, business and commercial purposes." Id. at 14. As clearly shown by that decision, the Departmental interpretation of the Act as regards trade and manufacturing sites requires attention to be directed at the basic purpose and functional use of the site. In this case, claimant has stated in his application that the use and occupation of the subject tract

involved a cattle feedlot, cattle handling facilities, grain storage and logging operation. There is no evidence in the record that cattle other than those of claimant have been fed on this tract. Therefore, a cattle feedlot operation, as shown on the application to purchase, compels a finding that the use of the land is agricultural in nature, and not within the provision "trade, manufacture, or other productive industry."

One additional matter was raised by claimant. He requested a hearing on the rejection of his claim. However, as already discussed, there is no factual dispute in this appeal as to the character of his occupancy or improvements. On its face, his application shows that his use and occupation of this tract has been agricultural, and not that activity required for patent under the Act of May 14, 1898, supra. A trade and manufacturing site purchase application is properly rejected without a hearing where an application, on its face, fails to show an adequate business operation on the site. Martha J. Jillson, supra; Don E. Jonz, supra; Jay Frederick Cornell, 4 IBLA 11, 14 (1971). Therefore, appellant's request for a hearing is denied.

Where there is no factual dispute, the Board will affirm the rejection of an application to the extent that it describes land which has not been used for the requisite purposes. Golden Valley Electric Association, 8 IBLA 386, 388 (1972).

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.

Frederick Fishman
Administrative Judge

I concur.

Douglas E. Henriques
Administrative Judge

ADMINISTRATIVE JUDGE STUEBING CONCURRING IN PART:

I am unable to agree with the panel majority in its finding that a cattle feedlot operation is a use of the land that is agricultural in nature and not a "productive industry" within the meaning of the statute.

A feedlot is a relatively small area upon which is constructed a special complex of facilities designed for the exclusive purpose of fattening or "finishing" live beef cattle. It is essentially an industrial processing of an agricultural product. As applied to cattle, "feeders" are such as are not ready for slaughter, but require fattening to place them in condition for consumption. McGraw v. O'Neill, 101 S.W. 132, 135 (Mo. App. 1907).

This Board has previously decided that an operator in Alaska who receives live cattle, holds them in pens for a matter of days, feeds and waters them, and then slaughters and butchers them, is engaged in a "productive industry" within the context of the statute. Lloyd Schade, 12 IBLA 316 (1973).

A feedlot operator on a commercial basis is not concerned with breeding, grazing, or raising stock, except perhaps collaterally. Those activities are essentially agricultural in character and no land can be appropriated for such purposes under the trade and manufacturing site law. But when the farmer or rancher has matured his stock to the point where it must be delivered to a feedlot for "finishing," in my view the agricultural aspect of the operation is concluded and the industrial operation begins. In a feedlot the cattle are closely confined so that they do not walk off weight. They do not forage; high quality feed and water are delivered to them in abundance through the special facilities which make up the complex. They are carefully monitored for health and weight gain, and they do not leave until ready for slaughter. The process is almost mechanical, and in fact many feedlots are highly mechanized.

In Weed v. Monfort Feed Lots, Inc., 402 P.2d 177 (Sup. Ct. Colo. 1965) it was held that corporations and a partnership which operated feedlots where cattle were finished for market, and which used motor vehicles to transport livestock and feed for cattle, were not "farmers and ranchers" within a state ton mile tax exemption statute, but, rather, they were "feedlot operators" and were liable for payment of the tax. It is interesting to note that the feedlot operators in this case were contending that they were farmers or ranchers and the Court held as a matter of law that they were not.

Another case draws the distinction between operating a feedlot and simply feeding a lot of cattle in a small area. A town zoning ordinance prohibited use of land within Clinton City, Utah, for

livestock feedlots. The Court held that cattlemen were not in violation of the ordinance by bringing 1,000 head of cattle onto 100 acres of farmland purchased for winter feeding the cattle, and that the winter feeding operation in an open field did not constitute the maintenance of a feedlot. Clinton City v. Patterson, 433 P.2d 7, 9 (Sup. Ct. Utah 1967).

In my opinion, feedlots, stockyards, slaughterhouses and packing plants are "industries" for the processing of an agricultural product.

However, my conclusion that the operation of a commercial feedlot is a "productive industry" within the ambit of the statute would not alter the result reached by my colleagues on the panel, except as to the applicable law. As matters now stand, the appellant is apparently to receive five acres embracing his principal improvements and feedlot pens under the law pertaining to headquarters sites. My view is that this is all the land he is entitled to in view of the use of the land and the size of his operation. He is definitely precluded from obtaining title to the balance of the land which he uses for pasture or the production of feed or forage, or, of course, lumber.

The fact that the cattle which appellant fattens in his feedlot are his own, rather than his customers, is a cogent concern, but I am not prepared to opine that his feedlot is any less a commercial operation for that reason.

Accordingly, I would modify the State Office decision to hold that the five acres should be patented to appellant as a trade and manufacturing site rather than as a headquarters site.

Edward W. Stuebing
Administrative Judge

AUG 26 1976

IBLA 74-160 : Court order remanding case
: Trade and Manufacturing Site
OMAR STRATMAN :
: Transferred to Hearing Division

ORDER

Pursuant to the Order of the District Court for the District of Alaska filed May 6, 1976, in Stratman v. United States, No. A74-103 Civ., remanding the case to the Board of Land Appeals, the case is referred to the Hearings Division for hearing and decision in accordance with the District Court's Order.

Fredrick Fishman
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Edward W. Stuebing
Administrative Judge

APPEARANCES:

Clyde C. Houston, Esq.
805 West Third Avenue, Suite 200
Anchorage, Alaska 99501

James R. Mothershead, Esq.
U.S.D.I. Office of the Solicitor
1016 West 6th Ave., Suite 201
Anchorage, Alaska 99601

cc: Laurie K. Luoma
Chief Administrative Law Judge
Hearings Division, OHA

16 IBLA 228A

