

Editor's note: Reconsideration granted; decision reaffirmed -- See Wilfred Wood (ON Reconsideration), 25 IBLA 37 (May 6, 1976)

WILFRED S. WOOD

IBLA 75-306

Decided May 27, 1975

Appeal from a decision of the Alaska State Office, Bureau of Land Management, rejecting an application to purchase a headquarters site, A-059198.

Affirmed as modified.

1. Administrative Procedure: Adjudication -- Alaska: Headquarters Lands: Determination of Character of

As only nonmineral lands may be appropriated under the law pertaining to headquarters sites, where the Geological Survey reports that a tract of entered land is nonmineral in character and the Bureau of Land Management therefore formally advises the claimant that the tract is subject to settlement or occupancy and officially acknowledges his claim, and the claimant thereafter complies fully with the law and applies for patent, a subsequent determination that the land is mineral in character will not vitiate the claim unless it is established that the original finding of nonmineral character was error, and that facts in existence at the time equitable title passed required a determination that the land was then mineral. Due process permits such action to be taken only after proper notice and opportunity for hearing.

2. Alaska: Headquarters Sites -- Alaska: Land Grants and Selections: Generally -- Alaska Statehood Act -- Application and Entries: Generally

A selection of land filed by the State of Alaska pursuant to its Statehood Act segregates the land from subsequent appropriation based on settlement or location.

3. Federal Employees and Officers: Authority to Bind Government

Rights not authorized by law cannot be acquired through reliance on erroneous information given by employees of the Bureau of Land Management.

APPEARANCES: Timothy G. Middleton, Esq., Wohlforth & Flint, Anchorage, Alaska, for appellant.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Clarence Wren has appealed from the November 12, 1974, decision of the Alaska State Office, Bureau of Land Management (BLM), which rejected Wilfred S. Wood's application to purchase a headquarters site consisting of 4.65 acres and described as lot 6, U.S. Survey No. 4982, section 14, T. 13 S., R. 56 W., Seward Meridian, Alaska. 1/

On May 22, 1963, Wilfred Wood filed his notice of location of the headquarters site pursuant to 43 U.S.C. § 687a (1970). The Act, provides, inter alia, that qualified persons may purchase up to five acres of nonmineral land in Alaska for use in connection with a productive industry. On August 15, 1963, in response to the Bureau's inquiry, the Geological Survey reported that the land was prospectively valuable for oil and gas, but was "without value for other minerals, either metalliferous or nonmetalliferous, and that the exercise of surface rights thereon would not interfere unreasonably with operations under the mineral leasing law." 2/

1/ On December 29, 1970, Wood sold his entire interest in the headquarters site to Clarence S. Wren. Inasmuch as Wood had allegedly completed his improvements, occupied the land for the purpose of the Act, and had filed his application to purchase more than six years earlier, all else being regular, the conveyance to Wren was legally efficacious. Paul M. Jovick, 19 IBLA 283, 291 (1975); Dale R. Lindsay, 13 IBLA 107, 110 (1973).

2/ With the exception of lands valuable for coal, oil and gas, mineral lands may not be acquired pursuant to 43 U.S.C. § 687a (1970). In passing, we note that 43 U.S.C. § 687a (1970) provides that lands valuable for coal, oil and gas may be obtained in the manner provided by 43 U.S.C. § 270-1 (1970). However, 43 U.S.C. § 270-1 (1970) was repealed by the Alaska Native Claims Settlement Act, 43 U.S.C. § 1601 et seq. (Supp. III, 1973). Nevertheless, 43 U.S.C. § 270-11 (1970), which is still in effect, provides the method for acquiring lands valuable for coal, oil and gas pursuant to 43 U.S.C. § 687a (1970).

By its decision of August 28, 1963, the Anchorage Land Office informed Wood that his claim would be impressed with a reservation of oil and gas, and required him to file an acknowledgement of the reservation, which he did. Then, on October 21, 1963, the land office sent Wood a formal acknowledgement of his claim, which advised him, in part, as follows:

Our records show that the lands are subject to settlement or occupancy. Your notice of location is therefore recognized as of the date filed, 5/22/63.

This statement was totally in error, as will be seen.

Wood proceeded to construct an access road to the site, which he graded and graveled for use as a vehicle park for his heavy equipment. He also erected a machine shop on the site, and stored other commercial gear on the premises.

On August 27, 1964, the Land Office wrote to Wood, advising him that the State of Alaska had applied to select lands which embraced his claim and requested that he immediately file an application to purchase if he was eligible to do so. On November 25, 1964, Wood filed his purchase application. Subsequently there were several exchanges of correspondence between Wood and the Land Office concerning the application.

Again, the Bureau requested the Geological Survey to report on the mineral character of the land, and on January 26, 1975, the Survey filed another report identical to that which it had made in August 1963.

In 1971, pursuant to the application to purchase, the Bureau surveyed the site, which comprised 4.65 acres, and filed a plat of the survey. In 1972 a field examination was conducted. The examiner reported that a valuable deposit of sand and gravel existed on the site and that the value was increasing as demand and scarcity increased. A gravel pit on adjacent land encroached on the site to a substantial extent. A separate mineral examination and report were accomplished with similar findings and conclusions. The report of the land examination, however, covered another aspect of the case, as follows:

C. CONFLICTS IDENTIFIED

* * * * *

The applicant's Notice of Location was filed two years after State selection application A-054380 which

segregated the subject land from all forms of appropriation based upon settlement and location on May 3, 1961. (43 CFR sub-chapter A, Part 76.16-1963 edition.)

* * * * *

II. CONCLUSIONS

The land was segregated from all forms of appropriation by State selection application A-054380 on May 3, 1961 and the subject headquarters site application should never have been allowed.

* * * * *

III. RECOMMENDATIONS

I recommend that headquarters site A-059187 be rejected for the following reasons:

- A. State selection application A-054380 predates the subject headquarters site application.

Even then the Bureau did not act on this information. Instead, on November 12, 1974, the Alaska State Office rejected the purchase application for the sole reason that because the land is mineral in character purchase is prohibited by both statute and regulation, citing 43 U.S.C. § 687a (1970) and 43 CFR 2563.0-3(a).

[1] The Department of the Interior may inquire into the propriety of conveying land under its jurisdiction at any time prior to issuance of patent. See, e.g., United States v. Shearman, 73 I.D. 386, 434 (1966), aff'd sub nom. Reed v. Morton, 480 F.2d 634 (9th Cir. 1973), cert. denied, 414 U.S. 1064 (1973); Knight v. United States Land Ass'n., 142 U.S. 161, 178 (1891). However, there are certain limitations that must be respected. In State of Wisconsin, 65 I.D. 265 (1958), after a lengthy discussion of the pertinent cases, the Department stated:

The cases which have been discussed appear to establish these principles: Where one has done all that is required of him under a particular statute and has earned equitable title to a tract of public land, nonetheless so long as legal title remains in the United States, the Secretary retains jurisdiction to inquire into the validity of disposing of the land to that person. The Secretary, however, can vacate the disposal and refuse to issue patent only for proper grounds existing prior to or up to the time equitable

title was earned. Thus, if only nonmineral land can be disposed of under a particular statute and an applicant is permitted to earn equitable title to a tract of land on a determination or assumption that the land is nonmineral in character, the disposal of the land can be vitiated only on a subsequent determination that the original finding of nonmineral character was in error and that facts in existence at the time equitable title passed required a determination that the land was mineral in character.

In the cases where a disposal can validly be set aside, despite the passage of equitable title, due process permits such action to be taken only after proper notice and hearing.

At 272.

Thus, in the present case, if all other requirements of law were met, appellant would be entitled to a patent if, from the facts known at the time the purchase application was completed and filed, it could not have been determined that the land was valuable for its gravel deposit, notwithstanding that the pertinent statute and regulation provide that title to mineral land may not be so acquired. At the very least, appellant would be entitled to a hearing on that and any other disputed issues of fact. 3/

[2] However, there is a much more serious defect in the attempted entry. The land was segregated from appropriation by location or settlement by state selection application A-054380, filed by the State of Alaska on May 3, 1961. 43 CFR 2627.4(b), formerly 43 CFR 2222.9-5(b), formerly 43 CFR 76.16; State of Alaska, 73 I.D. 1, 6 (1966) aff'd sub nom. Kalerak v. Udall, 396 F.2d 746 (9th Cir. 1968), cert. denied, 393 U.S. 1118 (1969); Helen F. Smith, 15 IBLA 301, 302 (1974). The location of the headquarters site claim, therefore, was invalid from its inception, and has remained invalid at all times since.

[3] While it is indeed regrettable that the error was not discovered long ago, this Board has no authority to remedy the harshness of the result. We confronted a similar situation in William Henry Weaver, 8 IBLA 313 (1972), in which a homesteader relied upon erroneous assurance by the Anchorage Land Office that certain land was open to settlement, and we were obliged to hold that rights not authorized by law cannot

3/ For example, the field report states that the applicant has not shown use of the land in conjunction with a productive industry; a finding which might well be disputed on the strength of the existing record.

be acquired through reliance on erroneous information given by employees of the Bureau of Land Management.

Therefore, 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 as modified.

Edward W. Stuebing
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Martin Ritvo
Administrative Judge

