

MATANUSKA-SUSITNA BOROUGH, INC.

IBLA 77-575 Decided December 29, 1978

Appeal from decision of the Alaska State Office, Bureau of Land Management, which denied appellant's protest against issuance of a patent of lands to the City of Wasilla and which denied in part appellant's petition for classification of those lands under the Recreation and Public Purposes Act, as amended, 43 U.S.C. § 869 et seq. (West. Supp. 1978). AA-2028.

Dismissed.

1. Alaska: Townsites—Federal Land Policy and Management Act of 1976:
Generally—Federal Land Policy and Management Act of 1976:
Repealers—Townsites

Authority to dispose of land within Alaska railroad townsites under 43 U.S.C. § 975b was repealed by sec. 704(a) of the Federal Land Policy and Management Act of 1976.

2. Administrative Procedure: Generally—Appeals—Patents of Public Lands:
Generally—Rules of Practice: Appeals: Generally

An appeal from a decision denying a protest against the issuance of a patent must be dismissed if the patent has been issued, because the Department has no jurisdiction to act further in the matter.

3. Administrative Procedure: Generally—Appeals— Federal Land Policy and Management Act of 1976: Generally— Patents of Public Lands: Generally—Rules of Practice: Appeals: Generally

Because issuance of a patent removes the land from Departmental jurisdiction, it is

not proper to issue that patent simultaneously with dismissal of a protest against the patent application because such action deprives the protester of his right to review and precludes compliance with 43 U.S.C.A. § 1701(a)(5) (West Supp. 1978) which mandates objective administrative review of initial decisions.

APPEARANCES: J. W. Sedwick, Esq., Burr, Pease & Kurtz, Inc., Anchorage, Alaska, for appellant.

OPINION BY ADMINISTRATIVE JUDGE GOSS

Matanuska-Susitna Borough, Inc., has appealed from a decision of the Alaska State Office, Bureau of Land Management (BLM), which denied its petition for classification of lands within the Wasilla railroad townsite for disposal under the Recreation and Public Purposes Act, 43 U.S.C. § 869 (1970), and which denied appellant protest against the issuance of a patent for the lands to the City of Wasilla. The Borough had filed its application AA-2028 on July 21, 1967. The city filed its patent application AA-12383 pursuant to 43 U.S.C. § 975b (1970) in July 1976. On July 15, 1977, the same date on which the State Office rejected the Borough application, a patent was issued to the City of Wasilla, citing as authority 43 U.S.C. § 975b.

[1, 2] Appellant correctly contends that section 704(a) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2792, repealed the Department's authority to dispose of land pursuant to 43 U.S.C. § 975b, effective October 21, 1976. The Secretary, however, is granted other authority under which the patent could be granted. E.g., 43 U.S.C. § 1718 (Supp. 1978). The effect of issuance of the patent, even if issued by mistake or inadvertence, is to transfer the legal title from the United States and to remove from jurisdiction of the Department consideration of all disputed questions concerning rights to the land. H. B. Baldwin, 37 IBLA 215 (1978); State of Alaska, 35 IBLA 140 (1978); see also Germania Iron Co. v. United States, 165 U.S. 379, 383 (1897); Everett Elvin Tibbets, 61 I.D. 397 (1954). Because the Department thus has no jurisdiction to act further on this matter, the appeal must be dismissed.

[3] It was improper to issue the patent simultaneously with the decision dismissing appellant's protest and denying its petition for classification, because the action in effect denied appellant's right to appeal to the Board as provided by 43 CFR 4.410. The simultaneous issuance of the patent was also improper because it denied appellant's

opportunity to seek administrative review of the classification decision under 43 CFR 2450.5. The Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1701(a)(5) (West Supp. 1978) requires that the Department " * * * structure adjudication procedures to assure * * * objective administrative review of initial decisions * * *."

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.

Joseph W. Goss
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

