

DARRELL P. RIGGS  
KAREN SUE RIGGS

IBLA 79-463

Decided March 19, 1980

Appeal from a determination by the Alaska Townsite Trustee, Bureau of Land Management, that appellants were ineligible to enter a townsite lot after October 21, 1976.

Affirmed.

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

The townsite laws were repealed by sec. 703 of the Federal Land Policy and Management Act of 1976 (FLPMA), 90 Stat. 2790, and the initiation of an occupancy claim pursuant to any of the repealed laws after the effective date of FLPMA, Oct. 21, 1976, does not constitute a valid existing right which would survive FLPMA.

2. Estoppel -- Federal Employees and Officers: Authority to Bind  
Government

The general rule is that reliance on erroneous or incomplete information provided by Federal employees cannot create any rights not authorized by law.

3. Estoppel -- Federal Employees and Officers: Authority to Bind  
Government

The United States is not bound or estopped by the acts of its officers or agents when they enter into an arrangement or agreement to do or cause to be done what the law does not sanction or permit.

APPEARANCES: Karen Sue Riggs, pro se.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Darrell P. Riggs and Karen Sue Riggs have appealed a determination by the Alaska Townsite Trustee, Bureau of Land Management (BLM), that appellants were ineligible to enter a townsite lot after October 21, 1976.

By letter dated September 9, 1977, appellants notified George E. M. Gustafson, the Alaska Townsite Trustee, of the boundaries of their townsite claim in the Port Alexander Townsite and indicated that they had built a 16-foot by 16-foot A-frame summer residence on the land. Mr. Gustafson acknowledged the filing. Shortly after, there was an exchange of correspondence concerning staking requirements and when the subdivisional survey of the townsite would be done. Then on March 15, 1979, Mr. Gustafson wrote to appellants informing them that, in an opinion dated February 20, 1979, the Regional Solicitor had concluded that persons who began occupancy of unsubdivided townsite lands after October 21, 1976, could not claim land under the townsite laws because those laws were repealed as of that date by the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. §§ 1701-1782 (1976). The Regional Solicitor noted that section 701(a) of FLPMA, 90 Stat. 2786, only protected land use rights existing on the date of approval of FLPMA (October 21, 1976) and that persons not occupying a townsite lot on that date could not thereafter acquire rights to a lot. In a letter dated May 3, 1979, in response to a request for clarification from appellants, Mr. Gustafson informed them that they had a right to appeal to this Board.

In their statement of reasons, appellants argue that neither officials of Port Alexander Townsite nor the Townsite Trustee indicated that the land was not available to them until March of 1979, more than a year and a half after they submitted notice of their claim. Appellants note that they corresponded with the Trustee several times during that period and there was never any indication that townsite lots were unavailable or that there would be any problem with their claim. They also point out that townsite officials kept a map indicating which unstaked townsite lots were available in the town and encouraged them to stake a claim. They conclude:

Since Mr. Gustafson is the townsite trustee, it would have seemed he should have received information concerning the removal of townsite land to entry which he certainly would then have passed on to people who inquired about information on land available for entry, and thus such claims would have been discouraged. Likewise, if these lands were to belong to the municipality, it would seem they should have received notification so that they would be in a position to remove their map showing open lands

and to not encourage by informing people about which sectors were unclaimed. Since it would seem neither of these were done, it does not seem fair to penalize people who adhered to the laws the major principals in the case thought were the existing laws. Would it not seem that if the government changes the laws they should make the people involved aware of the changes, especially if some of these are supposed to be, in effect, caretakers of the laws?

[1, 2] In a recent decision, Royal Harris, 45 IBLA 87 (1979), a majority of the Board examined an appeal involving almost identical facts and issues and held:

It is not clear from the file under what statutory authority appellant first initiated his claim. One of the townsite statutes was the Act of May 25, 1926, 44 Stat. 629, 43 U.S.C. §§ 733-36 (1970), which allowed Alaska Natives to obtain townsite lots. This statute, as well as the other townsite laws, was repealed by section 703 of FLPMA, 90 Stat. 2790. The question then becomes whether appellant has a valid existing right under section 701 of FLPMA, which provides that nothing in the Act shall be construed as terminating any patent, or other land use right or authorization existing on the date of approval of the Act (Oct. 21, 1976). The events giving rise to this appeal postdate the effective date of the Act. Therefore, on October 21, 1976, appellant could have had no valid existing right which would survive FLPMA. Stu Mach, 43 IBLA 306 (1979). When appellant wrote to BLM on May 9, 1977, he had only a hope or expectancy. However, use or occupancy of the public land granted subsequent to the effective date of FLPMA must be under authority of that Act, 43 U.S.C. § 1732(b) (1976); William J. Coleman, 40 IBLA 180 (1979), and the erroneous advice provided by BLM could create no rights not authorized by law. Belton E. Hall, 33 IBLA 349 (1978). [1/]

[3] Appellants argue that they should not be treated unfairly, *i.e.*, BLM should not deny their claim, because they were misled by the Townsite Trustee and Port Alexander Township. This is, in effect, an

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1/ The author of this opinion dissented from the majority opinion in Royal Harris, *supra*, as to the effect of the repeal of the townsite laws by FLPMA, *supra*, on claimants who began occupying a townsite lot after the date of repeal. I adhere to that dissent. However, until the Board's majority position is overturned, I feel it necessary to follow the majority position that no rights to a townsite lot can be created by occupancy beginning after the date of repeal.

assertion that BLM should be estopped from rejecting their claim to the townsite lot. In Royal Harris, supra, the Board dealt with the same assertion by the appellant who had partially constructed a residence on his lot and spent over \$1,500 on building materials. The Board said:

It is well settled law that the Department can alienate interests in land belonging to the United States only within the limits authorized by law. Union Oil Co. of California v. Morton, 512 F.2d 743, 748 (9th Cir. 1975).

William J. Elder and Stephen M. Owen, 56 Comp. Gen. 85, 89 (1976), illuminates the principle above as follows:

There is no doubt that Federal employees, and ordinary citizens, are presumed to know the contents of the United States code. Federal Crop Ins. Corp. v. Merrill, 332 U.S. 380 (1947).

We believe the rule stated by the Supreme Court in Utah Power & Light Co. v. United States, 243 U.S. 389 (1917), is still correct:

\* \* \* that the United States is neither bound nor estopped by acts of its officers or agents in entering into an arrangement or agreement to do or cause to be done what the law does not sanction or permit. (243 U.S. at 409)

\* \* \* \* \*

We sympathize with appellant's expenditures of means and materials toward building a structure. Appellant has not shown, however, that a serious injustice necessarily would result if he cannot lay claim to the site. The letter appealed from suggests that one possible remedy lies with the municipality.

Appellants in this case have spent at least \$2,000. Although we sympathize with appellants' problem, the Townsite Trustee's determination must be affirmed.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the matter appealed from is affirmed.

James L. Burski  
Administrative Judge

We concur:

Frederick Fishman  
Administrative Judge

Edward W. Stuebing  
Administrative Judge

