

STATE OF ALASKA
v.
MOSES CHYTHLOOK

IBLA 79-288

Decided May 13, 1980

Appeal by the State from the February 2, 1979, decision of the Alaska State Office of the Bureau of Land Management rejecting the State's appeal from BLM's December 6, 1978, decision due to untimeliness, and appeal from the December 6, 1978, decision approving Native allotment application and rejecting State land selection. AA-7433 et al.

Reversed and remanded.

1. Alaska: Land Grants and Selections: Generally -- Alaska: Native Allotments -- Appeals -- Contests and Protests: Generally -- Rules of Practice: Government Contests -- Rules of Practice: Private Contests

Where there is a conflict between an application by the State of Alaska to select land under the Statehood Act and an application by an Alaskan Native for allotment under the Act of May 17, 1906, and it appears to BLM that the Native applicant has met the requirements for patent, upon notice of this determination the State, if dissatisfied, has an election of remedies. It may not appeal from the "Notice," which is interlocutory, but it may initiate private contest proceedings to prove lack of qualification on the part of the Native, or it may appeal the subsequent decision of BLM to the Board of Land Appeals. If, on appeal, the Board concludes that the Native's application is deficient, it will order the institution of Government contest proceedings, but if it finds the allotment application acceptable, it will order the patent issued, if all else be regular.

APPEARANCES: Barbara J. Miracle, Assistant Attorney General, Anchorage, for the State of Alaska; David B. Snyder, Alaska Legal Services Corporation, for Native allotment applicant, Moses Chythlook.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

This is an appeal by the State of Alaska from the February 2, 1979, decision of the Alaska State Office, Bureau of Land Management (BLM), which rejected the State's appeal from an earlier BLM decision dated December 6, 1978. The State of Alaska also appeals the substance of the December 6 decision. The December 6, 1978, decision held Native allotment application AA-7433 for approval and rejected, in part, State selection applications A-054323, A-054569, and A-054571 to the extent of their conflict with the Native allotment application, stating that the Native applicant had met the requirements of the Native Allotment Act 1/ and the applicable Departmental regulations. This decision apprised the State that it had 30 days from receipt of the decision in which to initiate a private contest. The decision further stated that failure to do so would result in the decision becoming final without further notice. The State was also notified of its right to appeal to the Board of Land Appeals within 30 days of receipt of the decision. The State received this decision on December 8, 1978, and filed a notice of appeal on January 30, 1979. This appeal was rejected by BLM on February 2, 1980, on the ground that it was untimely.

[1] Subsequent to the decision of BLM, this Board has issued a number of decisions exploring the procedures to be followed respecting the treatment of conflicts between Native allotment applications and State selections. See, e.g., State of Alaska, 42 IBLA 94 (1979); State of Alaska, 41 IBLA 309 (1979). In those decisions, the Board stated that where such a conflict exists and it appears to BLM that the Native allotment applicant has met the requirements for issuance of the allotment certificate, upon notice of this determination the State, if dissatisfied, has an election of remedies. The State may not appeal from the "Notice," which is interlocutory, but it may initiate private contest proceedings during the time prescribed to prove lack of qualifications on the part of the Native. If the State elects not to do so, it may inform BLM or simply allow the time to lapse, whereupon BLM will issue a decision concluding the adjudication. The State may appeal this decision to the Board in accordance with 43 CFR

1/ Native Allotment Act of May 17, 1906, 34 Stat. 197, as amended, 43 U.S.C. §§ 270-1 through 270-3 (1970), repealed by the Alaska Native Claims Settlement Act, 43 U.S.C. § 1617 (1976), with a proviso for approval of any allotment application pending before the Department on December 18, 1971.

4.400. If, on appeal, the Board concludes that the Native's application is deficient, it will order the institution of Government contest proceedings. If it finds the allotment application acceptable, it will order the allotment certificate issued if all else be regular.

Moreover, this Board has specifically held that where, in a decision holding a Native allotment for approval and a State selection for rejection to the extent of the conflict, BLM grants the State 30 days to initiate a private contest challenging the Native allotment after which the BLM "action will become final," the 30-day appeal period commences upon expiration of the 30 days accorded the State for initiation of the private contest and not with receipt of the decision. State of Alaska v. Patterson, 46 IBLA 56 (1980); State of Alaska, 42 IBLA 94 (1979).

Finally, we noted in State of Alaska, 41 IBLA 309 (1979), that while the State was required to make an election of remedies, it was apparent that the State was unaware that the election was mandatory. Accordingly, since the appeal was filed in this case prior to the issuance of our decision in State of Alaska, 41 IBLA 309 (1979), we will set aside the original decision and afford the State a period of 35 days from receipt of this decision in which to file a private contest complaint. Accord, State of Alaska v. Patterson, supra. At the expiration of 35 days, the decision of BLM will become final and the State may take a timely appeal to the Board directed solely to the merits of the decision.

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 reversed and the case files remanded for further action consistent with this opinion.

James L. Burski
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Joseph W. Goss
Administrative Judge

