

CITY OF CORDOVA

IBLA 81-22

Decided March 9, 1982

Appeal from a decision of the Alaska State Office of the Bureau of Land Management declaring that title to 2.5 acres of patented land has reverted from the City of Cordova to the United States. AA 13268.

Affirmed.

1. Patents of Public Lands: Generally

A decision holding that title to a tract of land has reverted to the United States will be affirmed where the land together with its improvements was patented to a municipality to be used only for school or other public purposes subject to reversion if the Secretary of the Interior finds the grantee has violated the conditions for a period of 1 year and where the record discloses that grantee has removed the school structures thereon and failed to use the land for 15 years thereafter.

APPEARANCES: R. Everett Harris, Esq., Anchorage, Alaska, for the City of Cordova; Dennis J. Hopewell, Esq., Office of the Regional Solicitor, Anchorage, Alaska, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE GRANT

The City of Cordova (Cordova) appeals from the August 26, 1980, decision of the Alaska State Office, Bureau of Land Management (BLM), which declared a divestiture of Cordova's title and a reversion of title in the United States to 2.5 acres of land situated in Cordova. The land in question was patented to Cordova on April 15, 1954, pursuant to the Act of August 23, 1950, ch. 778, 64 Stat. 470, which states in pertinent part:

[T]he Secretary of the Interior be, and he is hereby, directed to convey to local town or city officials or to school authorities in the Territory of Alaska, all the

right, title, and interest of the United States in and to any parcel or tract of land and the improvements thereon for school or other public purposes whenever he shall determine that such land and improvements are no longer required by the Alaska Native Service for school purposes: Provided, That any conveyance made pursuant to this Act * * * shall provide that the lands and improvements conveyed shall be used for school or other public purposes only and that the school facilities maintained thereon or therein shall be available to all of the native children of the town, city, or other school district concerned on the same terms as to other children of such town, city, or district. The Secretary of the Interior, if at any time he determines that the grantee of any such lands and improvements has violated or failed to observe the foregoing provisions and that such violation or failure has continued for a period of at least one year, may declare a forfeiture of the grant. Such determination by the Secretary shall be final, and thereupon the lands and improvements covered thereby shall revert to the United States and become a part of the public domain subject to administration and disposal under the public land laws. [Emphasis added.]

The patent of the land to Cordova expressly incorporated within it all of the reservations and conditions of the statute. The patent states in part:

This patent is issued upon the following conditions:

That the land and improvements hereby conveyed shall be used for school or other public purposes only;

* * * * *

That, if at any time the Secretary of the Interior determines that the Town of Cordova, Alaska, has violated or failed to observe the provisions of said Act of August 23, 1950, for a period of at least one year, the said lands and improvements covered thereby shall revert to the United States.

The record discloses that on November 29, 1978, BLM issued to appellant an order to show cause why a decision declaring a divestiture of title pursuant to the reverter clause in the patent should not issue. The order recited that it was issued in light of the July 1977 and February 1978 field examinations which showed that the land was vacant and not being used for any purpose. The examinations revealed the land contained only some trash, an abandoned vehicle, and no structures.

Counsel for appellant responded by letter of February 28, 1979, which advised that the city had sent a letter of August 23, 1965, to the Secretary of the Interior which stated that the schoolhouse and

buildings on the land were deteriorated to the point that they had been condemned and that the city intended to destroy the structures and use the land as a playground and/or ballpark. Counsel further cited a 1977 letter from the city to the Secretary acknowledging that the land was undeveloped at the time and expressing interest in transfer of the land to the State or a native corporation for use for a home for elderly people. In response to the show cause order, counsel further asserted that since 1977 the city had been endeavoring to find a way to use the tract for housing for the elderly, but that another site had been ultimately selected for the project because of uncertainty regarding title to the tract in issue. Counsel further averred that a committee had been appointed to investigate use of the land as a park and that the city had not abandoned the property, but rather had been attempting in good faith to develop it for public purposes.

There is no real factual dispute in this case. By admission of the City Manager of Cordova, Mr. Lovett, the property has been vacant and without buildings since 1965. Since that time the property has had occasional use as an undeveloped playground area. Cordova contends that such use is a sufficient public use. The BLM decision notes, however, that any vacant lot would normally attract and receive similar use, and that "[t]here is no evidence that the City of Cordova made any attempt to develop the land as a park or playground as would be indicated by picnic tables, playground equipment, continued maintenance and upkeep, etc." Two separate field investigations, one by the Bureau of Indian Affairs Realty Office, conducted in July of 1977, and one by BLM in February of 1978, revealed that there were no buildings on the land and that the only items on the land were trash, old lumber, and an abandoned truck. The conclusion formed by both field investigators was that there was no evidence of the property's being used for school or other public purposes.

The BLM decision held:

Failure of the City of Cordova to use the land for school or other public purposes for a period of over 1 year is deemed to be a violation of the reversionary provision of the patent and to effect a divestiture of the City of Cordova's title to the land and the reversion thereof in the United States.

In the statement of reasons for appeal it is asserted that the land should not revert for nonuse because no reversionary clause permitting divestiture for nonuse is included in the patent or the statute under which it was issued. Appellant cites County of Clark v. Kleppe, Civ. No. LV 77-13 (D. Nev. 1978), which reversed the Board's decision in Clark County, Nevada, 28 IBLA 210 (1976), for the principle that nonuse is not a ground for reversion in the absence of a clause providing for reversion in the event of nonuse or failure to erect a structure. Appellant contends it should have a hearing on whether the land was, in fact, used. The answer filed by the Solicitor in support of the BLM decision distinguishes the patent involved in this case from

the patent in County of Clark which was issued pursuant to the Recreation and Public Purposes Act of June 14, 1926, as amended, 43 U.S.C. §§ 869 to 869-4 (1976), citing the Board's decision in City of Okanogan, Washington, 41 IBLA 98 (1979), for support. Accordingly, the issue is whether nonuse of the tract of patented land in this case will support a decision of BLM declaring appellant's title divested and title reverted in the United States pursuant to the reverter clause.

The patent in the County of Clark case, issued pursuant to the Recreation and Public Purposes Act, provided that the land was patented to the County for use for various public purposes specified "and other civic-public uses only." The reverter clause in the patent provided that the land could be transferred or "devoted to a use other than that for which the land is granted" only after obtaining the consent of the Secretary of the Interior. The patent further provided that upon the attempt of the grantee to make a "change of use" without prior consent, title shall revert to the United States. The land at issue in the case had remained undeveloped for a period of 19 years after patent. Although the Board held that this nonuse of the land for an unreasonable period of time caused the reverter clause in the patent to divest patentee's title, the district court reversed the Board's decision holding that nonuse of the land does not constitute devotion to a different type of use than that authorized in the patent which could cause a reversion. See Sky Pilots of Alaska, Inc., 40 IBLA 355, 366 (1979).

The case of City of Okanogan, Washington, 41 IBLA 98 (1979), involved a patent with a somewhat different reversionary clause issued under a different statute. In that case land was patented to the city for use as a park pursuant to a statute which provided "that if the said lands shall not be used as public parks the same, or such part thereof not so used, shall revert to the United States."

The patent was expressly made subject to the restrictions and reversionary interest prescribed in the statute. The Board held that a decision finding a divestiture for nonuse was proper under the terms of a reversionary clause which provided that if the land was not used for a specific purpose then title shall revert and where nonuse had continued for 60 years. City of Okanogan, Washington, supra at 102.

[1] In the present case, both the patent and the authorizing statutes provide that the tract of land and improvements thereon shall be used for school or other public purposes only and that forfeiture may be declared if the Secretary determines that the grantee has failed to observe these conditions for a period of 1 year. The legislative history of that statute under which the land was patented discloses that the purpose was to transfer to local school officials in Alaska federally owned land and buildings formerly operated by the Alaska Native Service as day schools for Native children, the operation of which schools by the Alaska Native Service had been discontinued due to budget cuts in areas where the territorial government operated schools for white children. In this way the Indian school facilities could be utilized to help accommodate the additional enrollment.

S. Rep. No. 2236, 81st Cong., 2d Sess. 1-2 (1950). The legislative history clearly indicates that the statute was intended to "accomplish the transfer of the buildings and sites now the property of the Federal Government to the local authorities, without reimbursement, for so long a period as they are needed for school or public purposes." Letter from Oscar L. Chapman, Acting Secretary of the Interior, to J. Hardin Peterson, Chairman, Committee on Public Lands, House of Representatives (May 12, 1949), reprinted in S. Rep. No. 2236, 81st Cong., 2d Sess. 2-3 (1950).

Accordingly, it must be concluded that this appeal is governed by the principle set forth in City of Okanogan, Washington, supra, that a finding of divestiture and reversion is proper where the land is not used for the purposes set forth in the patent and authorizing statute. In the present case, the land and improvements were patented for use only for school or other public purposes subject to the proviso that a failure to comply with these conditions which lasts for at least a year is ground for declaration of a forfeiture by the Secretary of the Interior. The record is clear that the school buildings once located on the patented land were torn down in 1965 and the land has remained vacant and unused since that time. While the city undoubtedly intended in good faith to establish other public uses on this land, these plans have, for various reasons, not come to fruition. Therefore, BLM properly found title of appellant to be divested under the reverter clause and revested in the United States. No hearing is required where there is no dispute as to any material issue of fact and the validity of a claim turns on the legal effect to be given facts of record. See John J. Schnabel, 50 IBLA 201 (1980).

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.

C. Randall Grant, Jr.
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

