

UPPER MOHAWK COMMUNITY COUNCIL

IBLA 87-411

Decided October 3, 1988

Appeal from a decision of the Eugene, Oregon, District Office, Bureau of Land Management, rejecting Recreation and Public Purposes Act lease application, OR 42019.

Affirmed.

1. Oregon and California Railroad and Reconveyed Coos Bay Grant Lands: Generally -- Oregon and California Railroad and Reconveyed Coos Bay Grant Lands: Leases -- Oregon and California Railroad and Reconveyed Coos Bay Grant Lands: Nonmineral Entries and Disposals -- Recreation and Public Purposes Act -- Words and Phrases

"Political subdivision." Although a provision of the Recreation and Public Purposes Act, 43 U.S.C. § 869-1(d) (1982), authorizes issuance of leases for public land to nonprofit corporations, this authority does not extend to revested Oregon and California railroad grant lands which may be leased only to states and counties, state and Federal instrumentalities and political subdivisions, and municipal corporations. A nonprofit corporation which is not a "political subdivision" within the meaning of the Act, is not eligible for such a lease.

APPEARANCES: Richard Eymann, Esq., and Robert S. Russell, Esq., Marcola, Oregon, for appellant.

OPINION BY ADMINISTRATIVE JUDGE LYNN

The Upper Mohawk Community Council has appealed from the March 12, 1987, decision of the Eugene, Oregon, district Office, Bureau of Land Management (BLM), rejecting its application to lease 67 acres of public land in secs. 33 and 34, T. 15 S., R. 1 W., Willamette Meridian, for an "old-growth" timber park. The application, OR 42019, was filed under the provisions of the Recreation and Public Purposes Act, 43 U.S.C. §§ 869 -- 869-4 (1982) (R&PP Act), and its implementing regulations in 43 CFR Part 2740. The land at issue, which is revested Oregon and California railroad grant (O&C) land, 1/ had previously been the subject of a lease

1/ See the Oregon and California Railroad and Coos Bay Wagon Road Grant Lands Act of 1937, 50 Stat. 874.

application filed by the Lane County, Oregon, Commissioners. When the county withdrew its application, appellant, a nonprofit corporation, filed its own. ^{2/}

[1] The R&PP Act, which was enacted in 1954 to amend the Recreation Act of 1926, 44 Stat. 741, authorizes issuance of leases for public land to nonprofit corporations. As passed in 1954, the R&PP Act specifically excluded O&C lands. The Department of the Interior sought passage of an amendment to the R&PP Act for the explicit purpose of extending leasing authority to O&C lands. In its report to Congress the Department stated:

We do not believe that the Recreation and Public Purposes Act should be made applicable in all respects to the Oregon and California and Coos Bay lands, but we do feel that it would be appropriate to permit governmental bodies to lease such lands thereunder. We do not believe that nonprofit corporations and associations should be permitted to lease them, however, nor do we believe that these lands should be subject to sale to any parties.

S. Rep. No. 375, 86th Cong., 1st Sess., reprinted in 1959 U.S. Code Cong. & Admin. News 1573, 1574. The Department further noted that under the terms of the proposed bill, "no lands could be leased to nongovernmental bodies." *Id.* at 1575. Congress accepted the Department's recommendation, and the R&PP Act presently provides that O&C lands can be leased only "to States and counties and to State and Federal instrumentalities and political subdivisions and to municipal corporations." 43 U.S.C. § 869(c) (1982); 43 CFR 2741.1(b).

Therefore, in order to qualify to receive an R&PP Act lease, appellant must show that it is a "political subdivision." Appellant contends it is a political subdivision because it has exercised several governmental functions by applying for, receiving, and administering U.S. Housing and Urban Development block grant funds to develop a well to increase the water supply for the unincorporated town of Marcola; to improve Marcola streets and drainage; and to acquire land, hire architects, and build a community center and fire hall.

Initially, we note that although an entity may have been created pursuant to state law, Federal law determines whether that entity is a "political subdivision" within the meaning of a particular Federal statute or regulation. "In the absence of a plain indication to the contrary, however, it is to be assumed when Congress enacts a statute that it does not intend to make its application dependent on state law." Jerome v. United States, 318 U.S. 101, 104 (1943). Quoted in NLRB v. Natural Gas Utility District of Hawkins County, Tennessee, 402 U.S. 600, 603 (1971); and NLRB v. Randolph Electric Membership Corp., 343 F.2d 60, 62 (4th Cir. 1965).

^{2/} The lease application includes lands in the Bunker Combo Timber Sale, Unit M-85-7.3, Tract E-85-10. The denial of appellant's protest against that sale is the subject of a separate decision, also issued today. Upper Mohawk Community Council, 104 IBLA 382 (1988).

BLM cited Commissioner v. Shamberg's Estate, 144 F.2d 998 (2nd Cir. 1944), in finding that appellant was not a "political subdivision." In Shamberg's Estate the court was asked to consider whether the Port of New York Authority (Authority), which was created jointly by the States of New York and New Jersey, was a political subdivision of a state and thus qualified to issue tax-exempt bonds. In holding that the Authority was a political subdivision, the court quoted from 30 Op. Atty. Gen. 252, 253 (1914):

The term "political subdivision" is broad and comprehensive and denotes any division of the State made by the proper authorities thereof, acting within their constitutional powers, for the purpose of carrying out a portion of those functions of the State which by long usage and the inherent necessities of government have always been regarded as public. * * * It is not necessary that such legally constituted "division" should exercise all the functions of the State of this character. It is sufficient if it is authorized to exercise a portion of them. * * *

If, then, the [entities] be lawfully created by a State for the purpose of exercising a portion of its public functions so defined, they are "political subdivisions thereof."

Many of the Federal cases considering whether entities are "political subdivisions" arise in the employment context. In NLRB v. Natural Gas Utility District, *supra*, the court examined the NLRB's regulations in holding that the respondent qualified as a political subdivision. The test established by the NLRB, which is slightly broader than the Attorney General's 1914 opinion quoted above, was whether the entity was either (1) created directly by the state, so as to constitute a governmental department or administrative arm of the state; or (2) administered by individuals who were responsible to public officials or the general electorate. *See also Jefferson County Community Center v. NLRB*, 732 F.2d 122 (10th Cir.), *cert. denied*, 469 U.S. 1086 (1984) (nonprofit corporation providing educational and vocational services for mentally retarded and seriously handicapped individuals, even though providing services that were a part of a legislatively enacted scheme, remained a private contractor and did not qualify as a political subdivision because it was not created by the state and was not controlled by public officials or the general public); St. Jude Industrial Park Board v. NLRB, 760 F.2d 223 (8th Cir. 1985) (park board, although ratified by city government, was not a political subdivision because it was not created by city government to constitute a department or administrative arm of the government).

Similarly, in a case involving the Occupational Health and Safety Administration, the court held that a zoological society was not a political subdivision of a state because it was neither created directly by the state nor administered by individuals who were controlled by and responsible to public officials or the general public. Brock v. Chicago Zoological Society, 820 F.2d 909 (7th Cir. 1987).

In a public lands case, the Tenth Circuit Court of Appeals held that a nonprofit corporation created by several California and Utah cities was entitled to an exemption from paying the costs incurred in processing applications for permits and rights-of-way across Federal lands. The exemption applied to state and local governments. Beaver, Bountiful, Enterprise v. Andrus, 637 F.2d 749 (10th Cir. 1980).

Thus, the essential characteristic in determining whether an organization is a "political subdivision" under Federal law is whether the organization was created by a governmental authority to carry out a governmental function or purpose. The material submitted with appellant's application shows that appellant is an organization created by and consisting of private individuals. There is no indication that the organization was created by a governmental body, organized by governmental officers acting in an official capacity, or created to carry out governmental functions. In fact, the evidence indicates appellant was created by private individuals to promote their private interests and that those interests have, on occasion, coincided with certain governmental interests. A private organization does not become a "political subdivision" merely by claiming to be such, or even by providing assistance to governmental bodies in the performance of their functions.

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.

Kathryn A. Lynn
Administrative Judge
Alternate Member

I concur:

Will A. Irwin
Administrative Judge