Editor's Note: Reconsideration denied by Order dated December 16, 1996

DANIEL J. BOLES, JR.

IBLA 94-308 Decided November 6, 1996

Appeal from a decision of the Area Manager, Stateline Resource Area, Nevada, Bureau of Land Management, rejecting color-of-title application. N-56435.

Affirmed as modified.

1. Color or Claim of Title: Applications--Color or Claim of Title: Good Faith

An applicant under sec. 1 of the Color of Title Act, as amended, 43 U.S.C. § 1068 (1994), who knows that title to the land sought is in the United States at the time he acquires an interest in the land does not hold color or claim of title in good faith, and the application may be rejected for that reason.

APPEARANCES: Daniel J. Boles, Jr., Las Vegas, Nevada, pro se.

OPINION BY DEPUTY CHIEF ADMINISTRATIVE JUDGE HARRIS

Daniel J. Boles, Jr., has appealed from a decision of the Area Manager, Stateline Resource Area, Nevada, Bureau of Land Management (BLM), dated January 18, 1994, rejecting color-of-title application N-56435 for 12 acres of land situated within Lot 2, sec. 16, T. 13 S., R. 71 E., Mount Diablo Meridian, Clark County, Nevada, along the Virgin River near the border with Arizona.

On September 24, 1992, Boles initially filed, on behalf of Lois P. Connell, Evelyn P. Boyce, and the Shriners Hospitals for Crippled Children (Shriners Hospitals), a color-of-title application, pursuant to section 1 of the Color of Title Act, as amended, 43 U.S.C. § 1068 (1994). 1/ That application contained some deficiencies for which BLM sought clarification, including the fact that Boles had signed the application as an "agent" on behalf of the asserted owners.

1/ Application for a patent pursuant to sec. 1 of the Color of Title Act is referred to as a class 1 color-of-title claim. 43 CFR 2540.0-5(b).

Boles provided the necessary clarifying information in an amended application filed on February 11, 1993. At that time, he substituted himself as an owner, submitting evidence that he had acquired the undivided one-half interest of the Shriners Hospitals on October 26, 1992. Connell and Boyce were identified as the owners of the other undivided one-half interest. In a cover letter filed the same date, Boles stated: "I am not acting on behave [sic] of the owners. We have all signed and have filed as one."

Section 1 of the Color of Title Act, 43 U.S.C. § 1068 (1994), provides in relevant part:

> The Secretary of the Interior * * * shall, whenever it shall be shown to his satisfaction that a tract of public land has been held in good faith and in peaceful, adverse, possession by a claimant, his ancestors or grantors, under claim or color of title for more than twenty years, and that valuable improvements have been placed on such land or some part thereof has been reduced to cultivation, * * * issue a patent for not to exceed one hundred and sixty acres of such land upon the payment of not less than $ 1.25 per acre * * *.

The application, both as originally filed and amended, relied on a March 29, 1954, "Trustee Deed" from the Treasurer and Ex-Officio Trustee, Clark County, to Rennold Pender and Frank E. Gowen, as initiating the private chain of title. It also stated, following amendment, that there were valuable improvements on the land and that all or part of the land had been cultivated at various times after 1954, and continuing until the date of application. March 1991 was listed on the application as the date upon which the owners first learned they did not have clear title to the land.

In his January 1994 decision, the Area Manager rejected the application because, at the time the application was filed, the land had been withdrawn by Congress, pursuant to section 2 of the Act of October 27, 1986, P.L. No. 99-548, 100 Stat. 3061, from all forms of entry and appropriation under the public land laws and, under section 4(c) of that Act, designated for retention in Federal ownership. 2/ The Area Manager stated: "Your color-of-title application would have to have been filed prior to passage of the Law for consideration."

The Area Manager's decision is addressed only to Boles, even though Boles had expressly stated that he was not acting on behalf of the other owners. There is no evidence that BLM served the decision on either

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2/ In the Act of Oct. 27, 1986, Congress withdrew all public lands within the corporate limits of the City of Mesquite, Nevada, subject to valid existing rights, and offered many of them for sale to the city, with the remainder to be retained in Federal ownership. 100 Stat. 3061.

Connell or Boyce. Accordingly, their interests in the color-of-title application are unaffected by BLM's decision, and, to the extent Boles' appeal purports to represent their interests, it does not do so. 3/ Our decision is limited to Boles' interest in the application.

[1] In order for a color-of-title applicant to be entitled to a patent of public land, under the class 1 provisions of section 1 of the Color of Title Act, the land must have been held "in good faith and in peaceful, adverse, possession by [him], his ancestors or grantors, under claim or color of title for more than twenty years." 43 U.S.C. § 1068 (1994); see also 43 CFR 2540.0-5(b). It is now well settled that this means that the applicant must have acquired his interest in the land in good faith, and thus without any knowledge that title to the land properly resides in the United States. 43 CFR 2540.0-5(b); Thomas Doyle Jones, Jr., 125 IBLA 230, 232 (1993); Kim C. Evans, 82 IBLA 319, 321 (1984). This is so even where the land was held by other persons in good faith under claim of title for more than 20 years, before the applicant's acquisition of his interest. As the Solicitor stated in Anthony S. Enos, 60 I.D. 329, 331 (1949), rejecting a color-of-title applicant's contention that, even though he knew of Federal title when he acquired the land sought, he should be held to have succeeded to the entitlement of his predecessors-in-interest:

> The good faith of the person applying for a patent under the Color of Title Act must be established. Consequently, the fact that the land applied for may have been held by other persons in good faith for more than 20 years under color of title does not justify the issuance of a patent to one who thereafter purchased the land with knowledge that title was in the United States. In such a case, one of the requirements of the statute, the good faith of the applicant, is missing.

That is the situation here.

We, therefore, conclude that the Area Manager should have rejected the color-of-title application, as to Boles' interest, because Boles acquired his interest in the land in question with knowledge of the paramount title of the United States. See Thomas Doyle Jones, Jr., 125 IBLA at 233. 4/

3/ We note that, in any event, the record fails to show that Boles could represent the interests of Connell and Boyce in such an appeal. There is no evidence in the record that Boles is authorized, pursuant to 43 CFR 1.3, to practice before the Department of the Interior on behalf of third-parties.

4/ Given our disposition of the appeal, we need not address the issue raised in the appeal, i.e., whether the color-of-title claim constituted a valid existing right within the meaning of the Act of Oct. 27, 1986, at the time of passage of that act, such that it was excepted therefrom.

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 as modified.

Bruce R. Harris
Deputy Chief Administrative Judge

I concur:

James L. Burski
Administrative Judge