

ROBERT HOOPES

NOV 13 1963

A-29676

Decided

Alaska: Possessory Rights--Small Tract Act: Lands Subject to--  
Withdrawals and Reservations: Effect of

Public land in Alaska which has been withdrawn from settlement, location, sale, and entry and reserved for classification, subject to valid existing rights, is not available for lease or sale under the Small Tract Act, even to an applicant who alleges he built a cabin on a tract of land prior to its withdrawal, since no rights can be acquired under the Small Tract Act by building improvements or occupying the land prior to any authorization to do so; however, a valid claim under any of the appropriate settlement acts in Alaska initiated prior to the withdrawal would not be affected by it.



UNITED STATES  
DEPARTMENT OF THE INTERIOR  
OFFICE OF THE SECRETARY  
WASHINGTON 25, D. C.

A-29676

Robert Hoopes

: Fairbanks 026869

: Small tract application  
: rejected

: Affirmed

APPEAL FROM THE BUREAU OF LAND MANAGEMENT

Robert Hoopes has appealed to the Secretary of the Interior from a decision by the Division of Appeals, Bureau of Land Management, dated June 13, 1962, which affirmed a Fairbanks, Alaska, land office decision rejecting his application to purchase a small tract of land pursuant to the Small Tract Act of June 1, 1938, as amended (43 U.S.C., 1958 ed., secs. 682a-e).

The land office decision rejected Hoopes' application on the ground that the land had been withdrawn on April 21, 1944, by Public Land Order 225 (9 F.R. 4949) from settlement, location, sale, or entry for the purpose of classification. The decision also pointed out that Hoopes had applied to purchase another small tract of land and referred to regulation 43 CFR 257.4(c) which indicates that generally no more than one small tract will be allowed to an individual except where it is shown that it is needed. In the decision rendered by the Bureau on appeal, Hoopes' request that the application be changed to his wife's name in order to remove this objection was denied. The denial was based upon the principal reason stated by the land office for the rejection of the application, namely, that the land had been withdrawn.

This reason was correct. So long as the land involved here is withdrawn and remains unclassified, applications under the Small Tract Act cannot be entertained. Cleora B. Ray, A-28805 (July 30, 1962). Any opening of the lands to application or filing will be pursuant to an order of this Department and in accordance with the terms of such an order.

The appellant contends that he built a cabin on the tract applied for more than 25 years ago and has used it ever since,

which fact shows his need for the tract. The Bureau correctly noted that, under the Small Tract Act, classification of the land is required before the lands can be occupied and the fact that he had built and occupied a cabin gave him no rights under that law. See 43 CFR 257.1; cf. Arabelle Hoover et al., A-28430 (January 26, 1961). The order of withdrawal of these lands did state that it was "subject to valid existing rights". Since the Small Tract Act does not provide for gaining rights by acts of settlement, occupancy, or improvement prior to classification, the appellant or his wife cannot be considered as having a valid, existing right under that act at the time of the withdrawal. We find, therefore, that the rejection of the appellant's application was proper.

The provision in the withdrawal would, of course, except valid settlement claims under appropriate acts, such as the act of March 3, 1927, as amended (48 U.S.C., 1958 ed., sec. 461), authorizing the sale of not to exceed five acres for the purpose of a homestead or headquarters site which had been initiated prior to the withdrawal. From the state of the present record it is doubtful whether the appellant could show that he has met the requirements of such acts and the regulations issued pursuant to them, e.g., 43 CFR Part 64. However, if he desires to attempt to make the required showings, he should be permitted to do so before the land is opened to the public for disposition pursuant to any possible classification of the lands.

Accordingly, pursuant to the authority delegated to the Solicitor by the Secretary of the Interior (sec. 210.2.2A(4)(a), Departmental Manual; 24 F.R. 1348), the decision appealed from is affirmed and the case returned to the Bureau for any further action which may be appropriate.

  
Ernest F. Hom  
Assistant Solicitor  
Land Appeals