

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Frank W. Sharp has appealed from the Alaska State Office, Bureau of Land Management, decision dated September 30, 1977, which rejected his application AA 8804 to acquire certain public lands pursuant to the Color of Title Act, 43 U.S.C. § 1068 (1976). The application had been filed February 28, 1974, for 15.02 acres, described as lot 3, sec. 36, T. 50 S., R. 67 E., Copper River meridian, Alaska.

Record information as to this parcel is as follows: All of T. 50 S., R. 67 E., was included in the Tongass National Forest, established by Presidential Proclamation 846 of February 16, 1909. Pursuant to the Act of March 4, 1915, 38 Stat. 1214, when public lands in the Territory of Alaska are surveyed, secs. 16 and 36 in each township shall be reserved from sale or settlement for the support of the common schools in the Territory. Under the Alaska Statehood Act, Sec. 6, par. K, 48 U.S.C. Prec. § 21 (1976), title to these reserved school lands passed to the State of Alaska as of the date of the State's admission into the Union. The Statehood Act further provided that title did not pass as to any such school sections which were appropriated by the United States prior to the date of admission of Alaska into the Union. James Sharp received homesite permit No. 546 on June 17, 1935, from the U.S. Forest Service, for 4.76 acres within lot 3, sec. 36, T. 50 S., R. 67 E. A supplemental plat to accommodate the elimination of this 4.76 acres from lot 3 was approved by the General Land Office (predecessor of the Bureau of Land Management), October 25, 1938, with the homesite land being described as lot 8, 4.76 acres, and the remaining portion of lot 3 being delineated as lot 9, 10.26 acres. In 1942, Executive Order 9059 excluded Homesite No. 546 (lot 8, sec. 36, T. 50 S., R. 67 E.) from the Tongass National Forest. No application to purchase Homesite No. 546 was ever filed, by James Sharp. On January 3, 1959, when Alaska became a State, only lot 8, was unreserved public land in sec. 36, T. 50 S., R. 67 E. Frank W. Sharp filed his color-of-title application in 1974, and in 1975, the State of Alaska filed application AA 9199 for title to the lands in sec. 36, T. 50 S., R. 67 E., granted for common schools. ^{1/} In concurrent actions, BLM approved the State grant for only lot 8, sec. 36, and rejected the color-of-title application in toto: as to lot 8 because title was vested in the State, and as to lot 9 because it was withdrawn for the Tongass National Forest.

^{1/} On June 30, 1960, the State of Alaska filed application Juneau 011970 for patent to the school section lands in lots 2, 3, 4, 5, 7, sec. 36, T. 50 S., R. 67 E. The application was rejected by State Office decision of August 18, 1960. The basis given for rejection was that all of the lands in sec. 36 were reserved within the Tongass National Forest. The decision inadvertently overlooked the redesignation of lot 3 as lots 8, 9, and that lot 8 had been eliminated from the Tongass National Forest.