

ARIZONA STATE HIGHWAY DEPARTMENT

OCT 21 1968

A-29325

Decided

Rules of Practice: Appeals: Standing to Appeal

The Arizona State Highway Department has no standing to appeal from a decision rejecting its free use applications for sand and gravel deposits when the rejection is based on the ground that the lands containing the deposits have been patented to the State of Arizona and the sand and gravel were not excepted from the patents by the mineral reservations contained in the patents.

Stapled



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

A-29325

Arizona State Highway
Department

: Arizona 030560, 030708
: Applications for free use
: permits rejected
: Appeal dismissed

APPEAL FROM THE BUREAU OF LAND MANAGEMENT

The Arizona State Highway Department filed two applications under the act of July 31, 1947, as amended (30 U.S.C., 1958 ed., sec. 601 et seq.), for free use permits to take borrow, mineral aggregate, and other highway construction materials from six parcels of land. Because three of the parcels had been patented to the State of Arizona with a reservation of all minerals to the United States, the land office asked the State Land Commissioner if he had any objection. The Commissioner replied as to one application that he believed sand, gravel, and borrow material are not properly considered to be minerals included in the mineral reservation. As to the other application, the Attorney General of Arizona on behalf of the State Land Department filed a protest on the same ground.

In decisions dated May 16 and July 12, 1961, respectively, the land office dismissed the protests, holding that the materials applied for are minerals within the scope of the mineral reservation in the patents to the State. ^{1/}

Thereupon, "t/he State of Arizona by and through ROBERT W. PICKELL, the duly elected, qualified and acting Attorney General of the State of Arizona" filed notices of appeal from the land office decisions. Although the Arizona Highway Department had been named in the decisions as an adverse party and was served, it did not answer the appeal.

On November 8, 1961, the Division of Appeals, Bureau of Land Management, reversed the land office decisions. It held that the particular deposits of sand and gravel, in which the Highway Department

^{1/} The patents were issued for lands exchanged with the State under section 8 of the Taylor Grazing Act, as amended (43 U.S.C., 1958 ed., sec. 315g).

was interested, did not constitute minerals within the meaning of the mineral reservation in the patents to the State. It concluded that there was no need to issue free use permits to the Highway Department.

A notice of appeal to the Secretary was then filed by the Highway Department, the notice being signed by the Director of the Department and in the name of the Attorney General by an Assistant Attorney General. A brief in support of the appeal was signed only by the Assistant Attorney General in the name of the Attorney General.

The notice of appeal and brief were served on the State Land Department, and it filed an answer to the appeal, defending the Bureau's decision. The answer was signed in the name of the Attorney General by another Assistant Attorney General.

There is thus presented the anomalous situation of the Attorney General's office representing both contending parties on this appeal. Without, however, examining the questions that may be raised by this procedure, I believe that the appeal cannot be entertained and must be dismissed for a more fundamental reason.

The patents to the three parcels in question were issued to the State of Arizona and not to any particular agency of the State. The Bureau's decision held that these patents conveyed to the State the sand and gravel deposits sought by the Highway Department and that they were not excepted by virtue of the mineral reservations. This ruling was favorable to the State. I am unable to see then that any agency of the State has any standing to challenge the ruling by an appeal to the Secretary. Certainly if the State in its own name and not acting through any of its agencies had applied for the permits, thinking that perhaps the sand and gravel were reserved to the United States, and the Bureau had rejected the applications for the reason that the State owned the sand and gravel, the State could not appeal from such a ruling. It follows, a fortiori, that an agency of the State stands in no better position.

Therefore, 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 appeal is dismissed.

Ernest J. Horn

Assistant Solicitor
Land Appeals