United States Department of the Interior

OFFICE OF THE SOLICITOR
Washington, D.C. 20240

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In reply, please refer to:
Main Interior, Room 6456

Ms. Frances Ayer, Esq.
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The Federal Bar Building
1815 H Street, N.W.
Suite 750
Washington, D.C. 20006-3604

Re: Status of U.S. Survey 963: 14.81 acres Deeded to the United States in Trust for the Organized Village of Kake

Dear Ms. Ayer:

Your office requested a legal review of the status of 14.81 acres in Alaska that the Organized Village of Kake (OVK)[1] claims the United States holds in trust for them. On May 6, 1996, there was a petroleum spill at the Kake cannery on land that was part of the Harris deed parcel. This spill prompted your inquiry into the legal status of the land.

Background

P.E. Harris & Co., a State of Washington corporation, was the operator of a salmon cannery near Kake Village.[2] On February 15, 1950, P.E. Harris & Co. deeded for one dollar consideration a 15.9 acre parcel containing the cannery "to the United States of America in trust for the Organized Village of Kake, Alaska" (Harris deed).[3] The same day, P.E. Harris & Co. also

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[1]/ OVK is organized as a tribal municipal government under section 16 of the Indian Reorganization Act (IRA), 25 U.S.C. §§ 473a, 476, and as a tribal business corporation under section 17 of the IRA, 25 U.S.C. § 477.

[2]/ In re Kake Sch. Dist., 11 Alaska 186 (1946).

[3]/ The deed does not clarify whether the parcel is conveyed to the section 16 tribal entity or the section 17 corporate entity of OVK, as both entities have the same name. An October 1, 1975 memorandum written by the Juneau Field Solicitor concludes that without evidence to the contrary, it "can be assumed that the initial conveyance to the United States was in trust for the § 16 entity." In addition, a May 10, 1977, memorandum from the Acting Associate Solicitor for Indian Affairs to the Juneau Field Office states that "from the wording of the deed, it would

executed a bill of sale for ten dollars consideration for all the personal property at the cannery (machinery, equipment, appliances, and supplies) "to the United States of America in trust for the Organized Village of Kake, Alaska." The Harris deed was recorded in Petersburg, Alaska on April 19, 1950. A copy of the deed was stamped received by the BIA on April 24, 1950. On May 24, 1950, P.E. Harris & Co. withdrew from Alaska and the corporation was dissolved on June 26, 1950.[4] OVK was subsequently the sole operator of the cannery.

As a general matter, a conveyance is not complete until accepted. To date, we have found no express documentation indicating that the Department of the Interior ever accepted the Harris deed parcel into trust status. The issue presented by your request is whether, in the absence of such documentation, the Department has accepted the land in trust. After a review of the history of this parcel and relevant applicable law, we conclude that the United States does hold the land in trust for OVK.

Analysis

The Indian Reorganization Act[5] authorizes the Secretary of the Interior to acquire lands for Indians through purchase and other means. In 1949, the Secretary of the Interior delegated to the Commissioner of Indian Affairs the authority for the "approval of the purchase of lands for individual Indians and Indian tribes. This authority extends to and includes the acceptance of options for the acquisition of lands."[6] The Commissioner's subsequent delegation of the authority to acquire lands for Indians to the Area Directors did not occur until 1951.[7] At the time of the

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appear that the land in question is held by the [section 16] constitutional entity." Finally, the Alaska Supreme Court and the United States District Court for the District of Alaska, relying on two Solicitor's Opinions, M-36545 (Dec. 16, 1958), M-36515 (Nov. 20, 1958), have adopted the view that, unless specified, a transaction of an "organized tribe" is a transaction of the section 16 tribal entity. Atkinson v Haldane, 569 P.2d 151, 171-172 (Alaska 1977); Parker Drilling Co. v Metlakatla Indian Community, 451 F. Supp. 1127, 1135 (D. Alaska 1978). Therefore, I conclude that the deed intended to convey the land to the section 16 tribal entity.

4/ Kake Sch. Dist. v. P. E. Harris & Co., 101 F. Supp. 290, 291 (D. Alaska 1951).

5/ 25 U.S.C. § 465.

6/ Secretarial Order No. 2508, Delegations of Authority § 13(f), 14 Fed. Reg. 258-60 (1949).

7/ Secretarial Order No. 551, Delegations of Authority § 3, 8, 16 Fed. Reg. 2939-40 (1951) ("The area directors may exercise the authority of the Commissioner of Indian Affairs in the following classes of matters: . . . Land acquisitions. The approval of the purchase of lands for individual Indians and Indian tribes. This authority extends to and includes the acceptance of options for the acquisition of lands and the authorization to disburse restricted individual Indian money to complete the acquisition of lands for individual Indians.").

Harris deed, therefore, only the Commissioner and the Secretary had the authority to accept the Harris deed. Only an authorized agent can bind the Government. Slobojan v. United States, 136 Ct. Cl. 620 (1956). Again, there is no document indicating that any person, authorized or otherwise, ever explicitly accepted the deed.

The Department of Interior has consistently treated the Harris deed parcel as held in trust by the federal government for OVK. The most clear indication of this belief is the legislative history to the Act of October 20, 1978 (the Act).[8] Congress passed the Act to provide the means for Kake Tribal Corporation (KTC)[9] to acquire title to land upon which it had built a cold storage plant. This tract of land is part of the original Harris deed parcel. KTC had believed that under the terms of Alaska Native Claims Settlement Act (ANCSA), it was entitled to receive unconditional fee simple title to the surface estate in the land. However, title examinations disclosed that a part of the land was owned by the United States in trust for OVK. The land could not be conveyed to KTC because the Indian Nonintercourse Act prohibits the sale of tribal land without the consent of the United States.[10] Another part of the land was required to be conveyed to OVK under section 14(c) of ANCSA.[11] KTC therefore sought legislation to have these problems resolved.

In letters to Congress, the Department of the Interior confirmed that the land was held in trust and that legislation was indeed the only recourse available to KTC to correct these problems. In response to a Senate Committee inquiry on the view of the Department regarding the land, Assistant Secretary-Indian Affairs Forrest J. Gerard stated that, "Title examinations disclosed that a part of the tract (upon which the plant is located) . . . is owned by the United States in trust for the Organized Village of Kake." H.R. Rep. No. 95-1615, 95th Cong., 2d Sess. 2 (1978). Congress relied on this statement, as is evidenced by the statements of Senator Stevens who said, "During (construction of the cold storage plant) a title examination was conducted and it was found that the structure was in fact located partially on land (approximately 1.09 acres) which was beneficially owned by the Kake IRA, with legal title being vested in the United States in trust for the IRA." 124 Cong. Rec. S. 33468 (daily ed. Oct. 4, 1978). Therefore, the legislation would not have been necessary had the Department not believed that it held the land in trust for OVK.

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[8]/ 92 Stat 1635.

[9]/ KTC is a village corporation formed by Native residents of the village of Kake pursuant to ANCSA, 43 U.S.C. § 1607.

[10]/ The Indian Nonintercourse Act prevents the purchase, grant, lease, or other conveyance of lands from any Indian nation without consent of the United States. 25 U.S.C. § 177.

[11]/ Section 14(c)(3) requires that a village corporation convey to the municipal government, or to the State in trust for any future municipal government, the surface estate of the improved land on which the village is located. 43 U.S.C. § 1613(c)(3).

Other evidence of the Department's belief that the land is held in trust also exists. In an August 24, 1961 memorandum to the Juneau Area Director on the title status of the tidelands on which certain canneries (including Kake) were situated, the Acting Juneau Field Solicitor stated that "the canneries were purchased about ten years ago by the United States in trust for the respective Native IRA corporations. These purchases are evidenced by deeds of record."

Similarly, Solicitor's Opinion M-36975 (January 11, 1993), states that:

> During the 1940's and 1950's, the Government acquired by purchase, and took title in trust to, cannery properties in three Southeast Alaska communities. . . . In one case, Kake, both the Department of the Interior and Congress have accepted as fact that the United States holds trust title to the lands. 124 Cong. Rec. 33468 (1978) (remarks of Sen. Stevens and letter . . . from Assistant Secretary Gerard . . . .). Beneficial title to these trust lands is still held by the IRA community and/or association as follows: Angoon (13.24 acres); Kake (15.9 acres); Klawock (1.91 acres).

Courts have held that to constitute acceptance of an offer, there must be an expression of the intention by word, signed writing, or act, communicated or delivered to the person making the offer or his agent. Slobojan v. United States, 136 Ct. Cl. 620, 622 (1956). I think that there is clear evidence that the Department through its subsequent acts relating to the Harris deed parcel, accepted the land into trust. These acts, most notably the report to Congress, express the Department's intent to recognize the land as trust land. I therefore conclude that the Harris deed parcel is held by the United States in trust for OVK due to the Department's subsequent actions concerning the land.

Conclusion

Overall, the Department's treatment of the land indicates its belief that the Harris deed parcel is being held in trust for the tribe. The United States has acted in a manner consistent with a proper and sufficient transfer of the parcel to the United States in trust for the OVK. For these reasons, it is our opinion that the 15.9 acres conveyed in the Harris deed parcel, minus the 1.09 acres conveyed by the United States to the Organized Village of Kake in fee, is held in trust by the United States for the benefit of the Organized Village of Kake.

Sincerely,

Derril Jordan
Associate Solicitor

cc: Director, Juneau Area Office, Bureau of Indian Affairs
Regional Solicitor, Anchorage