



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-168879

May 7, 1970

Dear Mr. Hogan:

Further reference is made to your letter of January 20, 1970, concerning the refusal of the Department of the Interior to sell certain land in New Mexico to your constituent, Mr. Herbert E. Counihan.

The land in question was offered for sale in January 1957, by the Bureau of Land Management (BLM), Department of the Interior, pursuant to the authority of 43 U.S.C. 1171, as amended. Two bids were received. Mr. Counihan submitted the high bid of \$102, and Mr. Rupert Chisholm bid \$65. The land had been appraised in September 1956 at a value of \$61.50. Mr. Chisholm, owner of contiguous land, claimed a preference right under the above statute. The manager of the BLM office in Santa Fe concluded that Mr. Chisholm had a preference right to purchase the land. The decision was appealed by Mr. Counihan to the Director, BLM, who affirmed the decision in May 1958. This decision was also appealed and, in December 1958, the Deputy Solicitor of the Department of the Interior remanded the case to the BLM for further determination as to the preference right owner. In August 1959, the BLM determined that Mr. Chisholm was not entitled to a preference right. Mr. Chisholm's appeal of this decision was denied on October 27, 1960, by the Director, BLM, who also remanded the case for a further determination of the value of the land in view of the lapse of time since the 1956 appraisal.

The later decision was appealed by Mr. Chisholm and, in July 1962, the Assistant Secretary for Public Land Management ruled that Mr. Chisholm's preference right claim had properly been disallowed. He also concluded that the facts suggested that the 1956 appraisal may have been inadequate, and ordered a reappraisal. Further, he directed that the sale be vacated if the reappraisal showed that Mr. Counihan's bid of \$102 did not represent the fair market value of the land as of January 1957. In a decision dated March 13, 1963, the BLM concluded that the value of the land as of January 1957 was \$451, and ordered the sale vacated. The land is now estimated to have a value of at least \$6,500. An appeal from this decision was denied by the BLM. A further appeal was made to the Secretary and on May 13, 1964, the Assistant Secretary for Land Management affirmed the BLM decision. Mr. Counihan's request that the case be reopened was denied on August 3, 1964.

We interviewed Mr. Counihan and obtained his written statement setting forth what he considers to be deficiencies and mismanagement with respect to the handling of his case by the Department of the Interior. Mr. Counihan contends that he was unjustly deprived of the land because the Department did not act in a reasonably timely manner and has been remiss in establishing and maintaining normal administrative controls. In this connection, he points to the length of time it took the various levels of the Department to make the determinations and decisions concerning his case. He also contends that the 1963 reappraisal was erroneous. Finally, Mr. Counihan states, "Although the Secretary was within his 'legal' rights in finally vacating the sale some 7-½ years after it was held, it would seem that the Department should be under some sort of moral obligation to rectify its errors of omission and commission."

While it appears that the protracted proceedings involved in this case worked to Mr. Counihan's disadvantage, our investigation indicated that the six year delay from the date of the sale in 1957 and the decision to vacate the sale in 1963 resulted from the contending bidders' tenacity in pursuing their respective legal remedies and from normal administrative delays occasioned by a heavy work load. The Chief of the Office of Appeals and Hearings, BLM, informed us that although appeals were handled on a first-come first-served basis, delays of up to a year and a half during the period between 1957 and 1962 were not unusual because of the number of such appeals received. The Assistant Solicitor for Land Appeals advised us that as of July 1962 there were 797 appeals pending before the Secretary, and that this was the largest backlog of such appeals since 1949. Hearings in 1963 before the Subcommittee on Public Lands of the Senate Committee on Interior and Insular Affairs indicate that the average time between the land office or examiner's decision and the BLM Director's decision was 17 months for appeals decided in fiscal year 1958, and 9 months for appeals decided in fiscal year 1962. It was also shown that the average time for the Secretary's decision on appeals from the Director's decisions was 9 months in fiscal year 1958 and 12 months in fiscal year 1962.

Mr. Counihan's contention that the 1963 reappraisal was erroneous was denied in BLM decision No. 012665, August 14, 1963, wherein the basis for the reappraisal value was explained thusly --

"The new appraisal is the result of an evaluation of the land in question by qualified personnel of this Bureau.

The record discloses that in establishing the new appraised value of \$451 for the land as of the date of the public sale, the market data approach to value was used as being the applicable approved method of appraisal. This appraisal was based on sales data from several sales of comparable lands in the same general area between private landowners, for lands to be used in the development of future homesites. The sales prices included in these data were adjusted on a percentage basis taking into consideration various factors such as time, size, shape, location and site of the land, market limitations, general desirability and other factors, in order to develop adjusted values. The appraised value of \$55 per acre, or \$451 for the 8.20 acres contained in the tract in question, as of January 15, 1957, was thus determined."

Mr. Counihan's appeal of this decision was denied by the Office of the Secretary on May 13, 1964, on the basis that he had failed to present any factual evidence that the BLM's reappraisal was in error.

Our investigation of the reappraisal issue indicates that the 1963 reappraisal was more comprehensive than the appraisal in 1956. The latter appraisal was set forth in a memorandum to the Land Office Manager from the Lands and Minerals Officer, without stating any basis for the appraisal. The 1963 appraisal was made by a Land Examiner, reviewed by the Acting State Reviewing Appraiser, and based on three land sales, adjusted for various factors as stated in the above-quoted language. Furthermore, the 1963 reappraisal was made after the BLM's appraisal practices had been investigated in 1959 by the Special Subcommittee on Assigned Power and Land Problems, House Committee on Government Operations, and, as a result thereof, the BLM had instituted a rigorous training program and established an appraisal review system. In these circumstances, our Office finds no basis for questioning the 1963 appraisal.

The law under which this land was offered for sale authorizes the Secretary of the Interior to sell at public auction for not less than the appraised value certain tracts or parcels of the public domain which, in his judgment, would be proper to expose for sale. 43 U.S.C. 1171. The applicable regulation, 43 C.F.R. 250.5, in effect in 1957, provided that :

"* * * until the issuance of a cash certificate the authorized officer may at any time determine that the lands should not be sold, the applicant or any bidder

has no contractual or other rights as against the United States, and no action taken will create any contractual or other obligations of the United States."

In interpreting and construing these provisions, the courts have held that until the issuance of a cash certificate no right to the land, either legal or equitable, arises, and the Secretary, in his discretion, may refuse to sell for whatever reason he finds adequate. See Willcoxson v. United States, 313 F. 2d 884 (1963); Ferry v. Udall, 336 F. 2d 706 (1964). In the instant case, no cash certificate was issued and the sale was vacated only after it was determined that the appraised value of the land exceeded Mr. Counihan's bid.

In view of the foregoing, we are unable to conclude that Mr. Counihan was unjustly deprived of the land as he contends, or that the Department has "some sort of moral obligation" to sell the land to him. With regard to your request that we consider whether a broader survey is indicated, we do not believe that such a survey of public land sale practices is indicated by our inquiry into this case.

Sincerely yours,

(SIGNED) ELLEN B. STAATS

Comptroller General
of the United States

The Honorable Lawrence J. Hogan
House of Representatives