

MEMORANDUM

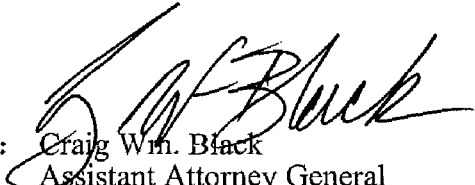
State of Alaska Department of Law

To: John F. Bennett
Right-of-Way Chief
Northern Region
Department of Transportation
and Public Facilities

DATE: July 28, 1999

FILE NO.: 663-94-0639

TELEPHONE NO.: (907) 465-3600

FROM: 
Craig Wm. Black
Assistant Attorney General
Transportation Section-Juneau

SUBJECT: Chitna-McCarthy Road Right-of-Way Width

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Assistant Attorney General Doug Gardner tells me that during a meeting this morning, you expressed interest in learning the status of this opinion request. In light of the E-mail messages you and I exchanged earlier this month, Doug and I thought you might appreciate this brief synopsis.

On May 16, 1995, Commissioner Perkins made a formal opinion request to this office regarding the nature of the state's interest in the Chitna-McCarthy right-of-way. However, the question long predates his request.

In 1989, an attorney in this office opined that the width of the right-of-way was 200 feet. However, in 1993, the Interior Board of Land Appeals set the width at 100 feet. Note that this office represented the state before the IBLA.

Our file also includes numerous, detailed draft opinions from 1994 discussing the issue. On June 16, 1994, Assistant Attorney General Thomas A. Dahl sent a nine page memo on the subject to Commissioner Campbell in which we asserted that only a 100 foot right-of-way would likely be respected by the courts.

Within a month, Commissioner Campbell asked Dahl to revisit his memo to determine whether a 200 foot right-of-way might be defensible. Dahl drafted a 34 page response that was the subject of considerable comment within this department, but it does not appear that it was ever provided to your department. Dahl's revised memorandum continued to express serious doubts that a right-of-way larger than 100 feet could be defended.

Earlier this year I discussed the matter with Mr. Miller, who remained interested in the subject. I suggested that in light of the apparent controversy involving this subject, it would probably be best for your department to reconsider whether it still wanted us to produce an opinion. You indicated in an E-mail message to me that there were discussions within your department on this subject in March of this year, but that you had been unable to determine whether a new request had been sent from your department.

John F. Bennett
Right-of-Way Chief
Our file: 663-94-0639

July 28, 1999

Page 2

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We are prepared to provide you with the opinion you seek, should you wish us to do so. Hopefully the passage of time will provide us with additional material for the definitive answer you need.

CWB/pw

cc: Doug Gardner
Assistant Attorney General