

MEMORANDUM

State of Alaska
Department of Transportation & Public Facilities

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TO: Steve C. Sisk, PE
Director, Design & Construction
Northern Region

DATE: April 25, 1991

FILE NO:

TELEPHONE NO:

474-2402

FROM:

John A. Miller
Chief Right of Way Agent
Northern Region

SUBJECT:

Omnibus Act Right
of Way Interest

An October 25, 1985 AGO memo from Jack B. McGee to Mark S. Hickey discusses the issue of the State's interest in the rights of way quitclaimed by the Federal government to the State of Alaska by virtue of the 1959 Omnibus Act. In summary, the memo states that the entire federal interest was conveyed to the State for these rights of way as the quitclaim deed was issued pursuant to a federal statute. That is, if the federal government had fee interest on June 30, 1959, the date of the Omnibus Quitclaim Deed, then that entire fee interest was conveyed to the State. In support of this position, a 12/15/86 opinion by Assistant Attorney General Linda Walton stated that "The State of Alaska has always taken the position that the Commerce deed transferred to the state, all the federal government's interest in the roads."

Although this position may be valid, it is contrary to the understanding by which all DOT&PF Regional Right of Way sections operate and also contrary to DNR's current interpretation of the issue.

A decision to conform to the McGee opinion would have far reaching effects on DOT&PF's Right of Way operations. Most directly affected would be right of way leasing, relinquishment of excess right of way, and BLM utility permit clearances. Indirectly affected would be the department's credibility with the public after 30 years of proclaiming the rights of way to be easements. BLM has always taken the position that the Commerce department could only quitclaim the interest it had in the rights of way, which was an easement. As BLM has in the past and now continues to issue land patents to the centerline of our highways, a title conflict of this nature will ultimately result in litigation.

Therefore, we request that this issue be submitted to the Office of Strategic Management, Planning and Policy for review and policy guidance. It is possible that a formal Attorney General's opinion on this issue may be necessary.

JFB/jfb