

## Merger of Title

AGO PUE's.pdf Rewak SLE RS2477 - Words of public dedication - vested in the public held in trust by agency PUE's.pdf "The right of way for the construction of highways over public lands not reserved for public uses, is hereby granted." "While DOT has the statutory authority to regulate and make use of section line easements, the nature of a public dedication and the specific language creating the dedication suggest that it is the public that technically holds the easement, subject to state authority and stewardship, until affirmatively vacated. The section line easement will remain valid until technically vacated." "In California it probably will not merge, because the easement is held in trust for the general public. *Marin v. Marin*, 344 P.2d 95 (Cal. App. 1959) vacated on other grounds, *Marin v. Marin*, 349 P.2d 526 (Cal. 1960)."

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AGO mccarthy-road\_ago\_op.pdf Act of 1941 "words of dedication" "In construing the Act of 1941, we are guided by a longstanding interpretive principle applicable to congressional grants set out in *Missouri, Kansas and Texas Railway Co. v. Kansas Pacific Railway Co.*, 97 U.S. 491,497 (1878): It is always to be borne in mind in construing a congressional grant, that the act by which it is made is a law as well as a conveyance, and that such effect must be given to it as will carry out the intent of Congress. That intent should not be defeated by applying to the grant the rules of the common law, which are properly applicable only to transfers between private parties. Under this interpretive principle, the 1941 Act did not have to use the word "dedicate" in order to effect a dedication of the railroad right-of-way to highway uses.

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Other federal statutes have been interpreted as constituting an offer of dedication or a direct dedication even though the word "dedicate" was absent from the legislation. For example, R. S. 2477, 43 U.S.C. 8 932, repealed with a savings provision, Pub.L. No. 94-579, 90 Stat. 2793 (1976), has long been interpreted as an "offer to dedicate" public land to highway use even though the word "dedicate" is not used in the statute. *Dillingham Commercial Co., Inc. v. City of Dillingham*, 705 P.2d 4 10, 4 13 (Alaska 1985); *Brice v. State*, 669 P.2d 13 11, 13 14 (Alaska 1983); *Lovelace v. Hightower*, 168 P.2d 864, 866 (N.M. 1946). In *Cook v. City of Burlington*, 30 Iowa 94, 1870 WL 3 17 at \*2 (1 870), the Iowa Supreme Court held that a congressional act that merely "reserved [specifically identified federal public land] from sale . . . for public use . . . as public highways" constituted a dedication of that public land to highway uses. We conclude that the language of the 1941 Act is a congressional dedication of the former railroad right-of-way to highway uses."

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PLO 2665 - "(b) A right of way or easement for highway purposes converging the lands embraced in the feeder roads and the local roads equal in extent to the width of such roads as established in section 2 of this order is hereby established for such roads over and across the public lands."

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*Wessells v. State Dept. of Highways*  
562 P.2d 1042  
Alaska 1977.  
Apr 06, 1977

We note that the Department of Natural Resources, Division of Lands, and the Department of Highways were created by the legislature as two separate agencies with separate and distinct sources of authority. Although acting on behalf of the state, the Division of Lands and the Department of Highways appear to function as independent entities.

Under Chapter 5 of Title 38, the Commissioner of the Department of Natural Resources, who supervises the Division of Lands, [FN12] has authority to enter into agreements with other state agencies. [FN13] The Director of the Division may approve contracts for the sale, lease or other disposal of available lands, imposing terms and conditions which he deems in the best interest of the state. [FN14] The provisions of Title 38 are not applicable, however, to:

FN12. AS 38.05.020(a).

FN13. AS 38.05.020(b)(2).

FN14. AS 38.05.035(a)(14).

Any power . . . or authority . . . granted to . . . the Department of Highways . . . to acquire, use, or lease . . . real property or any interest in real property. [FN15]

FN15. AS 38.05.030(b).

The authority of the Department of Highways to acquire property or rights-of-way is granted by the legislature under a separate title, AS 19.05.080.