

1/16/14

Hi Karen

Here is an addendum to my analysis of the 2/19/1993 AG opinions.

This addendum explains paragraph 4 of the agreement between Interior and Commerce for the transfer of the ARC to Commerce.

Apparently people had a tough time understanding what the paragraph meant. I didn't go into detail in my analysis as it was clear to me the meaning of that paragraph. I forgot that younger generations don't have grammar or English classes any more and can only talk with their thumbs using "computer and smart phone" talk and "grammar", so a detailed explanation was needed.

I'm sure glad I lived in the generations I did and not the present generations.

Cheers
Bruce Campbell

ADDENDUM TO MY REVIEW OF THE AG OPINION OF FEB. 19, 1993.

It has been pointed out that my review of the AG opinion on highway ownership dated 1/10/2014 does not adequately explain why their opinion expressed on page 4 of the AG opinion is totally incorrect. (see page 2 of my review)

The authors of the opinion state on page 4 that ,”A few days after that delegation, the Secretary of Interior and the Secretary of Commerce agreed that easements formerly managed by the Alaska Road Commission for the Department of Interior (1) would be transferred to the Department of Commerce and (2) would remain in full force and effect.” This incorrect finding was the main building block of their ultimate decision that easements, not fee, were the basis for the transfer of Alaska’s Highway system to the new State of Alaska in 1959. If the initial finding was incorrect any opinion based on that finding would be incorrect also.

Their incorrect finding was based on the agreement executed by the Secretaries of Interior and Commerce on September 15, 1956 for the transfer of the Alaska Road Commission (ARC) from Interior to Commerce. Paragraph 4 of that agreement states:

“Any existing contract, lease, easement, license, permit, or agreement heretofore entered into by or granted by or to the Department of Interior by and through the Alaska Road Commission shall remain in full force and effect and shall be transferred to the Department of Commerce and shall be binding upon that Department.”

How on earth the authors of the AG opinion determined that paragraph 4 -” transferred easements formally managed by the ARC for the Department of Interior to the Department of Commerce” - based on this simple paragraph is a mystery”.

The actual facts:

- 1) The roads administered by the ARC as authorized by the Secretary of Interior on March 24, 1949 (see tab 23) were roads within areas reserved for highways. They were not easements. They were titled as reservations and that’s what they were. They were created by Interior Department Assistant Secretary Warne on December 6, 1948. (see tab 21). **An easement is a right to occupy or use real property of another and requires a grantor and a grantee.** The ARC was simply an arm of the Interior Department and not an independent agency. The ARC and the Interior Department were legally one so there was no need or reason for an easement between the ARC and Interior as both the public lands and the highway system were in the domain of the Interior Department.
- 2) The Key words in paragraph 4 of the agreement between Interior and Commerce were, “ BY AND THROUGH the Alaska Road Commission”.

3) Any arrangement entered into BY the ARC with another party remote from the Department of Interior that created a contract, lease, easement, license, permit, or agreement was ultimately the responsibility of the Department of Interior and as such the Department was the real party to any arrangement entered into BY the ARC . The liability flowed THROUGH the ARC to its parent the Department of Interior.

4) Any such liability thus accrued to the Department of Interior was to be transferred to the Department of Commerce and remain in full force and effect and be binding on the Department of Commerce.

The wording of paragraph 4 is somewhat confusing but if one takes their time and grammar that they learned (or should have learned) in grade school its meaning is apparent.

A much simpler way of stating the contents of paragraph 4 would be:

Any existing contract, lease, easement, license, permit, or agreement which the ARC as an agent of its parent, the Department of Interior, entered into shall be an obligation of the Department of Interior. Any such obligation shall remain in full force and effect and shall be transferred to the Department of Commerce and shall be binding on that Department.

Lawyers being lawyers love to use lots of words when a few would not only suffice but be much easier to understand. Apparently the lawyers that authored the AG opinion in 1993 got caught in a lawyer trap and totally misinterpreted paragraph 4 of the Interior-Commerce transfer agreement. Serves them right!

Bruce Campbell

January 15, 2014

Tab references refer to Exhibit D of my 2010 Commentary