

MEMORANDUM

State of Alaska

Department of Transportation & Public Facilities

TO: Charles E. Cole
Attorney General

DATE: May 1, 1991

FILE NO:

TELEPHONE NO: 465-3900



FROM: Frank G. Turpin
Commissioner

SUBJECT: Request For
a Formal
Legal Opinion

In researching the interest we control in our highway rights of way, we came across a legal memorandum written by one of your Assistant Attorney Generals that takes a different view than we have previously claimed. While we have always claimed a highway easement was transferred to the state by the Omnibus Act, as you will see from the memorandum, we may well have received a fee simple. (A copy of the memorandum written by Jack McGee is attached.) We feel we have a public duty to advocate a fee simple if that is the case. We anticipate this will be strenuously opposed by federal land managers should we adopt this position.

We believe the change suggested by Mr. McGee's memorandum will have a major affect on other land owners in the state. Consequently, I hereby request that the memorandum be reviewed by a second attorney and, if the result is the same, published as a formal Attorney General's Opinion. (Our request for a second opinion should not be seen as questioning the legal abilities of Mr. McGee. We respect his abilities and trust him implicitly. Mr. McGee agrees a second opinion should be rendered because of the nature of the change suggested.)

Should you need further information on this request, please contact Clyde Stoltzfus at the number listed above.

Attachment

cc: M. Clyde Stoltzfus, Special Assistant to the Commissioner

R O U T E	C O P Y	D & C DIRECTOR		
		NORTHERN REGION		
		DIRECTOR	<i>[Signature]</i>	
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[Handwritten initials]