

Dedication

Dedication: The appropriation of land, or an easement, by the owner, for the use of the public, and accepted for such use by or on behalf of the public. Such dedication may be express where the appropriation is formally declared, or by implication arising by operation of law from the owner's conduct and the facts and circumstances of the case.

Common-Law Dedication: A common-law dedication is one made as above described, and may be either express or implied. An express common-law dedication is one where the intent is expressly manifested, such as by ordinary deeds, recorded plats not executed pursuant to statute or defectively certified so as not to constitute a statutory dedication.

Statutory Dedication: A statutory dedication is one made under and in conformity with the provisions of a statute regulating the subject, and is of course necessarily express.

In essence, a dedication is a two part operation. It requires an offer by the land owner to dedicate, and it also requires the acceptance by the public. Statutory dedication formalizes this process.

A statutory dedication is provided under A.S. 40.15.010 Approval, filing, and recording of subdivisions. This statute reads as follows: "Before the lots or tracts of any subdivision or dedication may be sold or offered for sale, the subdivision or dedication shall be submitted for approval to the authority having jurisdiction, as prescribed in this chapter." "The recorder may not accept a subdivision or dedication for filing and recording unless it shows this approval. If no platting authority exists as provided in AS 40.15.070 and 40.15.075, land may be sold without approval." AS 40.15.070 and AS 40.15.075 cite that the Department of Natural Resources is the platting authority outside of the organized boroughs for the change or vacation of existing plats.

Although DNR is cited as the platting authority in the unorganized borough, its authority is limited by statute to the review of replats which modify land boundaries as depicted on existing plats or the vacation of street dedications which have been previously created. They do not have the authority to review and approve subdivision plats therefore cannot accept dedications on behalf of the public. A 1/11/83 AGO opinion on the "Eagle River Urban relinquishment" and a 7/10/89 AGO opinion on "Dedicated easements in Rocky Lake subdivision" have discussed this type of a scenario and stated that where there is no platting authority to approve or disapprove the plat, common law principles apply in determining whether lands were dedicated to public use.

The fact that DNR does not have complete platting authority in the unorganized borough is not lost on DNR or the private surveying community. Currently, subdivisions and dedications may be made in the unorganized borough by deed or plat, are not required to be surveyed and monumented, and require no approval prior to recording. At this time, only DEC has authority to review and approve a subdivision plat with regard to waste water adequacy. Complete platting authority in the unorganized borough may be extended to DNR in the near future by virtue of proposed legislation. Senate Bill 81, entitled "An Act

establishing the Department of Natural Resources as the platting authority in certain areas of the state; relating to subdivisions and dedications; and providing for an effective date" was offered in 1991 but has not passed the legislature to date.

Often a common-law dedication is based upon an offer to dedicate an easement to the public by virtue of an express reservation in a property conveyance document or in an easement deed specifically prepared to dedicate an easement. It is also possible to make the offer of dedication with a deed and an attached plat as an exhibit.

(extracted from Record of Survey document)

1 located by actual construction of the railroad, and by surveys and
2 USGS maps; therefore staking and posting was unnecessary either to
3 establish the original 200 foot right-of-way, or to widen it later.
4 The Omnibus Act Quitclaim Deed conveyance of unconstructed as well
5 as constructed portions of roads in the state would otherwise have
6 no meaning.

7 **II. The 1941 Act Was a Dedication for Highway Purposes of the**
8 **Entire Railroad Right-of-Way from Cordova through Chitina to**
9 **the Kennecott Mine; the Dedication Was Effective Upon**
10 **Relinquishment by the Railroad Without Additional Agency**
11 **Action.**

12 Whether the 1941 Act is to be interpreted as a dedication
13 of the former railroad right-of-way is a matter of statutory
14 interpretation, and does not depend on a finding of the common law
15 elements of a dedication of private property to public uses. The
16 language and purpose of the 1941 Act, and consistent later acts of
17 two federal Departments clearly support the conclusion that the
18 1941 Act was a dedication of the former railroad right-of-way for
19 highway purposes.

20 **A. A Congressional Dedication of Public Lands Does Not**
21 **Require the Common Law Elements of a Dedication of**
22 **Private Property to Public Purposes.**

23 The elements necessary to establish a common law
24 dedication to public use by the owner of private property are not
25 applicable to a congressional dedication of public lands. 3/ The

26 3/ Congress undisputedly has the capacity to "withdraw,"
"appropriate," or "reserve" public lands of the United States for
specific public uses. Congress may also "dedicate" public lands,
and this word does not imply any limitation of Congress's power, or
any additional requirements to perfect. The word "dedicate" has
been used in these briefs because it is usually associated with
setting aside land for roads or highways.

1 common law elements of dedication -- a clearly expressed offer to
2 dedicate, and acceptance by appropriate public authorities --
3 attempt to assure fairness to the two separate entities interested
4 in the transaction: the owner of the private property said to be
5 dedicated to public use, and the public recipient. The element of
6 a clearly expressed offer to dedicate serves to protect the owner
7 from overreaching by a public claim to more than the owner intended
8 to dedicate. The element of an acceptance by public authorities
9 serves to protect the public from being burdened by property of no
10 value or usefulness. See, e.g., Note, Public Ownership of Land
11 Through Dedication, 75 Harvard L. Rev. 1406 (1962); Parks, The Law
12 of Dedication in Oregon, 20 Ore. L. Rev. 111 (1941).

13 **But dedication of property owned by a government for a**
14 **particular public use is a different sense of the word.** 23 Am.
15 Jur. 2d Dedication (1983) Sec. 2 at p. 6. See also, 26 C.J.S.
16 Dedication, Sec. 6, p. 404 n. 55.15; Sec 34, p. 462 n. 48.5 (1956);
17 Tigner, Dedication - a Survey, 15 Baylor L. Rev. 179 (1963) at 184-
18 5, n. 38. No acceptance is necessary when a public body having
19 capacity to do so makes a formal dedication. State of California
20 v. U.S., 169 F.2d 914, 921 (9th Cir. 1948); Gewirtz v. City of Long
21 Beach, 330 N.Y.S. 2nd 495, 506 (N.Y. Sup. Ct 1972); McKernon v.
22 City of Reno, 357 P.2d 597, 601 (Nev. 1960); Singewald v. Girden,
23 127 A.2d 607, 616 (Del. 1956); Arcques v. City of Sausalito, 272
24 P.2d 58, 60 (Cal. Ct. App. 1954). When acting to dedicate public
25 land, Congress has authority and responsibility to determine what
26 uses of public lands will benefit both the public as landowner and

1 the public as user. The dedication and its acceptance are in the
2 same acts. Singewald, 127 A.2d at 616.

3 For this reason, the plaintiffs' search (Plaintiffs'
4 Supplemental Brief at pp. 42-47) for two separate elements of offer
5 and acceptance is simply inappropriate. The only pertinent
6 question is whether the 1941 Act is properly interpreted as an
7 expression of intent to appropriate or reserve the right-of-way as
8 a future transportation route, or whether the 1941 Act merely
9 directs the Secretary to determine later whether the right-of-way
10 is needed for use as a highway, without specifying the form of such
11 a determination or imposing any restrictions which would protect
12 the right-of-way from passing out of the public domain before the
13 Secretary made such a determination.

14 This is an issue of statutory construction, which is a
15 matter within the special competency of the court. Tesoro Alaska
16 Petroleum Co. v. Kenai Pipeline Co., 746 P.2d 896 (Alaska 1987)

17 There the court said:

18 the starting point should be the language of
19 the statute itself construed in light of the
20 purposes for which it was enacted. . . . The goal
21 of statutory construction is to give effect to the
22 legislature's intent, with due regard for the
23 meaning the statutory language conveys to others.

24 Id. at 904-905.

25 B. The Language and Purpose of the 1941 Act Support the
26 Conclusion that Congress Dedicated the Railroad Right-of-
Way for Highway Purposes.

First, the plain language of the 1941 Act shows that
Congress intended the former railroad corridor to be used for a

2. The Law of Dedication.

Dedication is a mechanism for transfer of real property which need not comply with the Statute of Frauds. There are, however, well-defined requirements for a valid dedication.

"Dedication is the intentional appropriation of land by the owner to some public use." Seltenreich v. Town of Fairbanks, 103 F.Supp. 319, 323 (D.Ak. 1952), quoting 16 Am.Jur. § 2, at 348.²¹

In Alaska, there are two basic elements of common law dedication: an intent to dedicate on the part of the landowner, and an acceptance by the public. Swift v. Kniffen, 706 P.2d 296, 300-01 (Alaska), reh. denied, 1985; State v. Fairbanks Lodge No. 1392, Loyal Order of Moose, 633 P.2d 1378, 1380 (Alaska 1981); Seltenreich v. Town of Fairbanks, 103 F.Supp.

after relinquishment, which would be a necessary precondition to the Secretary's exercise of his authority to withdraw the lands for a right-of-way."

Letter from Roger DuBrock to Asst. A.G. McGee, June 7, 1989, Exhibit "W," at 3-4.

²¹See also Nature Conservancy v. Machipongo Club, Inc., 419 F.Supp. 390, 396 (E.D.Va. 1976). "A common law dedication occurs 'when the owner of an interest in land transfers to the public a privilege of use of such interest for a public purpose.' Hamerly v. Denton, 359 P.2d 121 [, 125] (Alaska 1961); see also State v. Fairbanks Lodge No. 1392, Loyal Order of Moose, 633 P.2d 1378 (Alaska 1981); Olson v. McRae, 389 P.2d 576 (Alaska 1964)." A grant of a private right-of-way is not a dedication. Seltenreich v. Town of Fairbanks, 103 F.Supp. 319, 323 (D.Ak. 1952).

319, 323 (D.Ak. 1952), quoting McQuillin on Municipal Corporations, 3d ed., § 33.02, at 579-80.²²

"It is a question of fact whether there has been a dedication." Hamerly v. Denton, 359 P.2d 121, 125 (Alaska 1961). **The burden of proof to show dedication is on the party asserting it.** Seltenreich v. Town of Fairbanks, 103 F.Supp. 319, 323 (D.Ak. 1952).²³

The evidence to establish a dedication must be clear and convincing. Seltenreich v. Town of Fairbanks, 103 F.Supp. 319, 323 (D.Ak. 1952).²⁴

First, the proponent of a dedication must show that the landowner intended to dedicate his property to the public,

²²"[D]edication involves not only an offer to dedicate, but an acceptance thereof, either express or implied, by a public authority having power to pass upon the matter." Anderson v. Town of Hemingway, 237 S.E.2d 489, 490 (S.Car. 1977); Swift v. Kniffen, 706 P.2d 296, 300-01 (Alaska), reh. denied, 1985; Nature Conservancy v. Machipongo Club, Inc., 419 F.Supp. 390, 396 (E.D.Va. 1976).

²³Quoting McQuillin on Municipal Corporations, 3d ed., at 671-72, and quoting 16 Am.Jur. § 75, at 417; see also Hamerly v. Denton, 359 P.2d 121, 125 (Alaska 1961) ("It is a question of fact whether there has been a dedication. This fact will not be presumed against the owner of the land; the burden rests of the party relying on a dedication to establish it by proof that is clear and unequivocal." (at 125.) "Since we know that individual owners of property are not apt to transfer it to the community or subject it to public servitude without compensation, the burden of proof to establish dedication is upon the party claiming it." Anderson v. Town of Hemingway, 237 S.E.2d 489, 490 (S.Car. 1977) (citations omitted).

²⁴Quoting McQuillin on Municipal Corporations, 3d ed., at 674; see also Hamerly v. Denton, 359 P.2d 121, 125 (Alaska 1961). "'Dedication being an exceptional and a peculiar mode of passing title to interest in land, the proof must usually be strict, cogent, and convincing and the acts proved must be inconsistent with any construction other than that of dedication.'" Seaboard Air Line Ry. Co. v. Town of Fairfax, 80 S.C. 414, 430, 61 S.E. 950, 956 (1908)." Anderson v. Town of Hemingway, 237 S.E.2d 489, 490 (S.Car. 1977).

and that he manifested that intent in such a way as to create, as a matter of law, an offer to dedicate. "The crux of the offer requirement is that the owner must somehow objectively manifest his intent to set aside property for the public use." Swift v. Kniffen, 706 P.2d 296, 300-01 (Alaska), reh. denied, 1985 (footnote omitted, emphasis in original).

"The existence of an intent to dedicate is a factual issue which the claimant must clearly prove." Swift v. Kniffen, 706 P.2d 296, 300 (Alaska), reh. denied, 1985. Intent to dedicate must be clearly and unequivocally manifested. Seltenreich v. Town of Fairbanks, 103 F.Supp. 319, 323 (D.Ak. 1952).²⁵ Recordation of a plat showing streets does not by itself dedicate the lands shown as streets on the plat. State v. Fairbanks Lodge No. 1392, Loyal Order of Moose, 633 P.2d 1378 (Alaska 1981).

An intent to dedicate on the part of the landowner only sets the stage for creation of a valid dedication. A

²⁵Quoting McQuillin on Municipal Corporations, 3d ed. § 33.36, at 669; see also Nature Conservancy v. Machipongo Club, Inc., 419 F.Supp. 390, 396 (E.D.Va. 1976). "Intention must be clearly and unequivocally manifested by acts that are decisive in character." Hamerly v. Denton, 359 P.2d 121, 125 (Alaska 1961); accord, Swift v. Kniffen, 706 P.2d 296, 300-01 (Alaska, reh. denied, 1985. "[S]uch intention must be manifested in a positive and unmistakable manner." Anderson v. Town of Hemingway, 237 S.E.2d 489, 490 (S.Car. 1977).

"A court can, however, find an intention to dedicate land based on objective facts in spite of testimony as to a subjective intent to the contrary. See e.g., Tinaglia v. Ittzes, 257 N.W.2d 724 (S.D. 1977); 6 R. Powell, The Law of Real Property § 935 at 368-69 (Rohan rev.ed. 1977)." State v. Fairbanks Lodge No. 1392, Loyal Order of Moose, 633 P.2d 1378, 1380 n. 3 (Alaska 1981).

dedication, to be effective, must be accepted by or on behalf of the public.²⁶

Acceptance, in this context may occur through a formal official action or by public use consistent with the offer of dedication or by substantial reliance on the offer of dedication that would create an estoppel.

State v. Fairbanks Lodge No. 1392, Loyal Order of Moose, 633 P.2d 1378, 1380 (Alaska 1981) (citations omitted).

The issue of whether, in a particular case, there were acts constituting acceptance is a question of fact, but what constitutes acceptance under a particular state of facts is a question of law. Watson v. City of Albuquerque, 76 N.M. 566, 417 P.2d 54 (1966).

As with the proof of an offer to dedicate, the burden to prove acceptance is on the party asserting dedication. Watson v. City of Albuquerque, 76 N.M. 566, 417 P.2d 54 (1966). Proof of acceptance must be unequivocal, clear and satisfactory, and inconsistent with any other construction. Seltenreich v. Town of Fairbanks, 103 F.Supp. 319, 323 (D.Ak. 1952).²⁷

Where an implied offer to dedicate is found to be accepted, the acceptance, too, is usually implied. "A landowner's implied dedication may be and usually is impliedly

²⁶"Common law dedication takes place when an offer to dedicate is accepted." State v. Fairbanks Lodge No. 1392, Loyal Order of Moose, 633 P.2d 1378, 1380 (Alaska 1981) (citations omitted); Seltenreich v. Town of Fairbanks, 103 F.Supp. 319, 323 (D.Ak. 1952), quoting McQuillin on Municipal Corporations, 3d ed., § 33.43, at 682-85.

²⁷Quoting McQuillin on Municipal Corporations, 3d ed., § 33.54, at 727 and 728. See also, Watson v. City of Albuquerque, 76 N.M. 566, 417 P.2d 54 (1966).

accepted by public use of the property in question. Acceptance may also be implied from acts of maintenance by public authorities." Bruce & Ely, Law of Easements and Licenses, ¶ 4.06[3], at 4-75 (footnotes omitted).

Irregular plowing or repair by city does not establish acceptance. Watson v. City of Albuquerque, 76 N.M. 566, 417 P.2d 54 (1966). Use of right-of-way for garbage collection does not establish acceptance. Watson v. City of Albuquerque, 76 N.M. 566, 417 P.2d 54 (1966). Giving permission to utility company to erect poles in the right-of-way does not establish acceptance. Watson v. City of Albuquerque, 76 N.M. 566, 417 P.2d 54 (1966). Failure to assess right-of-way for taxes does not establish acceptance. Watson v. City of Albuquerque, 76 N.M. 566, 417 P.2d 54 (1966).

3. The 1941 Statute Was Not an Offer to Dedicate the Chitina to Cordova Section of the Abandoned Railroad Bed.

The legislative history, including the Senate Report on the 1941 statute and the previous report of the Interstate Commerce Commission, illustrates that the federal government was concerned that abandonment of the railroad line would isolate the individual landowners near McCarthy and Kennecott. The effect of the 1922 statute would be to split the ownership of the former right-of-way lands between the federal government and the other landowners adjacent to the railroad. It is clear from the legislative history that the main intent of the 1941 statute