

MEMORANDUM

State of Alaska

TO: John F. Bennett, P.L.S.
ROW Engineering Supervisor
Northern Region

DEPARTMENT OF LAW
DATE: May 4, 1989

RECEIVED R/O

FILE NO: 665-89-0137

MAY 08 1989

TELEPHONE NO: 452-1568

Northern Region DOT & PF

THRU:

SUBJECT: Vacation of Rights-of-Way


FROM: Paul R. Lyle
Assistant Attorney General

CONFIDENTIAL
ATTORNEY/CLIENT
COMMUNICATION

You have asked for our advice concerning whether a conflict exists between AS 19.05.070 and AS 40.17.030 and 11 AAC 06.040-.050. I have reviewed the statutes and regulations and have determined that no conflict exists.

AS 19.05.070 allows DOT/PF to vacate highway rights-of-way by filing a vacation deed. AS 40.17.030(a)(4) & (6) require any conveyance to include the information necessary for indexing and the addresses of all persons who acquired an interest in property as a result of the conveyance. 11 AAC 06.040(a) roughly parallels requirements of AS 40.17.030(a)(4) & (6) ¹

The apparent conflict between these statutes arises because of DOT/PF's past practice of vacating rights-of-way without identifying to whom the state's property interest will pass upon recordation of the deed. Therefore, the deeds may not meet recording requirements. However, there is no real conflict between AS 19.05.070(a) and AS 40.17.030. AS 19.05.070 states that:

...Upon filing, [of the deed] title to the vacated land or interest in land inures to the owners of the adjacent real property in the manner and proportion considered equitable by the commissioner and set out in the deed.

Under AS 19.05.070 DOT/PF should be setting out in its vacation deeds the name of adjacent property owners and the interest acquired by each as a result of the vacation of the right-of-way. Therefore, if the requirements of AS 19.05.070 are followed the deeds will contain the information required by AS 40.17.030 and the document should be accepted for recording.

¹ AS 40.17.030 was enacted in 1988 while the regulations in 11 AAC 06 were effective in 1986. There are conflicts between AS 40.17 and 11 AAC 06 but none which are material to your question.

John F. Bennett
re: Vacation of Rights-of-Way

May 4, 1989
Page 2

You have asked whether the state can require adjacent owners to obtain title insurance for the purpose of protecting the state and proving their title to adjacent land. AS 19.05.070 does not set out the means by which the commissioner will make his determination. Generally, any requirement placed on adjacent landowners must be reasonable under the circumstances. Therefore, I recommend that DOT/PF bear the cost of title searches where the right-of-way is being vacated as part of a state or federally funded highway project. In the case where the vacation is being sought by a petitioning adjacent landowner it is reasonable to require the petitioning owner to bear the cost of proving his title by obtaining title insurance so that the state is fully protected against the claims which would certainly arise where title is clouded.

If you have any questions concerning this advice please do not hesitate to contact me.

PRL/jag

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M E M O R A N D U M

S t a t e o f A l a s k a
Department of Transportation & Public Facilities
Northern Region Right of Way

To: John Athens
Assistant Attorney General
Department of Law

Date: April 4, 1989

File No:

Telephone No: 474-2413

From: John F. Bennett, P.L.S.
ROW Engineering Supervisor
Northern Region

Subject: Vacation of Rights of Way

As we discussed on March 29, 1989, you indicated that there may be a conflict between A.S. 19.05.070 relating to the Vacation of Rights of Way and Title 40 relating to recording requirements.

Please review the attached highlighted sections of Title 19 and 40 as well as Alaska Administrative Code 11.AAC 06 and determine if there is in fact a conflict and whether we should request a formal opinion from your office.

As I see it, the problem is:

- 1) A.S. 19.05.070 requires the filing of deeds of vacation in the appropriate recording district in order for the vacation to take effect.
- 2) A.S. 40.17.030 states that to be eligible for recording, a document must:
 - a. include information needed to index the documents under regulations of the department,
 - b. include the mailing address of all persons named in a document who grant or acquire an interest under the document if it is a conveyance.
- 3) A.S. 40.17.040 requires an indexing system designed so the public may find documents by names of grantors and grantees.
- 4) 11.AAC 06.040 and 11.AAC 06.050 relating to prerequisites for recording or filing documents requires that the document contain the legibly printed or typed names of all parties required by statute to be indexed.

John Athens

-2-

April 4, 1989

It would seem that if the grantee is not named in a deed, it would be difficult or impossible to discover it in a title examination if the only party is the State of Alaska.

As we have vacations of rights of way pending, we will require guidance as to how we should proceed.

lkh

Attachments: as stated

cc: Dan Baum, Property Management (w/ attachments)