

MEMORANDUM
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF TECHNICAL SERVICES


State of Alaska

TO: James R. Anderson
Director

DATE March 31, 1983

FILE NO 120-1

TELEPHONE NO 265-4194

FROM
 Joseph C. Burch
Deputy Director

SUBJECT: RS 2477 Easements (State
Section Line Easements
Only)

The following are my comments to the 2/24/83 memo of Jim Frechione on the above general subject.

Background

1. AS 19.10.010, SLA 1953 (copy attached) dedicates a tract 100 feet wide between each section of land owned by the State, or acquired from the state . . .

This is an express statutory intention to dedicate, . . . "and they apply to "each" section of land in the state as it becomes eligible for section line dedication. Public lands which come open through cancellation of an existing withdrawal, reservation, or entry and subsequent acquisitions by the territory (or state), are all subject to the right-of-way.^{1/} (emphasis added)

2. Attorney Generals Opinion #7, 1969 (copy attached).

Point #7, backed up by footnote 14 notes "(However, once there has been an acceptance, the dedication is then complete, and will not be affected by subsequent reservations, conveyances or legislation)". This acceptance is AS 19.10.010, hence the rules of construction for application based on dates of legislation, lack of legislation, amended legislation, and territory or state.

Point 7b states "The public lands must be surveyed and section lines ascertained before there can be a complete dedication and acceptance of the federal offer."

Footnote 15 states "Note, however, that the Alaska statutes apply to each section line in the state. Thus, where protracted surveys have been approved, and the effective date thereof published in the Federal Register, then a section line right-of-way attaches to the protracted section line subject to subsequent confirmation with the official public land surveys." (emphasis added)

1/ 1969 AG's Opinion #7

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3. 11 AAC 53.300 (copy attached)

The regulation allows the director to waive the survey and platting requirements of additional easements or rights-of-way. It does not waive 11 AAC 53.300 (1)(A). (emphasis added)

4. Past DNR practices (copies attached for vacation of section line easements 1974, O.T.E. Seminar paper 1977, Survey instructions for surveying lands as provided by AS 38.05.077 March 21, 1977 and Fall FY 82 Remote Parcel Staking instructions).

Additional data exists to support and to demonstrate that past DNR practice (prior to 9/82) has been to notice the public on reservations for section line easements whether surveyed or not at time of entry.

5. Paper by John W. Sedwick (copy attached).

Situation:

Currently the Division of Land and Water Management's Northcentral District land office takes exception to recent Division of Technical Services survey and plat approval.

Past practice within DNR has reserved the section line easement whether it has been created or is a future right through attachment. Items one (1) thru four (4) cited in the Background support the NCDO position. The last paragraph of John W. Sedwick's paper states this clearly, also.

The Division of Technical Services, Cadastral Survey Section, has changed the Departments and Attorney General's Opinion practice as of September 1982. This is a recent change not approved by the Director to my knowledge.

Options:

1. Do nothing and continue DTS survey instructions and platting per 9/82 DTS changes.
2. Request a new Attorney General's opinion recommending the State not accept protraction surveys published in the Federal Register as having section line easements attach to same.
3. Return to status quo (past practice) within DTS and DNR prior to 9/82

Recommendations:

1. Do nothing only prolongs the issue and continues confusion within the Department, which I believe is contrary to public interest.

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2. The federal government's surveys and title to the state frequently leave the method of further subdivision of tracts of land to the State's discretion. If the State chooses to establish 'Section' lines following the BLM Manual of Survey Instructions or modification of the rectangular survey system, I believe it has this right. Occasionally the economics of the situation override the BLM Manual of Survey Instructions methodology for survey. The questions of the protracted location of section lines almost becomes mute with today's technology for surveying and past practices are reasonably defined as to accuracy. The 'future threat' approach does not carry much weight when proper survey analysis and instructions for survey are performed.
3. Protracted sections have been the practice of the State for alienating state interests since Statehood. Both surface and subsurface rights regulations and procedures have been constructed around this accepted state principal and theory. The Division of Technical Services should resolve the most recent practices and subsequent conflicts and return to the status quo.

Action:

1. Return to status quo.
2. Discuss this with DL&WM and regardless of which is followed, address the land management problems associated with the final choice of options and to resolve those future difficulties associated with the chosen option.

JCB:sa