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(1980). Letter to Theodore G. Smith. Alaska Attorney General Reports and Opinions, 1980, 1-3.

Chicago 7th ed.

"Letter to Theodore G. Smith," Alaska Attorney General Reports and Opinions 1980 (1980): 1-3

McGill Guide 9th ed.

"Letter to Theodore G. Smith" [1980] 1980 Alaska Attorney General Reports & Opinions 1.

MLA 8th ed.

"Letter to Theodore G. Smith." Alaska Attorney General Reports and Opinions, 1980, 1980, p. 1-3. HeinOnline.

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MEMORANDUM

State of Alaska

Theodore G. Smith, Director
Division of Forest, Land and
Water Management
Department of Natural Resources
323 East Fourth Avenue
Anchorage, Alaska 99501

DATE: April 22, 1980

FILE NO:

TELEPHONE NO:

FROM: AVRUM M. GROSS
ATTORNEY GENERAL (S)^M
By: Barbara J. Miracle
Assistant Attorney General
AGO - Anchorage

SUBJECT: Effect of Plat Dedication
of Public Areas in
Subdivision Plat.
Our File: A66-428-80

By memorandum dated March 19, 1980 you have asked a series of questions concerning the legal effect of a land subdivider dedicating portions of subdivided land for uses such as a public park, public access or as open space.

In reviewing your questions it is necessary to refer to AS 40.15.030 governing dedication of public areas in a subdivision which states as follows:

When an area is subdivided and a plat of the subdivision is approved and recorded, all streets, alleys, thoroughfares, parks and other public areas shown on the plat are deemed to have been dedicated to public use.

I will address your questions in the order given in your memorandum.

(1) Who owns land when it is "dedicated"?

When land is dedicated as a public area in a subdivision plat, the public area is owned by the public with title in the local municipality which accepted the dedication by approving the plat. (See paragraph 4 for discussion of land in unorganized borough).

(2) Is the word "dedicate" synonymous with grant or convey or reserve?

Under AS 40.15.030 the use of the word dedicate on the subdivision plat is not necessary. All streets, alleys, thoroughfares, parks and other public areas shown on the plat are deemed to have been dedicated to public use.

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(3) What language would be more appropriate to effect a grant of the land from the subdivider?

As I have indicated under AS 40.15.030 no particular language is necessary. If an area is identified on the plat as a "street", an "alley", "thoroughfare", a "park", then it will be dedicated under the statutory provision. Whenever a subdivider intends to include as a public area, something not enumerated under AS 40.15.030, it would avoid interpretation problems if he called it "public", (for example, "public" bathing area).

(4) Does it make any difference if the land is inside a municipality with platting authority or in the unorganized borough where DNR has authority?

If land is in a municipality with platting authority, all public areas on the plat are dedicated to public use with title in the municipality by virtue of the plat under AS 40.15.030. In the unorganized borough, DNR is the platting authority only for the change or vacation of plats. If an amended plat includes streets, alleys, thoroughfares, parks or other public areas DNR accepts those dedications by approving the amended plat and holds the dedicated lands and manages them for the public for the use for which they were dedicated.

When a subdivision is created in the unorganized borough, where there is no platting authority, lots or tracts of the subdivision may be sold or offered for sale without approval of a platting authority. AS 40.15.010. In the unorganized borough dedication of lands within a subdivision to public use is not governed by AS 40.15.030 but by common law principles of dedication. Whether public areas shown on a subdivision plat in the unorganized borough have been dedicated to the public would depend upon the facts in each case. Under the common law for a dedication of land to the public use to be complete there must first be an offer of land by the grantor to the public and acceptance by the public. 6A R. Powell, The Law of Real Property, ¶ 934 at 364 (1979 ed.). Although the subdivider need not obtain approval of his plat from a public authority in the unorganized borough, I see no bar to the state sending the subdivider an acceptance of his offer to dedicate areas of the subdivision to the public, when he records the subdivision, (for example,

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"The Director of the Division of Forest, Land and Water Management accepts for the people of the State of Alaska the dedication of the public areas shown on your subdivision plat").

Even if a public body does not officially accept the dedication, the subdivider may be estopped from attempting to revoke his offer if members of the public have relied on the offer. *Id.* at ¶ 935, p. 370. F. Some courts have held that in the case of dedication by a plat, or by a sale by reference to a plat, no acceptance by a public authority is required to make the dedication effective. *Banks v. Wilhoite*, 508 S.W.2d 580, 582 (Ky. Ct. App. 1974), *Wenderoth, Jr. v. City of Fort Smith*, 510 S.W.2d 296, 297 (Ark. 1974).