

STATE OF ALASKA

WILLIAM A. EGAN, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL / BOX 2170 - JUNEAU

1964 Opinions of the
Attorney General No. 7

September 14, 1964

The Honorable Phil R. Holdsworth
Commissioner
Department of Natural Resources
Juneau, Alaska

Re: Selection of Mental Health School
and University Lands by Boroughs

Dear Commissioner Holdsworth:

You have asked whether a borough may select Mental Health School and University lands pursuant to AS 07.10.150. It is our opinion that these lands are not subject to selection by a borough pursuant to AS 07.10.150, which provides:

"An organized borough may select 10 per cent of the vacant, unappropriated, unreserved state lands located in its boundaries within five years after the date of availability of state lands in the borough. Nothing in this section affects any valid existing claim, location, or entry under the laws of the state or the United States, whether for homestead, mineral, right-of-way, or other purposes, or affects the rights of any owner, claimant, locator, or entryman to the full use and enjoyment of the land so occupied."

AS 07.10.150 permits a borough to select 10 per cent of the vacant, unappropriated and unreserved State lands within the borough. This limitation on selection of State lands by a borough protects State lands which have been set aside for some special purpose from being used for other than the special

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purpose without referring to those special purposes individually. The question presented is whether the State's Mental Health School or University lands are lands set aside for special purposes which are therefore within the limitation of AS 07.10.150.

Section 07.10.150 prohibits a borough from selecting "reserved land." "Reserved land" is defined in Black's Law Dictionary (4th Ed. 1951) as follows:

"Public land that has been withheld or kept back from sale or disposition."

Similarly, Black's Law Dictionary (4th Ed. 1951) defines "appropriation of land" as follows:

"The act of selecting, devoting, or setting apart land for a particular use or purpose." Ibid.

Mental Health School and University lands are, in our opinion, appropriated and reserved lands within the meaning of the definitions quoted above and AS 07.10.150. Several statutes have established the status of Mental Health School and University lands. Mental Health lands in Alaska were established under a Federal grant which directed that the lands be administered as a public trust and the income therefrom "be applied to meet the necessary expenses of the Mental Health program of Alaska." (70 Stat. 709, 711). Similarly, School and University lands were established by a Federal grant which directed that such lands "shall be reserved" for the support of schools. An additional grant of Federal lands was made "for the exclusive use and benefit of" the university. (38 Stat. 214 as amended by 48 U.S.C. 353). The grants by the Federal Government of School and University lands and Mental Health lands were confirmed and transferred to the State of Alaska upon its admission to the Union under Section 6K of the Alaska Statehood Act (72 Stat. 339), with the express proviso that they be used for the purposes for which they were reserved.

Since Statehood, the State of Alaska has continued to use these lands and the proceeds derived therefrom for the special purposes for which the Federal Government originally granted these lands to the Territory of Alaska. The Director of the Division of Lands is authorized by AS 38.05.035 to select, administer and dispose of Mental Health lands for the support of the Mental Health program. AS 38.05.035(a)(13) provides as follows:

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"select, administer, and dispose of
mental health lands for the support of the
mental health program;" (Emphasis added)

The Legislature has clearly established a policy that Mental Health lands continue to be dedicated for the support of the Mental Health program. Similarly, School and University lands are dedicated for the purpose of supporting schools. See Title 11, Alaska Administrative Code, Sec. 202.012-014.

In conclusion, it is our opinion that the Mental Health School and University lands of the State are not unappropriated, unreserved State lands within the meaning of AS 07.10.150 and are not subject to selection by a borough under that Act.

I trust this answers your question.

Yours very truly,


WARREN C. COLVER
ATTORNEY GENERAL

WCC/rg

cc: William A. Egan
Governor

Floyd L. Guertin, Commissioner
Department of Administration