02-001B (Rev. 10/76)

STATE
of ALASKA

MEMORANDUM

#26,10

TO: William Satterberg
Assistant Attorney General
Department of Law
Transportation Section
Fairbanks

DATE: July 25, 1977

FILE NO:

TELEPHONE NO:

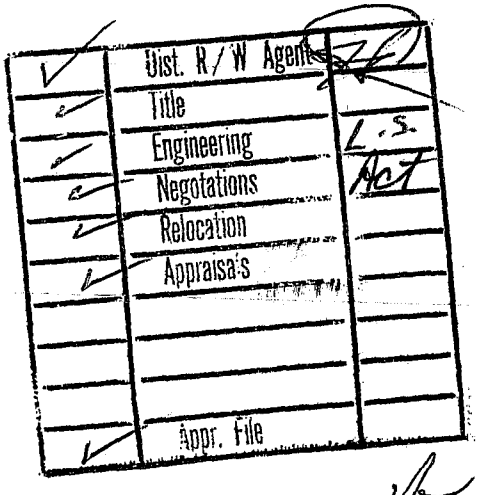
SUBJECT: Section Line Rights-of-Way

FROM: Richard Svobodny
Assistant Attorney General
Department of Law
Transporation Section
Juneau

Bill, don't get excited, this is not the memorandum which I promised on how district offices should deal with section line rights-of-way. I've spoken with the right-of-way section at headquarters, and have been informed that the present policy of not issuing letters of nonobjection should be maintained until a policy has been developed by either the Governor's Office or the Division of Lands. Presently, the Division of Lands is working on a policy regarding section line rights-of-way, and the Right-of-Way Section will have input into this policy development. In addition, Bill Luria, from the Governor's Office is looking into developing a policy on section line rights-of-way. We should not, in my estimation, be informing our district offices regarding section line rights-of-way, even if they are on privately owned land, until there is a uniform State policy.

I will be in Anchorage on July 27, and will talk to Dick Kerns regarding section line rights-of-way. At the present time, I do not believe that we should advise district offices regarding section line rights-of-way until either the Governor's Office or the Division of Lands, with the concurrence of the Department of Transportation, lets us know the policy regarding section line rights-of-way. My advice to the district offices would be to follow the procedure as established by the right-of-way section, that is, cease issuing letters of nonobjection, until the new policy is established.

RS:lm



rec'd 7-27-77
RSR.

Rsvd 8-1-77

Charles E. Thompson
Chief Utilities Engineer
Juneau Headquarters

July 12, 1977

Andy Zahare
Division Pre-Construction
Engineer
Interior Region

Attorney General Opinion
Requests

I. As of December 1976 the Utilities Section, as instructed, ceased exercising jurisdiction over unimproved (without roads) section line easements and ceased issuance of utility permits for activities within these easements.

Since that time the Department was approached twice with requests for utility permits within such easements. On both occasions the applicants were told that we were no longer issuing permits pending resolution of existing legal problems. The decision to cease utility permit issuance was apparently based upon an Attorney General recommendation dated October 21, 1976 and a directive dated November 3, 1976 to all Division R/W Agents. Copies are attached.

The Utilities, upon our inability to grant a permit, requested that Right-of-Way issue a letter of non-objection. Again the answer was negative. In view of this the applicants stated they had no choice but to utilize the easement. The Utilities Section felt that if it had no authority to exercise jurisdiction over such easements, then by corollary, it had no power to refuse entry. In light of this, the Section did negotiate, and the Utilities did agree to use the outer five feet if it did in fact go to construction.

This situation is unsatisfactory. It is important that control by some Department be exercised because of increasing suburban and rural development and new legislation requiring the State pay for all utility relocations whether or not permitted. Without some control, utility costs could be very high whenever these easements are utilized for roads and placed upon the State Highway System.

II. The last clause of Senate Bill #50, AS 19.25.020,(d), which reads "...notwithstanding the terms or provisions of any existing permits agreement, regulation or statute to the contrary...", raises a question fundamental to the development of a good utility permit program beneficial to both the State and the Utilities. Due to the provisions of the above statute, utility relocation costs will be considerably higher in the future. In order to minimize this impact, the issuance of permits should be scrutinized and evaluated more restrictively than before. No longer are utilities under permit required to relocate at their own expense. In unique situations, however, certain utilities have already

indicated a desire to locate in the right-of-way in such a manner that it would clearly be in conflict with contemplated but unprogrammed highway construction. They have indicated a willingness to enter into agreements of their own volition, whereby they agree to assume all costs of relocation should the contemplated highway improvement come to fruition. This agreement would be made part of the permit. This device would be a valuable tool in aiding the Utilities and when used would result in a lessening of utility relocation costs should they become a reality.

In summation we are requesting a decision to the following questions:

1. Is it within the purview of the Utilities Section to exercise control over section line easements and monitor Utility operations by the issuance of utility permits?

2. Would mutually volitional agreements in utility permits, providing that the permittee assume all costs of future relocation of the permitted facility, be legal and fully enforceable in the face of the statute wording?

AZ/DS/mjp

of ALASKA

MEMORANDUM

TO: ALL DISTRICT R/W AGENTS

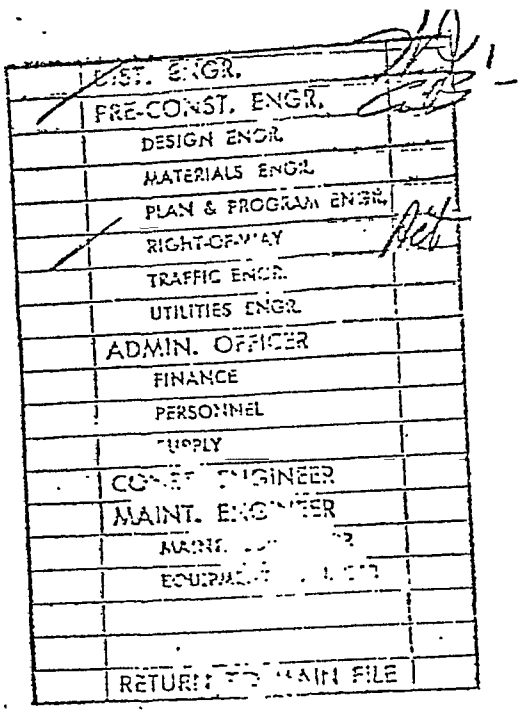
DATE : November 3, 1976

FROM: Hugh N. Williams
Deputy Director
Right of Way Division
Department of Highways
Juneau, Alaska

SUBJECT: Letters of Nonobjection for Section Line Rights-of-Way

Attached is a letter from the Attorney General's office concerning issuance of letters of nonobjection for utilization of section line rights-of-way. Please advise your personnel that no further letters will be issued until the matter is resolved. We would like your comments and suggestions on the Attorney General's letter, as well as what impact compliance will have on your operation.

Attachment: As stated



MEMORANDUM State of

TO: Jack Bodine
Right-of-Way Director
Department of Highways

DATE: October 21, 1976

FILE NO:

TELEPHONE NO:

FROM: Richard Svobodny
Assistant Attorney General
Department of Law
Highway Section

SUBJECT: Section Line Rights-of-Way and Letters of Nonobjection

Mr. James Edwards, the owner of real property near McCarthy, Alaska, has contacted Governor Hammond, Attorney General Gross, Frank Flavin, State Ombudsman and the District Attorney's office in Anchorage concerning the utilization of a section line right-of-way across his property, by a Mr. Andersen, for the construction of roadway to Mr. Andersen's property. Mr. Andersen apparently constructed the roadway in question under the color of a letter of nonobjection which he received from the Department of Highways. I have been informed by Mr. Williams that this letter of nonobjection does not appear in the files of either the Valdez or Anchorage district offices. However, I have been informed by Ms. Paddy Moriarty that the Ombudsman has a copy of the letter of nonobjection.

At the present time, there appears to be no standards or regulations concerning the issuance of a letter of nonobjection for the utilization of a section line right-of-way. It is the opinion of the Ombudsman that such letters not be given unless there is a thorough evaluation of the necessity for the utilization of a section line right-of-way.

I suggest that the Department of Highways cease from issuing any letters of nonobjection for the utilization of section line rights-of-way unless the letter has been approved by the Department of Law. In addition, I think the suggestion of the Ombudsman that regulations be promulgated, under the provisions of the Administrative Procedures Act, relating to the use of section line rights-of-way by private individuals, is a good suggestion The proposed standard to be met by these regulations would be one of public necessity and should spell out that no permission to use a section line right-of-way would be granted unless there could be an affirmative showing, by an applicant, that there was no substantial public opposition to the granting of a letter of nonobjection.

In summary, it is the recommendation of the Department of Law, that no letter of nonobjection should be issued concerning section line rights-of-way unless approved by the Department of Law and that the Department of Highways gives substantial consideration to the promulgation of regulations relating to the issuance of letters of nonobjection.

RS:lm