

STATE
of ALASKA

MEMORANDUM

KORREMBT'S
FILED
3 07 PM 1974
DISTRICT
DEPT. OF HIGHWAYSTO: Donald E. Beitinger
District R/W Agent
Department of Highways
AnchorageFROM: Richard P. Kerns, AAG
Highway Section
Anchorage AGO

DATE :

RECEIVED

March 4, 1974

SUBJECT:

Request for an Attorney General's
Opinion - Intersection of 76th
Avenue and New Seward Highway

MAR 7 - 1974

RIGHT OF WAY SECTION
ANCHORAGE DISTRICT

You have asked whether or not 76th Avenue can be closed off where it crosses the new Seward Highway, a controlled-access facility, without payment to abutting land owners.

In my opinion, 76th Avenue could be so closed without the highway department incurring liability for damages for any so-called abutter's rights.

A.S. 19.20.020 provides that:

The department and a municipality, acting alone or in cooperation with each other or with a federal agency participating in the construction and maintenance of highways, may plan, designate, establish, regulate, vacate, alter, improve, maintain, and provide controlled-access facilities for public use when it finds that present or future traffic conditions justify special facilities.

The department or a municipality may exercise the same authority with respect to controlled-access facilities that each has with respect to highways within its jurisdictions. The department or the municipality may regulate, restrict, or prohibit the use of the controlled-access facilities by the various classes of vehicles or traffic in a manner consistent with the definition of a controlled-access facility.

(Emphasis added)

As defined by AS 10.05.130, a controlled-access facility - means a highway especially designed for through traffic, and over, from, or to which owners or occupants of abutting land or other persons have either no right or easement or only a controlled right or easement of access, light, air, or view;

As stated in Section 10.2211 [2] Nichols on Eminent Domain, 3rd Ed.

Where an ordinary or conventional road is built, there may be an intent to serve abutting owners, but when a limited-access highway is established, the intent is just the opposite. No new rights of access can arise unless they are specifically granted.

Donald E. Beitinger
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The purpose of a controlled-access highway is to facilitate traffic, not to serve abutting landowners. Therefore, a mere break in the access line showing an intent to connect 76th Avenue as a public point of access for the public in general sometime in the future would not be sufficient to show a specific grant of access to an abutting owner.

RPK/smk