

STATE OF ALASKA

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL — ANCHORAGE BRANCH

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WIK COPY of KHW

June 19, 1970

MEMORANDUM

TO: Robert L. Beardsley
Commissioner of Highways
State of Alaska
Juneau

FROM: Richard P. Kerns *RPK*
Assistant Attorney General
Chief, Highways Section
Anchorage

RE: Jurisdiction of Section Line Rights of Way for Highways

It has come to my attention that certain questions have arisen in connection with administering the use of section line rights of way by the public where these rights of way have not actually been utilized by the Department of Highways for the State highway system. As you know, 1969 Opinions of the Attorney General No. 7 concluded that "each surveyed section in the State is subject to a section line right of way for construction of highways" subject to certain exceptions defined in the Opinion. A copy of this Opinion is attached.

Since the publication of this Opinion, various members of the public, property owners and governmental agencies have attempted to utilize or exert jurisdiction over these rights of way resulting in a certain amount of conflict of opinion. This results in inquiries being directed either to the Department of Highways, the Division of Lands or the Office of the Attorney General which in turn does or could result in further inconsistent approaches to the use of these rights of way.

With this in mind, a meeting was held attended by representatives of the Division of Lands, the Department of Highways and the Department of Law. As a result of this meeting, it was suggested that a memo be directed to you with copies as indicated, suggesting that jurisdiction of these highway rights of way be asserted by the Department of Highways. This conclusion is in keeping with a former Memorandum Opinion issued by the Department of Law dated November 4, 1963 prepared by David B. Ruskin, then assistant attorney general. A copy of this memorandum is also attached. It is suggested that when inquiries are directed to the State as to the use of these rights of way, that such inquiries

then letter of objection issued, notify A.D.L.

Memorandum

To: Commissioner Robert L. Beardsley

June 19, 1970

Page 2

By whom?

be directed to the District Right of Way Agents. If it is determined that the Highway Department has no objection to a proposed use, that a letter of non-objection be issued. The use of the term "non-objection" is emphasized so as to suggest that the State is not granting some sort of a permit but more to indicate that the State will not resist a particular use if it is otherwise in keeping with the interests of the State.

It has also been brought to my attention that certain of the boroughs have taken it upon themselves to vacate portions of these section rights of way. It is my opinion that the boroughs have no such authority. Jurisdiction over these rights of way is with the State of Alaska, Department of Highways and the Department of Highways is the only competent authority by which the same can be vacated. Possibly the boroughs are assuming this authority under A.S. 40.15.140. If this be the case, I believe the boroughs are misinterpreting the meaning of that statute. It is my opinion that the boroughs have authority to vacate only those streets which have been created by a subdivision plat.

Although it is our conclusion that the Highway Department has jurisdiction over these section line rights of way, it is suggested that because of the obvious interest that the Division of Lands has in these section line rights of way that it be emphasized to the Districts that the Division of Lands be advised as to any actions taken in connection therewith.

If you have any questions regarding the suggestions made in this memorandum, please do not hesitate to contact this office.

RPK:sm

cc: Donald E. Beitinger - Dept. Hwys
John K. Norman - Dept. Law
✓ Joseph Keenan - Div. Lands

What do we do with the info?