

#26.2

MEMORANDUM State of Alaska

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Chief		
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C. & EC Affs.		
R. W. Affs.		
P. & SE Affs.		
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TO: Hugh N. Williams
 Deputy Chief
 DOT/PF
 Juneau

DATE: October 6, 1980

FILE NO:

TELEPHONE NO:

RAK

FROM: Ross A. Kopperud
 Assistant Attorney General

SUBJECT: Sectionline Right-of-Way

We have done a cursory review of the opinion of the Deputy Solicitor of the Department of Interior with reference to RS 2477. RS 2477 is generally the source of sectionline rights-of-way in Alaska and other states, but may also extend to non-sectionline roads as well if such a road were used by the public over the unreserved, unappropriated public lands of the United States of America.

We are not in agreement with the Solicitor's opinion principally because he indicated that the law in this area is confusing and that the Statute is ambiguous. Although there has been much litigation in this area, the law is relatively clear.

It is our belief that existing and developing law in the area of sectionline rights-of-way in Alaska will cover many of the issues raised in the Solicitor's opinion. Therefore, it is our position that sectionline rights-of-way do exist across the lands of the United States of America in Alaska if the land was unreserved, unappropriated public lands of the United States after April 6, 1923, when the Territory of Alaska accepted the RS 2477 right-of-way grant by enacting 19 SLA 1923.

Attached to this memo is a series of documents, including a 1969 opinion of the Attorney General No. 7; an Alaska Supreme Court opinion, entitled Girves v. Kenai Peninsula Borough, 536 P.2d 1221 (Alaska 1975); a vacated opinion of the Attorney General; and lastly a portion of a recent brief entitled Miller/M-B v. State. The Miller/M-B case is the latest analysis of sectionline rights-of-way that I am aware of. These attachments should give you a good understanding of the present state of sectionline right-of-way law in Alaska. Please keep in mind that there are other Alaska cases and decisions on sectionline rights-of-way that I have not included.

If I can be of further assistance, please contact me.

See RS 2477 file for package