

MEMORANDUM

State of Alaska

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

DATE: October 21, 1976

FILE NO:

TELEPHONE NO:

FROM: Richard Svoboda *RS*
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