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STATE OF ALASKA

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Bud
"Tell It to Bud" Column
Anchorage Daily Times
Box 40
Anchorage, Alaska 99501

F1-0

Re: Section Line Rights-of-Way
Letter 4291

Dear Bud:

This letter is in belated response to your inquiry to the Department of Highways dated June 23, 1977, on behalf of an Eagle River resident who inquired about the existence of section line rights-of-way in Alaska. Your inquiry was referred to me by attorneys representing the Department of Highways, since I was coordinating the efforts of our summer legal extern who was examining the legal status of section line rights-of-way, among other subjects. Her examination was completed on August 31, 1977, and I am enclosing a copy of her research paper. That paper does not constitute a formal "opinion" of the Attorney General's Office, but is instead a review of the current law and the court decisions interpreting that law in Alaska, and similar laws elsewhere.

The short answer to your question is yes, section line rights-of-way are recognized in Alaska by Alaska Statutes 19.10.010. That statute, and its predecessor statutes, constitute acceptance by the Territory and the State of Alaska of the general federal grant of a public right-of-way over those public lands "not reserved for public uses", which was offered to the states and territories by Revised Statutes No. 2477, enacted by Congress in 1866. The Territory of Alaska accepted that federal grant by legislation in 1923, and designated all section lines in the State as the center line of public rights-of-way granted by the federal government. The acceptance of the federal grant has continued by statute, both in the state and the territory, since 1923 with the exception of a short period of time from 1949 to 1953 in which the acceptance statute was repealed, and was not immediately replaced by a similar statute. The effect, if any, of this statutory gap is a matter of legal dispute.

As presently enacted, AS 19.10.010 dedicates a tract of land 100 feet wide between each section of land owned by the State or acquired from the State, and a tract four rods (66 feet) wide between all other sections in the State. Thus, lands acquired by private persons directly from the federal government would have a section line right-of-way 66 feet wide, with the section line as the centerline of the right-of-way, imposed upon such lands.

Of course, the federal statute which granted public rights-of-way required that the land subject to these rights-of-way not be land "reserved for public uses". Thus any federal withdrawal or reservation of federal lands, such as for a national forest or national park, which may have occurred prior to 1923 (the date of the Territory's acceptance of the federal grant) would remove those withdrawn or reserved lands from the section line dedication. Our analysis of the current status of the law, however, indicates that subsequent reservations of federal lands for public uses (such as the Arctic Wildlife Range, the Kenai Moose Range, and the current "D-2" proposals) would reserve those lands with section line rights-of-way already imposed upon them.

Our research also indicates that in addition to the statutory designation of section line rights-of-way by the legislature, a valid public right-of-way which doesn't necessarily conform to the location of section lines may be established by public travel of a magnitude and character which the courts would find sufficient to legally establish such a public right-of-way. The general guidelines for the creation of this type of public right-of-way on unreserved public lands have been discussed in several Alaska court cases. It also appears that such a public right-of-way could have been established in Alaska by public travel at any time after 1884, so long as the land was not reserved for "public uses" at the time the public travel began. However, individual use of such a means of access before it becomes a generally-recognized and officially-tolerated right-of-way would still subject the user to a claim of trespass, if the land-holding agency objected to the location or use of what means of access. Even with regard to section line rights-of-way, because this area is legally complex (and in actual experience has infringed upon the rights of private landowners, state park lands, and environmental considerations) the State Division of Lands and Division of Highways are working on regulations which will outline for the general public the procedures to be used in applying for the use of appropriate section line rights-of-way in the State.

See case No. 18-7482 Superior Court Decision 1-29-79

Revised Statutes No. 2477, the original federal public land rights-of-way grant, was repealed in 1976 by enactment of Federal Land Policy and Management Act. However, the 1976 Act provided that nothing in the Act could be construed as terminating any valid right-of-way existing on the date of the Act. Our research indicates that the State's section line rights-of-way vested on unreserved public lands in 1923 when the federal right-of-way grant was accepted as to all state section lines. Thus the repeal of R.S. No. 2477 in 1976 would have no practical effect on these dedicated rights-of-way.

If you have any additional questions on this somewhat complicated subject, I would be happy to try to answer them.

Sincerely yours,

Thomas E. Meacham
Assistant Attorney General

Enclosure