

MEMORANDUM

State of Alaska

Department of Transportation & Public Facilities
Engineering and Operations Standards

TO: Jack McGee
Assistant Attorney General
Department of Law
Transportation Division

THRU: Roger Allington
Chief Engineer & Director
Engineering and Operations

FROM: Jeffery C. Ottesen, Chief
Right-of-Way and Environment

DATE:

FILE NO:

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SUBJECT: Project No. RS-M-0537(1)/53178
Old Seward Highway:
Dowling to Huffman
Request for Opinion

CHIEF R/W AGENT	
PRE AUDIT	
ENGINEERING	
TITLE	October 9, 1992
PLANS	
MATERIALS	
APPRAISALS	
NEGOTIATIONS	
Relocation/Prop. Mgmt.	
AIRPORTS	OCT 16 1992
RETURN TO:	Northern Region DOT & PF
FILE	

The Department of Transportation and Public Facilities (DOT&PF) requests your analysis of an issue which is not new to the Department of Law: Public Land Order (PLO) rights-of-way. Central region is about to embark on a project which will impact several PLO claims and needs a answer within 2 months, if that is possible. DOT&PF is currently involved in litigation at the Dimond Mall in Anchorage, and faces similar situations at other locations. We feel it is becoming more important than ever to define the state's position on the issue.

The specific question for this project is: Did PLO 757 and D.O. 2665 create the first utilization of a 47 Act right of way across properties along the Old Seward Highway where Notice of Utilization was never filed?

In response to commercial development along the Old Seward Highway, DOT&PF's message to most parties has been: "if the patent was subject to the 47 Act and along came a reclassification by PLO 757 or DO 2665, that the PLO did represent the first utilization. This department or the BPR prior to statehood had the ability to file notice of utilization and didn't. It is easy to assume that our predecessors would have done more if they thought they needed to."

We are aware of "A summary of '47 Act Options", completed by the Transportation Section of the Anchorage Attorney General's Office in April 1965, however this effort did not address the PLO issue. We also have a draft copy of a letter to Michael P. Condon from Michael H. Rorick, dated July 2, 1985, which discusses the issue but does not subdue it.

A clear and definitive statement from the Attorney General's Office has been requested by our regional offices. Since this is a statewide issue, we request that you coordinate your comments with myself, or Roger Allington in Headquarters.

Project charge codes are as follows: LC 30017932-0005 --- EOS Division (NTE \$10,000 until further authorization is obtained); CC 24410528.

cc Clyde Stoltzfus, Chief, Policy and Management MS 2500
Dan Beardsley, MS 2525 Central Region ROW
Marty Johnston, MS 2504 SE Region ROW
John Miller, MS 2553 Northern Region ROW