

# MEMORANDUM

# State of Alaska

TO: Harold Cameron  
Chief Right of Way Agent  
DOT/PF, Fairbanks

DATE: March 23, 1983

FILE NO: 566-119-83

TELEPHONE NO: 456-2395

FROM: Norman C. Gorsuch  
Attorney General

SUBJECT: Reservation of Right  
of Way for Construc-  
tion of Railroads

By: John Athens  
John Athens  
Assistant Attorney General

You recently requested that I look up the federal law described as the Act of March 12, 1914, 38 Stat. 305, and inform you as to whether this law is still in effect. The context of your request is that the State is in the process of planning an extension of the Alaska Railroad to the Canadian border, and the patents to some of the land which the railroad extension will cross contain a reservation to the United States of a right-of-way for the construction of railroads in accordance with 38 Stat. 305. You were interested in knowing whether the State would have to pay compensation to the landowners even if the State obtained a right-of-way from the BLM for construction of the railroad based on the reservation in the patents.

First of all, 38 Stat. 305 has been re-codified as 43 U.S.C. § 975d. This law is currently in effect. Accompanying this memorandum is a copy of this statute. If the State does obtain the right-of-way from the BLM, I think the statute is clear that no compensation would be due to the landowner for the taking of up to 100 feet on either side of the centerline of the railroad. However, although the landowner would not be due compensation for the taking of the land, I believe that the State would have to pay the landowner for any improvements that were taken or damaged.

You also requested my opinion on whether there would be any restrictions on where the railroad could be located on land subject to the reservation. Although only dicta, the Alaska Supreme Court in Wessels v. State, Department of Highways, 562 P.2d 1042 indicates at page 1051 that "the right-of-way may follow such route as is reasonably necessary for the State's purposes". Although this decision did not concern an interpretation of 43 U.S.C. § 975d, the situation in the Wessels case as to the State's discretion in location of the right-of-way is very similar to the discretion the State would have locating a railroad under the federal statute.

I am not aware of any temporary or special act, such as enacted by the Alaska legislature in 1966 at Chapter 92, which

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would prevent the State from using the railroad reservation in land patents. (This 1966 special act provided that the State may not avail itself of the right-of-way for roads reserved in patents pursuant to the Act of June 30, 1932, c. 320, § 5, as added July 24, 1947, c. 313, 61 Stat. 418.)

If you have any questions concerning the foregoing, or need further information, please do not hesitate to contact me.

EJA:ja  
enclosure