MEMORANDUM

State of Alaska

Department of Law

TO: Frank G. Turpin
Commissioner
Department of Transportation &
Public Facilities

DATE: February 19, 1993

FILE NO.: 661-91-0546

TEL. NO.: 269-5100

SUBJECT: Nature of property interest/title conveyed to State of Alaska in highway rights-of-way at statehood

FROM: Charles E. Cole
Attorney General
Department of Law

By: Carolyn E. Jones cej
Assistant Attorney General
Chief, Transportation Section, Anchorage

and

By: Rhonda F. Butterfield cej for RFB
Assistant Attorney General
Transportation Section, Anchorage

You requested an Attorney General's opinion concerning the nature of the title held by the State of Alaska in highway rights-of-way received from the United States at statehood under the Alaska Omnibus Act. The question is whether the state received fee simple title to the land within the rights-of-way, or only a right-of-way easement over that land. Our conclusion to the narrow question asked is that, in general, the State of Alaska received from the federal government at statehood only a right-of-way easement for its highways.[1]

The conclusion reached here that, in general, the State of Alaska received "easements" from the United States rather than "fee simple" title, is contrary to that stated in our earlier informal opinion. See 1986 Inf. Op. Att'y Gen. (663-86-0473; October 25). The 1985 opinion concluded that the State of Alaska had received the entire interest of the United States, including the fee interest, in the roads conveyed to Alaska at statehood. We now overrule that opinion.

---

[1] This conclusion has two caveats. First, it applies only to those through, feeder, and local roads in existence at the time of statehood. Second, the conclusion is general in nature. Because the Secretary may have held a fee simple interest as to some lands, it is possible that fee simple interests were conveyed as to particular parcels of land. As the analysis shows, the interest conveyed to the State of Alaska at statehood was whatever interest the Secretary of Commerce held at the time.

I. THE TITLE STATUS OF ROADS IN ALASKA BEFORE STATEHOOD

A. Public Land Orders

The vast majority of land in the Territory of Alaska before statehood was owned by the United States of America. The major roads in Alaska were first protected by the United States when the federal government withdrew a fee or easement interest in certain affected lands by a series of public land orders (PLO's) and Secretarial Order (DO) 2665. Those PLO's most applicable to your question are: 601, 757, and 1613. PLO 601, effective in 1949, reserved certain specified lands along specified roads for highway purposes, and set the widths of through, feeder, and local roads.[2] In 1951, PLO 601 was modified by PLO 757 and Secretarial Order (DO) 2665 simultaneously, which together retained the reservation of a fee interest for through roads, but changed the interest held in feeder and local roads to that of a "right-of-way or easement for highway purposes". The reservation and rights-of-way or easements specified in DO 2665 attached "as to all new construction involving public roads in Alaska." The purpose of this change was to permit land previously split into separate parcels by a crossing feeder or local road to qualify as a single contiguous parcel for homesteading purposes.

B. Public Land Order 1613

The last PLO before statehood was PLO 1613, filed April 7, 1958 pursuant to the authority in 43 U.S.C.A. §971(a). PLO 1613 expressly revoked the PLO 601 reservation of a fee interest in specified lands for the through highways in Alaska, and established an "easement for highway purposes, including appurtenant protective, scenic, and service areas, over and across [certain described] lands" of 150 feet on each side of the centerline of the through highways. PLO 1613, Sec. 3. The effect of PLO 1613 as to through roads, and PLO 757 and DO 2665 jointly as to feeder and local roads was to dissolve the right-of-way **fee** interest in all federal roads in Alaska, and to replace it with an easement interest.

The provisions of PLO 1613 also converted certain withdrawals parallel to highways to easements: 50-foot widths for telephone lines and 20-foot widths for pipelines. These easements

---

[2] Those roads are named and listed in PLO 601, and also in State v. Alaska Land Title Association, 667 P.2d 714, 718, n. 4 (Alaska 1983).

were parallel to the highway, and could run next to or within the highway easement.

The last subject dealt with by PLO 1613 was the grant of a preference right to adjoining landowners to purchase the land released from withdrawal. PLO 1613, para. 7, specified that:

> Owners of such private lands shall have a preference right to purchase at the appraised value so much of the released lands adjoining their private property as . . . equitable, . . . only up to the centerline of the highways . . . .

In summary, a review of PLO 1613 as a whole shows an intent: to convert the remaining Alaska highway withdrawals to easements; to convert the other rights-of-way for telephone lines and pipelines to easements; and to permit sale of the fee interest underlying these highway and utility easements to qualifying adjoining property owners.

C. Transfers of Jurisdiction over Alaska Roads

Jurisdiction over roads in Alaska changed over the years prior to statehood. From 1905 to 1932, roads in Alaska were administered through the Alaska Road Commission, under the Secretary of War. In 1932, Congress transferred the Alaska Road Commission to the Department of the Interior, and provided that "The Secretary of the Interior shall execute or cause to be executed all laws pertaining to the construction and maintenance of roads and trails and other works in Alaska . . . ." 48 U.S.C.A. § 321(a), repealed June 25, 1959. The Secretary of Interior was also granted the "power, by order or regulation, to distribute the duties and authority hereby transferred." 48 U.S.C.A. § 321(b).

Three years before statehood, Congress transferred the functions, duties, and authority over roads in Alaska from the Department of the Interior to the Department of Commerce. Federal-Aid Highway Act of 1956, Pub. L. No. 84-627, 70 Stat. 374, 5 U.S.C.A. § 485, repealed August 27, 1958, This authority remained in the Secretary of Commerce until statehood. See § 119 of Pub. L. No. 85-767, August 27, 1958, 72 Stat. 898, 23 U.S.C.A. § 119, repealed July 1, 1959.

Section 107(e) of the 1956 Federal-Aid Highway Act authorized the Secretary of Commerce to distribute the functions and duties transferred by the Act as the Secretary deemed appropriate. On August 17, 1956, the Secretary of Commerce

delegated authority over the construction and maintenance of roads and other works in Alaska by transferring the Alaska Road Commission to the Bureau of Public Roads. 21 Fed. Reg. 6682 (September 5, 1956). A few days after that delegation, the Secretary of Interior and the Secretary of Commerce agreed that the easements formerly managed by the Alaska Road Commission for the Department of the Interior (1) would be transferred to the Department of Commerce and (2) would remain in full force and effect. Memorandum of Agreement dated August 15, 1956, 21 Fed. Reg. 6395-96 (August 24, 1956). The next transfer of jurisdiction occurred at statehood.

II. THE STATE'S INTEREST IN ROADS AT THE TIME OF STATEHOOD

A. The Alaska Statehood Act

The Alaska Statehood Act, Pub. L. No. 85-508, 72 Stat. 339 (July 7, 1958), in Sec. 5, specified:

> Sec. 5. The State of Alaska and its political subdivisions, respectively, shall have and retain title to all property, real and personal, title to which is in the Territory of Alaska or any of the subdivisions. Except as provided in section 6 hereof, the United States shall retain title to all property, real and personal, to which it has title, including public land.

For the United States, the Section 6 exclusion included public lands, except those lands granted and subject to selection by the State of Alaska. The listed purposes for state land selection included fish and wildlife resources, schools, mineral permits, licenses, contracts, colleges, submerged lands, and other purposes. Land for highways and utilities is not listed in Section 6. Read together, sections 5 and 6 mean that the Alaska Statehood Act does not transfer title in the United States' highways to the State of Alaska.

B. The Alaska Omnibus Act and Quitclaim Deed

Shortly after statehood was granted, Alaska received the interest in its roads from the federal government pursuant to the Alaska Omnibus Act, Pub. L. No. 86-70, 73 Stat. 141 (June 25, 1959), and the resulting Quitclaim Deed. The Alaska Omnibus Act, in the "Highways" section, provided as follows:

> Sec. 21. (a) The Secretary of Commerce shall transfer to the State of Alaska by appropriate conveyance without compensation, but upon such terms and conditions as he may deem desirable, all lands or interests in lands, including buildings and fixtures, all personal property, including machinery, office equipment, and supplies, and all records pertaining to roads in Alaska, which are owned, held, administered by, or used by the Secretary in connection with the activities of the Bureau of Public Roads in Alaska [with two specified exceptions] . . .[3]

(emphasis added). The resulting Quitclaim Deed provided:

> [T]he Secretary of Commerce, Grantor, . . . does hereby devise, release, and quitclaim unto the State of Alaska, Grantee, its successors and assigns, subject to the condition set forth below, all rights, title, and interest of the Department of Commerce in and to all of the real properties . . . now owned, held, administered or used by the Department of Commerce in connection with the activities of the Bureau of Public Roads in Alaska . . . .
>
> . . . subject, however, to the condition that if the said Grantor . . . determines and publishes notice [within a certain specified time] . . . that all or any part of the above premises (sic) or any interests therein are needed for continued

---

[3] The same section also provided:

> (c)(1) The State of Alaska shall be responsible for the maintenance of roads, including bridges, tunnels, and ferries, transferred to it under subsection (a) of this section, as long as any road is needed for highway purposes.

This provision that the State of Alaska be responsible for maintenance of the roads transferred is consistent with the conveyance of easements rather than fee simple title, because ownership of the land does not preclude a delegation of the maintenance responsibility to the holder of the easement.

> retention in Federal ownership for purposes other than or in addition to road purposes, the Grantor may enter and terminate the estate hereby quitclaimed . . . .

Quitclaim Deed, dated June 30, 1959, recorded in Anchorage Recording District at Book 391, Page 12, and Juneau Recording District, Book 90, Page 243 (emphasis added).

It is a well-established principle of law that a Quitclaim Deed conveys only the interest held by the grantor. See, e.g., Anchorage v. Nesbett, 530 P.2d 1324, 1329, and n. 9 (Alaska 1975). Although Congress could have established that specific interests be conveyed to the State of Alaska, such as all fee simple interests, or all easements, Congress chose not to specify those interests. Instead, Congress directed that the "lands or interests in lands" to be conveyed to the State of Alaska were "owned, held, administered by, or used by the Secretary in connection with the activities of the Bureau of Public Roads in Alaska," whether they be interests in fee simple, easements, or anything else. Alaska Omnibus Act, 73 Stat. 141 at sec. 21(a) (1959).

By reason of the PLO 601, 757 and 1613 and DO 2665, however, the Department of Commerce generally administered only easements for highway purposes, and did not control the fee interest underlying the easements. Supra, at 1-3. See also State v. Alaska Land Title Association, 667 P.2d 714, 718, 719 and nn.5, 6, 720, 723 and n.12 (Alaska 1983), cert. den., 464 U.S. 1040, 104 S. Ct. 704. Therefore, the only interest that the Secretary of Commerce could convey to the State of Alaska under the Alaska Omnibus Act was an easement. Thus the Alaska Omnibus Act and the Quitclaim Deed, read as a whole, left the fee interests underlying the easements conveyed pursuant to section 21(a) of the Alaska Omnibus Act in the ownership of the United States.

C. Arguments for the Fee Interest

While there are some arguments for the proposition that the state received a fee simple interest, none of them are compelling in light of the right-of-way interests established under the Public Land Orders, the plain language of the Omnibus Act and Quitclaim Deed, related case law and general principles of law.

1. Isolated Language in the Omnibus Act

One argument that the state received a fee interest in its roads is based on the words "all lands or interests in lands"

in the Omnibus Act, and the words "all rights, title, and interest" in the Quitclaim Deed. 1986 Inf. Op. Att'y Gen. (663-86-0473; October 25) at 2-3. Based on those words, it can be argued that the United States, as the owner of the fee in those lands, conveyed all of its interest in the lands where the roads are located, and therefore, the state received fee simple title to the roads.

However, this argument ignores the qualifying language in both the Omnibus Act and the Quitclaim Deed, which each contain two qualifying clauses. The lands conveyed are restricted to such lands or interest in lands: (1) "which are owned, held, administered by, or used by the Secretary"; and (2) "in connection with the activities of the Bureau of Public Roads in Alaska . . . ." Thus, it cannot be said that the lands conveyed to the state consisted of "all lands or interests in lands" held by the United States and all departments thereof. The lands conveyed are clearly restricted and plainly described.

2. Merger of Interests

A second argument that the state received a fee simple interest in its roads is based on the concept that where the owner of two different interests (such as fee simple and easement) is the same, i.e., the United States, the interests merge and become one. 28 C.J.S. Easements sec. 57 (1941). This argument overlooks the fact that different departments and different Secretaries of those departments in the federal government had the legal responsibilities associated with those interests in Alaska, and those responsibilities may very well have been different, or even at cross-purposes. This argument also overlooks the qualifying language described in the previous paragraph.

3. The "Equal Footing" Doctrine

The "equal footing" doctrine has also served as a basis for the argument that the State of Alaska received fee simple title to its roads in the conveyance at statehood. 1986 Inf. Op. Att'y. Gen. (663-86-0473; October 25) at 3-4. The "equal footing" doctrine holds that when a state is admitted to the union of states that make up the United States, it is admitted as an equal to the other states. Because the State of Hawaii received fee title to its roads at statehood shortly after Alaska's statehood, we previously held that the State of Alaska was also entitled to receive the fee interest in its roads, as a matter of "equal footing".

However, the "equal footing" doctrine has not been interpreted so broadly. The doctrine applies to states' political

rights, not to economic standing. State of California ex rel. State Lands Commission v. United States, 457 U.S. 273, 102 S. Ct. 2432, 73 L. Ed. 2d 1 (1982). The application of the "equal footing" doctrine is best stated in United States v. State of Texas, 339 U.S. 707, 70 S. Ct. 918, 922, 94 L. Ed. 1221 (1950):

> The "equal footing" clause has long been held to refer to political rights and to sovereignty. See Stearns v. State of Minnesota, 179 U.S. 223, 245, 21 S.Ct. 73, 81, 45 L.Ed. 162 [1900]. It does not, of course, include economic stature or standing. There has never been equality among the States in that sense. Some States when they entered the Union had within their boundaries tracts of land belonging to the Federal Government; others were sovereigns of their soil. Some had special agreements with the Federal Government governing property within their borders. See Stearns v. State of Minnesota, supra, 179 U.S. pages 243-245, 21 S.Ct. pages 80-81. Area, location, geology, and latitude have created great diversity in the economic aspects of the several States. The requirement of equal footing was designed not to wipe out those diversities but to create parity as respects political standing and sovereignty.

While the "equal footing" doctrine has some application to the property rights of the states, such as navigable waters, the doctrine recognizes that the states came into the union on different terms and with different amounts of property within their borders. For example, Congress specifically declared that federal legislation in 1841, 1850, and 1862 providing certain grants of land for new states did **not** extend to the State of Alaska. Alaska Statehood Act, Pub. L. No. 85-508, 72 Stat. 339, Sec. 6(l) (July 7, 1958)(emphasis added). Cases subsequent to United States v. State of Texas have recognized that "[t]he power of Congress to dispose of any kind of property belonging to the United States is vested in Congress without limitation." State of Alabama v. State of Texas, 347 U.S. 272, 273, 74 S. Ct. 481, 98 L. Ed. 689 (1954).

There are other examples where the "equal footing" doctrine has been interpreted not to mean "equality." When Hawaii was admitted to the United States, the court upheld the power of the federal government to regulate inter-island air traffic on the theory that the flights were not within the boundaries of the

state, in spite of the "equal footing" argument that the decision would make Hawaii the only state without control of its intrastate air traffic. Island Airlines, Inc. v. C.A.B., 363 F.2d 120 (9th Cir. 1966). In State of Oklahoma, et al. v. Federal Energy Reg. Comm'n, 494 F. Supp. 636, 661 (W.D. Oklahoma 1980), aff'd 661 F.2d 832 (10th Cir. 1981), cert. denied 457 U.S. 1105, 102 S. Ct. 2902, 73 L. Ed. 2d. 1313 (1982), the court held that the federal government could regulate the price of natural gas within gas producing states on the ground that "the equal footing doctrine does not require economic equality among the states."

Finally, in two Nevada cases, the "equal footing" doctrine has not prevailed against the federal power to control property within the states. In State of Nevada, et al. v. United States, 512 F. Supp. 166, 171 (D. Nevada 1981), aff'd as moot 699 F.2d 486 (9th Cir. 1983), the court held that the federal government could change its policy from disposal to retention of federal land in the land grant states without violating the "equal footing" doctrine, because the doctrine "does not cover economic matters, for there never has been equality among the states in that sense." Similarly, in State of Nevada v. Watkins, 914 F.2d 1545, 1554-55 (9th Cir. 1990), cert. denied 111 S. Ct. 1105, 113 L. Ed. 2d 215 (1991), the court held that the "equal footing" doctrine did not permit Nevada to refuse to accept all high-level nuclear radioactive waste because Congress has the power to decide the issue under the Property Clause of the Constitution. See generally, United States v. State of Alaska, 423 F.2d 764, 768 (9th Cir. 1970), cert. den., 400 U.S. 967, 91 S. Ct. 363 (1970).

In summary, the "equal footing" doctrine has not required equality among the states in the property interests each state received from the federal government at statehood. It is not a valid basis upon which to claim that the State of Alaska received "fee simple" title to its highways and rights-of-way at statehood.

D. Other Applicable Principles and Rules

The usual presumptions concerning deeds are reversed for deeds from the federal government. Deeds are usually construed against the grantor in order to prevent remnants of property interests from remaining with the grantor and thereby creating confusing land title problems. 26 C.J.S. Deeds sec. 82(e) (1956). With government conveyances, deeds are construed in favor of the federal government and against the grantee in order to prevent the unintentional conveyance of the public domain and the public's rights in its lands. There is an

> established rule that land grants are construed favorably to the Government, that nothing passes except what is conveyed in clear language, and that if there are doubts they are resolved for the Government, not against it.

United States v. Union Pacific Railroad Co., 353 U.S. 112, 116, 77 S. Ct. 685, 687, 1 L. Ed. 2d 693 (1957), citing Caldwell v. United States, 250 U.S. 14, 20-21, 39 S. Ct. 397, 398, 63 L. Ed. 816 (1919). See also 63A Am. Jur. 2d Public Lands § 73 (1984), citing numerous cases. See also DeBoer v. United States, 470 F. Supp. 1137, 1139 (D. Alaska 1979), rev'd on other grounds, 653 F.2d 1313 (9th Cir. 1981); Southern Idaho Conference of Seventh-Day Adventists v. United States, 418 F.2d 411, 415, n. 8 (9th Cir. 1969). The rule applies where a conveyance is made from the federal government to a state government, and has recently been explained as "the principle that federal grants are to be construed strictly in favor of the United States." State of California ex rel. State Lands Commission v. United States, 457 U.S. 273, 287, 102 S. Ct. 2432, 2440, 73 L. Ed. 2d 1 (1982)(emphasis added), citing United States v. Grand River Dam Authority, 363 U.S. 229, 235, 80 S. Ct. 1134, 1138, 4 L. Ed. 2d 1186 (1960); and United States v. Union Pacific R. Co., 353 U.S. 112, 116, 77 S. Ct. 685, 687, 1 L. Ed. 2d 693 (1957). Applying this presumption to the facts here results only in the same conclusion: that the federal government conveyed highway easements to the State of Alaska in the Alaska Omnibus Act and Quitclaim Deed.

There is also a general rule of law that refutes a "fee simple" argument. That rule holds that, in the absence of statutes to the contrary, the public [government] acquires only an easement in highways, and title to the underlying fee remains in the owner. S. B. Penick & Co. v. New York Cent. R. Co., 111 F.2d 1006, 1007 (3d Cir. 1940); Fontenot v. Texaco, Inc., 271 F. Supp. 753, 755 (W.D. La. 1967), aff'd 397 F.2d 275 (5th Cir. 1968); Finch v. Matthews, 443 P.2d 833, 838 (Wash. 1968). Title to the fee is presumed to be in the abutting landowner. But where the legislature wants to take a fee interest on behalf of the public, it must clearly declare an intention to do so; otherwise, an easement only will be taken. Mott et al. v. Eno, 90 N.Y.S. 608 (N.Y. App. Div. 1904), 74 N.E. 229, 233, 181 N.Y. 346 (N.Y. 1905). In the case of Alaska's roads, there is no legislation, and no expressed legislative intent in either the federal or state statutes, purporting to place any interest other than an easement in the roads in the State of Alaska. On the contrary, the language consistently specifies that an "easement" for highway purposes is taken.

III. SUMMARY

The conclusion that the interest in roads conveyed to Alaska at statehood was generally that of an "easement", is supported by the following:

1. PLOs 757 and 1613, and DO 2665 that repealed an earlier PLO (601) reserving certain lands, and established "easements for highway purposes" in the lands previously withdrawn or reserved.

2. The provisions of the Alaska Statehood Act that the State and the United States would each retain title to all property to which it had title before statehood.

3. The provisions of the Alaska Omnibus Act and the Quitclaim Deed itself, which conveyed only the "lands or interest in lands . . . which are owned, held, administered by, or used by the Secretary [of Commerce] in connection with the activities of the Bureau of Public Roads in Alaska . . .", since those interests were generally easements.

4. The presumption applicable to federal government deeds construing the deed strictly in favor of the federal government. This presumption precludes an inference that the Department of Commerce conveyed a greater interest than it held in the property.

5. The nature of quitclaim deeds, which convey only whatever interest the grantor holds. In this case, the interests held, administered, or used by the Secretary of Commerce were generally easements.

6. The principle that the public acquires only an easement in highways, with title to the fee remaining in the owner, unless the legislature has clearly stated an intention to take the fee interest on behalf of the public. No legislative intent to take the fee interest appears in the legislative history for the ownership of Alaska's highways. Indeed, all of the legislative language speaks of "easements".

IV. CONCLUSION

Based on the above, it is our conclusion that, under the Alaska Omnibus Act and resulting Quitclaim Deed, the State of Alaska received, in general, easements for its roads at statehood.

RFB:bb:dky

MEMORANDUM

State of Alaska

Department of Transportation & Public Facilities

TO: Steve C. Sisk, PE
Director, Design & Construction
Northern Region

DATE: April 25, 1991

FILE NO:

TELEPHONE NO: 474-2402

FROM: John A. Miller
Chief Right of Way Agent
Northern Region

SUBJECT: Omnibus Act Right of Way Interest

An October 25, 1985 AGO memo from Jack B. McGee to Mark S. Hickey discusses the issue of the State's interest in the rights of way quitclaimed by the Federal government to the State of Alaska by virtue of the 1959 Omnibus Act. In summary, the memo states that the entire federal interest was conveyed to the State for these rights of way as the quitclaim deed was issued pursuant to a federal statute. That is, if the federal government had fee interest on June 30, 1959, the date of the Omnibus Quitclaim Deed, then that entire fee interest was conveyed to the State. In support of this position, a 12/15/86 opinion by Assistant Attorney General Linda Walton stated that "The State of Alaska has always taken the position that the Commerce deed transferred to the state, all the federal government's interest in the roads."

Although this position may be valid, it is contrary to the understanding by which all DOT&PF Regional Right of Way sections operate and also contrary to DNR's current interpretation of the issue.

A decision to conform to the McGee opinion would have far reaching effects on DOT&PF's Right of Way operations. Most directly affected would be right of way leasing, relinquishment of excess right of way, and BLM utility permit clearances. Indirectly affected would be the department's credibility with the public after 30 years of proclaiming the rights of way to be easements. BLM has always taken the position that the Commerce department could only quitclaim the interest it had in the rights of way, which was an easement. As BLM has in the past and now continues to issue land patents to the centerline of our highways, a title conflict of this nature will ultimately result in litigation.

Therefore, we request that this issue be submitted to the Office of Strategic Management, Planning and Policy for reveiw and policy guidance. It is possible that a formal Attorney General's opinion on this issue may be necessary.

JFB/jfb

DOT/PF

Name/Section Jan Miller / R.O.W.

TELEPHONE/CONFERENCE DATA

PEOPLE INVOLVED | REPRESENTING

Clyde Stoltzfus. | Comm. Off.

Date: 4/23/91

Time: A.M.

Project No./Name

TOPICS: STATS OF Jack McGee OPINION (circa 1985) re FEE INTREST UNDER PLO/OMNIBUS RIGHT-OF-WAYS.

- HE IS NOT AWARE OF ANY FURTHER ACTIVITY ON THIS ISSUE. (i.e. ADD'L OPINIONS, SUITS, ETC.)
- THIS MEMO CAME FROM MARK HICKEY'S FILES & HE DOESN'T KNOW WHY THIS OPINION NOT ACTED UPON.
- WE AGREED IT WAS ADVISABLE TO SOLICIT FUTHER LEGAL OPINION ON THIS QUESTION (JAM TO REQUEST OF ATHENS) BEFORE TAKING FURTHER ACTION. WE AGREED FOLLOWING THIS ADVICE REPRESENTS MAJOR CHANGE IN SEVERAL AREAS & SHOULD BE APPROACHED CAUTIOUSLY

ACTION ITEMS:

Copies To: SISIC, PLATZKE, SWARTHOUT.

Signature: Jam.

MEMORANDUM State of Alaska

ROUTE	COPY		
		D & C DIRECTOR NORTHERN REGION	
		DIRECTOR	DATE
	X	DESIGN 4-18	C
		CONST	FILE NO:
	X	ROW 4-18	C
		PROJ CONT	TELEPHONE NO:
		REG DIR	SUBJECT:
		PLANNING	
		ADMIN	
		M & O	
	X	RETURN 5/8/K	

TO: Mark S. Hickey
Special Assistant
Department of Transportation
and Public Facilities

DATE: October 25, 1985

FILE NO: 366-473-86

TELEPHONE NO: 465-3603

FROM: Harold M. Brown
Attorney General

By:
Jack B. McGee
Assistant Attorney General
Transportation Section-Juneau

SUBJECT: BLM's jurisdictional claim of underlying fee beneath Alaska highway easements

Over 80% of all the public roads in Alaska have been created by public land orders issued by the federal government. The effect of these land orders was to create public road easements across much of Alaska. See Alaska Land Title Association v. State, 667 P.2d 714 (Alaska 1983). Most of these roads were transferred to the state by the Department of Commerce in 1959.

In reference to those federally created public highways in Alaska that have been transferred to the State of Alaska by the United States Department of Commerce, the Bureau of Land Management of the U.S. Department of Interior (BLM) has taken the position that any placement of below-ground utilities within the right of way of any such highway requires the permission of BLM. BLM is apparently arguing that even though a particular highway may have been transferred to the state by the quitclaim deed issued by the Department of Commerce in 1959, control of the underlying fee remains with BLM and, therefore, any use of this underlying fee requires BLM's permission. 1/

Since BLM's argument turns on its claim to the fee underlying the road easement, an analysis of BLM's argument must begin first with a discussion of the nature of the interest of

---

1/ The first observation to be made of this argument is that, if valid, it holds only for those highway segments that presently cross federal lands. Lands over which a highway passes that have been conveyed to the state remain untouched by BLM's argument since the general rule is that those conveyances include the underlying fee subject to the public road easement. See M.B.M Inc. v. Geyer, 655 F.2d 530 (C.A. Virgin Islands (1981)), Evers v. Custer County, 745 F.2d 1196 (9th Cir. 1984), Chickasha Cotton Oil Co. v. Town of Maysville, 249 F.2d 542 (Okl. 1958). As subsequently discussed in this memo, however, there are sound reasons for doubting the validity of BLM's argument.

the United States that was transferred to the state by the quitclaim deed and, second, with a discussion of the nature of the interest that is created by a public road easement. Discussions of both follow below.

a) The Nature of the Interest Transferred to Alaska by the Quitclaim Deed of 1959:

The quitclaim deed of 1959 was issued pursuant to the authority granted by the Alaska Omnibus Act, Pub. Law 86-70, § 21(a), 73 Stat. 141, (1959). The pertinent parts of this act read as follows:

> Sec. 21. (a) The Secretary of Commerce shall transfer to the State of Alaska by appropriate conveyance without compensation, but upon such terms and conditions as he may deem desirable, all lands or interests in lands, including buildings and fixtures, all personal property, including machinery, office equipment, and supplies, and all records pertaining to roads in Alaska, which are owned, held, administered by, or used by the Secretary in connection with the activities of the Bureau of Public Roads in Alaska ...
>
> (c)(1) The State of Alaska shall be responsible for the maintenance of roads, including bridges, tunnels, and ferries, transferred to it under subsection (a) of this section, as long as any such road is needed for highway purposes.

It is clear that section 21(a) required the Secretary of Commerce to transfer "all lands or interests in lands, ... pertaining to roads in Alaska, which are owned, held, administered by or used by the Secretary in connection with the activities of the Bureau of Public Roads in Alaska ..." (emphasis added). BLM would interpret this language to mean that the Secretary was authorized to transfer only that interest in these roads that was held by the Secretary of Commerce. But this is not what section 21(a) says. The language is clear; it reads: "shall transfer ... all lands and interests in lands ..." This can only mean all interests in lands held by the United States. If it meant to transfer only the duty of maintenance and control (leaving the underlying fee with the United States), section 21(c)(1) would be wholly unnecessary and superfluous. It is, of course, a cannon of statutory construction that a law is to be construed in such a way that all of its parts, taken together,

a 16" Smooth Bore

have a coherent meaning. See Sands, 2A Sutherland Statutory Construction § 46.06, p. 104 and the cases cited in notes 2 and 3.

Since BLM's interpretation would render section 21(c)(1) wholly superfluous, it is not a proper (or even intelligible) reading of section 21(a) of the Alaska Omnibus Act. The correct meaning of section 21(a) is that it required the Secretary of Interior to transfer any and all interest that the United States had in all those public roads in Alaska that were administered by the Secretary of Commerce. The quitclaim, issued by the Secretary, then must be construed as doing exactly what the Act required.

The above interpretation of section 21(a) is in full accord with the manner and mode in which the transfer of roads to the newly formed State of Hawaii was accomplished. Section 5(b) of the Hawaii Statehood Act, Pub. Law 86-2, § 5(b), 73 Stat. 4, (1959) reads as follows:

> Except as provided in subsection (c) and (d) of this section, the United States grants to the State of Hawaii, effective upon its admission into the Union, the United States' title to all the public lands and other public property within the boundaries of the State of Hawaii, title to which is held by the United States immediately prior to its admission into the Union. The grant hereby made shall be in lieu of any and all grants provided for new States by provisions of law other than this Act, and such grants shall not extend to the State of Hawaii.

Hawaii, upon statehood, got the entire interest of the United States in the public roads located within its boundaries, both surface easement and underlying fee. This fact assumes no small degree of importance because of the "equal footing doctrine." 2/ Since the equal footing doctrine requires all states to be admitted to the Union on an equal footing with each other, an interpretation that would have Alaska receiving title from the federal government to only a surface easement in public roads while Hawaii received the entire interest of the federal government in public roads would obviously violate this constitutional

---

2/ See Shively v. Bowlby, 152 U.S. 1 (1893); and U.S. v. Texas, 339 U.S. 707 (1950).

doctrine. Such an interpretation should be avoided and it can be avoided only by interpreting the Alaska Omnibus Act as requiring the transfer to the State of Alaska of the full interest of the United States in those public roads "owned, held, administered by, or used by" the Department of Commerce.

The above discussion casts considerable doubt on the truth of the premise inherent in BLM's argument, i.e., that the fee underlying the public road easement transferred by the quitclaim deed remained with the federal government.

b) The Nature of the Interest that is Created by a Public Road Easement:

Even if one assumes, arguendo, that the quitclaim deed did not pass the entire interest of the United States in these roads but rather conveyed to the state only a surface easement, BLM's position still faces a fundamental objection. And this objection stems from the nature of the interest that is created by a public road easement.

In the most general sense, a public road easement vests in the general public a right of "passage and repassage" across the area defined by the easement. See O'Sullivan v. Brown, 171 F.2d 199 (5th Cir. 1948). The permissible uses of a highway easement, however, are not narrowly restricted to passage and travel. See Mayor and Council City of Baltimore, 147 F.2d 786 (4th Cir. 1945). Moreover, the scope of a public road easement extends upward and downward for a distance that is sufficient to accommodate and protect all proper uses of the roadway. City of Dixon v. Snow and Weinman, 183 N.E. 570, 571 (Ill. 1932). Sears v. Crocker, 69 N.E. 327 (Mass. 1904), and Anderson v. Stuarts Draft Water Co., 87 S.E.2d 756 (Va. 1955). And proper uses of a roadway include the placement of telephone poles, pipes, electrical conducts, sewers, and water mains. See Village of Grosse Point v. Ayres, 235 N.W. 829 (Mich. 1931); State v. Dreyer, 129 S.W. 904 (Mo. 1910); Levy v. Schwartz, 95 A.2d 322 (Md. 1953); Riley v. Davidson, 196 S.W.2d 557 (Tex. 1946) and St. Tammany Waterworks Co. v. New Orleans Waterworks Co., 120 U.S. 64 (1887). A highway easement thus includes with it the right to the use of the easement area, both above and below the surface, for the placement of utilities.

From the above it is clear that a public highway easement can be utilized for more than just simple travel and that other lawful uses include the placement of underground utilities. Of course, the control of the various uses that might be made of a public highway right-of-way remains in the hands of the public

authority that is charged by law with the duty to maintain the highway. See Clark v. Pour, 274 U.S. 554 (1927); Morris v. Doby, 274 U.S. 135 (1927); Frost and F. Trucking v. Railroad Comm., 271 U.S. 583 (1926) and United States v. Rogge, 10 Alaska 130 (Alaska 1941).

As for the public highways that are the subject of the Secretary of Commerce's quitclaim deed to the State of Alaska, it is clear that the state has the duty and authority to maintain these highways: Section 21(c) of the Alaska Omnibus Act required the state to assume the responsibility for the maintenance of the roads transferred by the quitclaim deed. 3/ (The U.S. Department of Commerce was vested with the exclusive authority to control and maintain public roads in Alaska prior to the issuance of the quitclaim deed. 4/)

Since, as a matter of law, the State of Alaska has been assigned the exclusive duty to maintain these highways, the control over their use remains with the state. BLM, since it has no maintenance responsibilities for these roads, does not have any control over their use either. Accordingly, BLM has no authority over the placement of under-ground utilities within the boundaries of these public road rights-of-way.

Summary

BLM's claim that it retains control of the subsurface area beneath those public roads transferred to the state by the quitclaim deed issued by the Department of Commerce must be rejected for two reasons. First, the quitclaim deed itself, since it was issued pursuant to a federal statute, must be interpreted as having conveyed the entire federal interest in these roadways to the state. Secondly, even if one concedes, arguendo, that the quitclaim deed transferred only an interest in a road easement, that interest is sufficient onto itself to give the State of Alaska exclusive control over any below-surface use of the easement.

JBM:ebc

3/ Even the fact that the federal government has aided in the construction of a state highway does not diminish the power of the state to regulate and control the highway. See Morris v. Doby, supra.

4/ See Act of August 27, 1958, Pub. Law 85-767, § 119, 72 Stat. 885, 898 (1958).

DOT easement policy changed

The Department of Transportation revised its procedures on notifying people about certain easements following an ombudsman inquiry into a complaint in Ketchikan.

No one knew about the 100-foot easement on the North Point Higgins Road. The Ketchikan Gateway Borough wasn't aware of it, nor were surveyors, nor the title insurance company, and least of all the couple who bought a lot on the road in 1982. When the Department of Transportation and Public Facilities announced plans to rebuild the road in the fall of 1989, these property owners were unhappy to learn their house sat on the edge of the easement and their carport encroached into it.

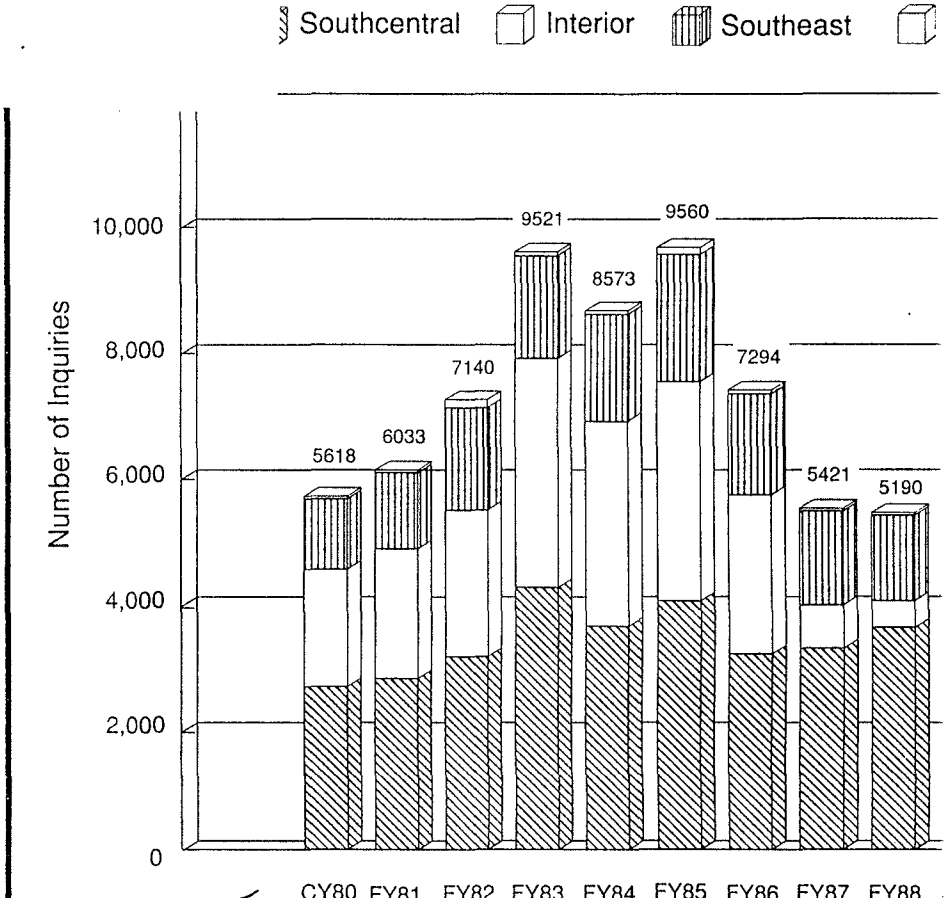
The easement is the result of Public Land Order No. 601, passed by Congress in 1949, which listed many highways in Alaska and applied to many unnamed local roads. The department's right-of-way section uncovered the public land order during a routine check of federal, territorial and state highway records. Earlier surveys and plats failed to change the original 66-foot easement to the 100-foot corridor mandated by the federal order.

The angry property owners who contacted the ombudsman's office challenged the state's right to the easement and also the department's lack of adequate notice about this obscure federal order. The ombudsman agreed to review whether the department could have handled the public notice better.

The ombudsman found, and agency officials agreed, that the department should have notified unsuspecting property owners by letter. Highway officials routinely notify property owners whose land they intend to purchase but don't usually send letters to people who are only affected by easement work. Department officials have revised their procedures to require a letter of notice in cases where easements set by public land orders are not general knowledge. John Jordan, chief right-of-way agent for the Southeast region, said this step "should go far in reducing future conflicts."

The property owners were not required to move their carport.

Source of Citizen Inqui



I AM UNAWARE OF SUCH A POLICY ?

Note: Severe budget cuts f… …nks ombudsma
It was reopened in …

Bolshevik yellow rag Communism— Just BECAUSE you see it in print you must be skeptical

DFYS transports runaway

In the "fiddling while Rome burns" category, last winter the Division of Family and Youth Services refused to transport a runaway girl to the home of her mother, despite the fact that the state had legal custody of the child and the child was living "on the street."

The division took the position that the father, who the child had run away from and who had allegedly abused the child, could afford the plane ticket and the agency should not be responsible for the cost.

After getting nowhere with the field office, the investigator contacted the regional DFYS director and pointed out that the state's liability in the event that something should happen to a child in its custody could be hundreds of thousands of dollars.

The director agreed that the ticket was cheap insurance and de…

Bus… …vision

Irate that his neighbor operates a guide service from a home in a rural subdivision, a central Alaska homeowner called the Fairbanks ombudsman's office for help. According to the homeowner, it is illegal to hunt in the subdivision.

The homeowner said the neighbor is violating his state-issued guide license by operating the guide business there. Even if it was allowed, the state would be wrong to license the guide business to operate in the subdivision, he argued.

The ombudsman found that the neighbor has both a current guide-

MEMORANDUM

State of Alaska

Department of Transportation & Public Facilities

TO: Charles E. Cole
Attorney General

DATE: May 1, 1991

FILE NO:

TELEPHONE NO: 465-3900

SUBJECT: Request For a Formal Legal Opinion

FROM: Frank G. Turpin
Commissioner

In researching the interest we control in our highway rights of way, we came across a legal memorandum written by one of your Assistant Attorney Generals that takes a different view than we have previously claimed. While we have always claimed a highway easement was transferred to the state by the Omnibus Act, as you will see from the memorandum, we may well have received a fee simple. (A copy of the memorandum written by Jack McGee is attached.) We feel we have a public duty to advocate a fee simple if that is the case. We anticipate this will be strenuously opposed by federal land managers should we adopt this position.

We believe the change suggested by Mr. McGee's memorandum will have a major affect on other land owners in the state. Consequently, I hereby request that the memorandum be reviewed by a second attorney and, if the result is the same, published as a formal Attorney General's Opinion. (Our request for a second opinion should not be seen as questioning the legal abilities of Mr. McGee. We respect his abilities and trust him implicitly. Mr. McGee agrees a second opinion should be rendered because of the nature of the change suggested.)

Should you need further information on this request, please contact Clyde Stoltzfus at the number listed above.

Attachment

cc: M. Clyde Stoltzfus, Special Assistant to the Commissioner

ROUTE	COPY	D & C DIRECTOR NORTHERN REGION
		DIRECTOR
		DESIGN
		CONST
	X	ROW 5-7-91
		PROJ CONT
	X	REG DIR 5-7-91
		PLANNING
		ADMIN
		M & O
X		RETURN

MEMORANDUM State of Alaska

TO: Mark S. Hickey
Special Assistant
Department of Transportation
and Public Facilities

DATE: October 25, 1985

FILE NO: 366-473-86

TELEPHONE NO: 465-3603

FROM: Harold M. Brown
Attorney General

By:
Jack B. McGee
Assistant Attorney General
Transportation Section-Juneau

SUBJECT: BLM's jurisdictional claim of underlying fee beneath Alaska highway easements

Over 80% of all the public roads in Alaska have been created by public land orders issued by the federal government. The effect of these land orders was to create public road easements across much of Alaska. See Alaska Land Title Association v. State, 667 P.2d 714 (Alaska 1983). Most of these roads were transferred to the state by the Department of Commerce in 1959.

In reference to those federally created public highways in Alaska that have been transferred to the State of Alaska by the United States Department of Commerce, the Bureau of Land Management of the U.S. Department of Interior (BLM) has taken the position that any placement of below-ground utilities within the right of way of any such highway requires the permission of BLM. BLM is apparently arguing that even though a particular highway may have been transferred to the state by the quitclaim deed issued by the Department of Commerce in 1959, control of the underlying fee remains with BLM and, therefore, any use of this underlying fee requires BLM's permission. 1/

Since BLM's argument turns on its claim to the fee underlying the road easement, an analysis of BLM's argument must begin first with a discussion of the nature of the interest of

---

1/ The first observation to be made of this argument is that, if valid, it holds only for those highway segments that presently cross federal lands. Lands over which a highway passes that have been conveyed to the state remain untouched by BLM's argument since the general rule is that those conveyances include the underlying fee subject to the public road easement. See M.B.M Inc. v. Geyer, 655 F.2d 530 (C.A. Virgin Islands (1981)), Evers v. Custer County, 745 F.2d 1196 (9th Cir. 1984), Chickasha Cotton Oil Co. v. Town of Maysville, 249 F.2d 542 (Okl. 1958). As subsequently discussed in this memo, however, there are sound reasons for doubting the validity of BLM's argument.

have a coherent meaning. See Sands, 2A Sutherland Statutory Construction § 46.06, p. 104 and the cases cited in notes 2 and 3.

Since BLM's interpretation would render section 21(c)(1) wholly superfluous, it is not a proper (or even intelligible) reading of section 21(a) of the Alaska Omnibus Act. The correct meaning of section 21(a) is that it required the Secretary of Interior to transfer any and all interest that the United States had in all those public roads in Alaska that were administered by the Secretary of Commerce. The quitclaim, issued by the Secretary, then must be construed as doing exactly what the Act required.

The above interpretation of section 21(a) is in full accord with the manner and mode in which the transfer of roads to the newly formed State of Hawaii was accomplished. Section 5(b) of the Hawaii Statehood Act, Pub. Law 86-2, § 5(b), 73 Stat. 4, (1959) reads as follows:

> Except as provided in subsection (c) and (d) of this section, the United States grants to the State of Hawaii, effective upon its admission into the Union, the United States' title to all the public lands and other public property within the boundaries of the State of Hawaii, title to which is held by the United States immediately prior to its admission into the Union. The grant hereby made shall be in lieu of any and all grants provided for new States by provisions of law other than this Act, and such grants shall not extend to the State of Hawaii.

Hawaii, upon statehood, got the entire interest of the United States in the public roads located within its boundaries, both surface easement and underlying fee. This fact assumes no small degree of importance because of the "equal footing doctrine." 2/ Since the equal footing doctrine requires all states to be admitted to the Union on an equal footing with each other, an interpretation that would have Alaska receiving title from the federal government to only a surface easement in public roads while Hawaii received the entire interest of the federal government in public roads would obviously violate this constitutional

---

2/ See Shively v. Bowlby, 152 U.S. 1 (1893); and U.S. v. Texas, 339 U.S. 707 (1950).

authority that is charged by law with the duty to maintain the highway. See Clark v. Pour, 274 U.S. 554 (1927); Morris v. Doby, 274 U.S. 135 (1927); Frost and F. Trucking v. Railroad Comm., 271 U.S. 583 (1926) and United States v. Rogge, 10 Alaska 130 (Alaska 1941).

As for the public highways that are the subject of the Secretary of Commerce's quitclaim deed to the State of Alaska, it is clear that the state has the duty and authority to maintain these highways: Section 21(c) of the Alaska Omnibus Act required the state to assume the responsibility for the maintenance of the roads transferred by the quitclaim deed. 3/ (The U.S. Department of Commerce was vested with the exclusive authority to control and maintain public roads in Alaska prior to the issuance of the quitclaim deed. 4/)

Since, as a matter of law, the State of Alaska has been assigned the exclusive duty to maintain these highways, the control over their use remains with the state. BLM, since it has no maintenance responsibilities for these roads, does not have any control over their use either. Accordingly, BLM has no authority over the placement of under-ground utilities within the boundaries of these public road rights-of-way.

Summary

BLM's claim that it retains control of the subsurface area beneath those public roads transferred to the state by the quitclaim deed issued by the Department of Commerce must be rejected for two reasons. First, the quitclaim deed itself, since it was issued pursuant to a federal statute, must be interpreted as having conveyed the entire federal interest in these roadways to the state. Secondly, even if one concedes, arguendo, that the quitclaim deed transferred only an interest in a road easement, that interest is sufficient onto itself to give the State of Alaska exclusive control over any below-surface use of the easement.

JBM:ebc

3/ Even the fact that the federal government has aided in the construction of a state highway does not diminish the power of the state to regulate and control the highway. See Morris v. Doby, supra.

4/ See Act of August 27, 1958, Pub. Law 85-767, § 119, 72 Stat. 885, 898 (1958).

WALTER J. HICKEL, GOVERNOR

PLEASE REPLY TO:

☒ 1031 WEST 4TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE: (907) 269-5100
FAX: (907) 276-3697

☐ KEY BANK BUILDING
100 CUSHMAN ST., SUITE 400
FAIRBANKS, ALASKA 99701-4679
PHONE: (907) 451-2811
FAX: (907) 451-2846

☐ P.O. BOX 110300 - STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 463-5295

CHIEF R/W AGENT	
PRE AUDIT	
✓ ENGINEERING	
TITLE	
PLANS	
MATERIALS	
APPRAISALS	
NEGOTIATIONS	
Relocation / Prop. Mgmt.	
AIRPORTS	
RETURN TO:	
✓ FILE	

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

May 3, 1993

RECEIVED R/W
MAY 11 1993
Northern Region DOT & PF

Attn: Richard Fusick
National Archives Civil Reference Branch
7th & Pennsylvania, Room 13E
Washington, D.C. 20408

Re: Research Request
Property Associated with Former
Copper River and Northwestern
Railway, No. 661-93-0533

Dear Mr. Fusick:

In response to a telephone inquiry from my legal assistant, Shirley Rynearson on April 6, 1993, regarding property transferred to the State of Alaska at statehood, you suggested I send you a written description of what I am looking for. I am actually interested in information on a more focussed subject, of which statehood transfer documentation is the most critical part. I am researching the chain of ownership of land and personal property associated with the former Copper River and Northwestern Railway which ran from Valdez, Alaska, to the Kennicott Copper Mine near McCarthy, Alaska in the early part of this century.

Please search your archives for the following materials:

1. Any schedule or list of personal property, buildings, fixtures, or structures--such as bridges or trestles--received by the United States from the Copper River and Northwestern Railway Company pursuant to a relinquishment dated March 29, 1945;

2. A December 11, 1957 agreement between the Interior Bureau of Public Roads and the Department of Commerce regarding ownership of scrap iron and jurisdiction over right-of-way relating to the former Copper River and Northwestern Railway Company;

3. Any portion of the schedules of property conveyed by the Secretary of Commerce to the State of Alaska pursuant to section 21 of the Act approved by the President June 25, 1959 (73 Stat. 141), which describe personal property, buildings, fixtures, or structures--such as bridges or trestles--relating to the Copper River and Northwestern Railway right-of-way. The Secretary of Commerce issued

RECEIVED
MAY 05 1993
DOT & PF CENTRAL REGION

R/W CENTRAL REGION
RECEIVED
MAY 5 1993

ACTION								
COPY								
	DWF	JLJ	DEW	CRE	REK	JHS	OTHER	FILE

03-C5LH

several transfer documents, each with schedules or property transferred. I already have the **June 30, 1959 Quitclaim Deed**, plus the following schedules:

Schedule A--Highways, 60 pages.
Schedule B--Improved Real Property, 54 pages.
(Cover sheet and 53 pages)
Schedule C--Unimproved Real Property, 62 pages.
(Cover sheet and 61 pages)

I also have the **June 30, 1959 Transfer of Personal Property to the State of Alaska Relative to Highways and Highway Functions**, plus the following complete and partial schedules:

* **Schedule D--Personal Property**, 319 pages.
(My copy of a Schedule D consists of a coversheet plus only 186 pages. I also have a "**Corrections--Schedule D--Equipment and Supplies**" consisting of a cover sheet and 12 pages)
Schedule E--Other Personal Property, 3 pages.
(I have a copy of a cover sheet plus 2 pages)

I also have the **June 30, 1960 Transfer of Personal Property to the State of Alaska Relative to Highways and Highway Functions**, but <u>not</u> the schedules D-2 or D-3:

* **Schedule D-2--Personal Property**, 104 pages.
* **Schedule D-3--Personal Property**, 27 (?) pages.
Schedule E-3--Personal Property, 1 page.
(I have a copy of a cover sheet plus 1 page)

I am most interested in the schedules I have starred: the balance of Schedule D and Schedules D-2 and D-3. According to a memorandum from H.E. Cunningham, Western Counsel, to C.W. Enfield, General Counsel (Dept. of Commerce?) dated June 1, 1959 (partial copy enclosed) Those schedules were tentatively to contain the following:

<u>Schedule D. Miscellaneous real property</u>. Included will be such items as the Copper River Railroad right-of-way including bridges thereon and cable crossing of river. That right-of-way is available for road purposes but not yet fully utilized by road construction.

<u>Schedule E. Miscellaneous personalty property</u>. Included will be such items as the rails available, or as will become available, from the abandoned Copper River Railroad. Note: Shelters along flag trails provided

with ARC funds haver not been carried on property records. Their locations and conditions are indefinite and it is considered that they may be disregarded.

The materials I have gathered all came from either the Alaska State of Alaska Archives in Juneau, Alaska, or the Alaska Department of Transportation and Public Facilities files. Schedule E and E-3 consist almost exclusively of Copper River Highway (former Railway) rails located at Cordova, Alaska in the Bureau of Public Roads, Anchorage Division. Unfortunately, none of the 186 pages of Schedule D I have obtained relate to the Copper River Railway. I suspect the missing 133 pages probably contain the information I need.

Although I have identified the starred items as most likely to contain the information I need, I would also be interested in knowing what other materials you have that may also be relevant. Please let me know what materials you have responsive to this request at your earliest convenience. Thank you for your assistance.

Sincerely Yours,

CHARLES E. COLE
ATTORNEY GENERAL

By: John L. Steiner
John L. Steiner
Assistant Attorney General

jls

cc: John Miller, DOT&PF
Patte Larson, Library Asst. I, Alaska State Archives
Karen Lind, ROW Agent, DOT&PF
Judy Bittner, ADNR, Historic Properties

26-00 Mr. C. W. Enfield, General Counsel
Washington, D. C.

June 1, 1959

26-40 H. E. Cunningham, Western Counsel H. E. CUNNINGHAM
San Francisco, California

Report on Certain Matters Pertaining to Alaska Omnibus Bill

Following is a brief rundown on preparations for transition of certain BPR functions under the Omnibus Bill if enacted into law relative to Alaska Statehood. Presumption is made that final Act will conform generally to H.R. 7120.

INVENTORY

Property inventories relating to Sec. 21(a) of the Bill are proceeding according to schedule and will be ready by June 15, 1959, with provision for making them effective as of June 30, 1959; i.e., inventory of stocks and supplies to be incorporated as of latter date. Property to be retained by BPR for its own activities and functions has been separately determined and listed. Schedules for property to be transferred to State will be (tentatively) as follows:

Schedule A. Road systems. Identification of individual roads by termini, length (miles), and principal points supported by strip maps and vicinity maps. No flag trails will be included as no property interests appear involved, and no potential prescriptive rights. Pedestrian cable crossings will be included where built with ARC funds and still in existence. One tramway (Nome) is not to be included--understood to be owned by Alaska although was operated by ARC. Ferries (one remaining) will be included. No airports or airstrips are involved.

Schedule B. Real Property - buildings. This will cover all buildings and the lands they occupy. Complete records, with legal descriptions, are now available and details will be set forth in the form of individual attachments. Glennallen depot record will also show State School Board building which occupies portion of the depot grounds. Also include tank farm on Alaska RR property under lease (or easement), Valdez asphalt plant and Nome depot on leased property (10 years) subject to annual rent charge.

Schedule C. Personalty. Major breakdowns will be (1) depreciable property, (2) non-depreciable property, and (3) office furniture and supplies. These will follow current property accountability practices. Small tools and parts inventories will be identified generally such as "parts and small tools stock at Fairbanks depot". Control is by "bin" records. BPR records will show money value (as of June 30, 1959) but

such figure will be omitted in inventory schedule furnished to Alaska.

Schedule D. Miscellaneous real property. Included will be such items as the Copper River Railroad right-of-way including bridges thereon and cable crossing of river. This right-of-way is available for road purposes but not yet fully utilized by any road construction.

Schedule E. Miscellaneous personalty property. Included will be such items as the rails available, or as will become available, from the abandoned Copper River Railroad. Note: Shelters along flag trails provided with ARC funds have not been carried on property records. Their locations and condition are indefinite and it is considered that such items may be disregarded.

In addition to the foregoing properties are the following items (or categories) for handling in the manner indicated, but prior to July 1, 1959:

Custody by National Defense. Tank farm now situated on Ladd Air Force Base and serviced by Army pipeline. If not permissible to use for road purposes for work performed for State, should negotiate with local post commander to take over custody and jurisdiction of tank farm.

Properties to be considered for declaration as excess. Included will be (1) one apartment building at Fairbanks and two apartment buildings at Anchorage, also (2) two lots at Palmer donated to Federal Government not needed in reference to road functions. The latter requires removal of cloud on title from overlapping descriptions, now underway through correspondence.

Sources of material for road purposes. All of these are understood to be by permits or licenses according to available records. These will be listed for separate referral to the State as a matter of record. BPR will continue to exercise its privileges in reference thereto while performing work for the State.

CONVEYANCE OF PROPERTY; CONTRACTS

Concurrently with the completion of the aforesaid inventories will be the preparation of drafts of three instruments in cooperation with the State:

1. Conveyance of the properties listed in Schedules A through E to the State of Alaska under Sec. 21(a) of the Bill.

2. Contract between BPR and State under Sec. 44(c) for BPR to perform road building and maintenance for State on reimbursable