

From: Jim Cantor<jim_cantor@law.state.ak.us>
Sent: Thursday, December 8, 2005 4:41 PM
To: mike_barton@dot.state.ak.us; andrew_niemiec@dot.state.ak.us
Cc: Nancy Gordon; Jim Cantor; Elizabeth Barry; Craig Tillery; johnf_bennett@dot.state.ak.us
Subject: Airport titles

This message is confidential as an attorney-client communication and under the deliberative process privilege. Do not place this confidential message in a public file.

You asked me about the process for asserting title to the Kantishna, Chisana, and May Creek Airports. These airports are located within the boundaries of national parks. In the past, the National Park Service has denied that the state has title interests in these airports.

The federal Quiet Title Act provides the most probable route for determining title to these disputed properties. An action under this act, 28 U.S.C. § 2409a, would occur in federal court. Under the act, the state would have to provide six months prior notice to the federal government of its intention to sue. The notice would have to explain the basis for the proposed lawsuit.

Land cases based on historical records can be quite expensive. As an example, the state spent approximately \$500,000 asserting title under RS 2477 to the Harrison-Portage Creek trail, a case which settled prior to trial. In that case, expenditures included attorney and paralegal time, as well as payments for history, mining and aerial photography experts. Cases concerning airport titles may be cheaper since there would be fewer issues concerning the boundaries of the facilities. However, airport title cases would still be quite expensive in part because the cost of fact-intensive historical use issues would be multiplied by three since there are three airports with three different histories. Additionally, it is likely that both the National Park Service and environmental groups would vigorously oppose state efforts to obtain title to even small plots of land in the national parks.

Title to these airports became an issue in the late-1980s and early-1990s. DOT&PF and DNR researched title and developed theories to support state assertions of title. However, these theories were by no means straightforward paths to victory. The National Park Service also researched title and strongly believed the state did not have title interests. The Department of Interior Solicitor's Office similarly believed the state did not have title interests. Trustees for Alaska also researched and weighed in against the state, apparently prepared for battle because it believed the state was trying to develop footholds for greater issues within national parks. I have found several referrals to the state Attorney General's office, but have not found records explaining whether this office developed a position. Ultimately, it appears that after involvement of the federal agencies' national offices and John Katz's Washington D.C. Office of the Governor, the state decided not to actively pursue assertions of title at that time.

I reviewed DOT&PF's historical records concerning construction, use, and potential ownership of the three airports. I also reviewed DNR's records and prior conclusions concerning these airports, as well as FAA records. My review of the historical records and relevant law raised serious concerns in my mind about an assertion of state title. Rather than write a dissertation on my concerns, I suggest a conversation to evaluate the strengths or weaknesses of my concerns and discuss whether the state wishes to expend further funds pursuing these latent title issues at this time. I am available for a teleconference at your convenience.

CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION

James. E. Cantor
Chief Assistant Attorney General
Transportation Section

Phone: 907-269-5160
Fax: 907-279-5832
Email: jim_cantor@law.state.ak.us