

LAW OF SECTION LINE EASEMENTS IN ALASKA

By John W. Sedwick*

I. BASIC DEFINITION

Stated most simply, in Alaska a section line easement is a right-of-way for a public highway which is either 66 feet or 100 feet wide and centered on the section line. This simple definition raises only one obvious question: When is the easement only 66 feet wide? There are less obvious questions--some whose answers are unclear or disputed--which must also be examined before one can claim to understand section line easements. For example, in 1981 Alaska's Supreme Court said that construction of a public highway does not necessarily entitle the builder to use the entire width of

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refuges, recreation areas and critical habitat areas could be adversely affected by highway construction and use.

One special category of state lands which might be accorded different treatment is land granted to Alaska in trust for special purposes. At one time there were three principal categories of trust lands: mental health lands, school lands, and university lands.³⁹ In 1978, the state passed legislation making mental health lands and school lands part of the state's unrestricted grant public domain.⁴⁰ However, university lands remain subject to the trust obligations imposed by federal law.⁴¹ A literal application

39 University lands are lands granted to the territory by the Act of March 4, 1915 (38 Stat. 1214) and the Act of January 21, 1929 (45 Stat. 1091). School lands were certain sections 16 and 36 granted to the territory for the support of public schools by the Act of March 4, 1915 (38 Stat. 1214). Mental health lands comprised 100,000 acres of land to be selected by the territory pursuant to the Act of July 28, 1956, the Alaska Mental Health Enabling Act, P.L. 830 (70 Stat. 712). These grants to the territory were confirmed and transferred to the state upon its admission to the Union. Section 6(k) of the Alaska Statehood Act, P.L. 85-508 (72 Stat. 339).

40 Ch. 182 SLA 1978.

41 Chapter 182 SLA 1978 purported to convert the state's trust lands into general grant lands. However, the Alaska Legislature gave the University Board of Regents the option to accept or reject conversion of university lands to state public domain in exchange for a special trust fund. The Board rejected the exchange of trust lands for trust fund revenues as it was permitted to do by § 24, Ch. 182 SLA 1978. No such option applied in the case of school and mental health lands. Conversion of the mental health lands is presently the subject of litigation.

of the state's section line dedication statute would create section line easements on university lands. To avoid the dedication of section line easements on university lands, one would have to interpret AS 19.10.010 (and its predecessors) so that the statute does not apply to university lands. Such an interpretation might be justified on the basis that it is necessary to avoid a conflict between the state dedication statute and the paramount federal trust obligation.

It would, perhaps, also be possible to avoid the conflict by finding that the federal trust obligation can be satisfied through the state's payment to the University of the value of the easements. In State v. University of Alaska,⁴² a case reconciling the apparent conflict between the federal trust obligation and the Alaska Legislature's inclusion of university lands within the Chugach State Park, the Alaska Supreme Court held that the legislature had the authority to commit university lands to a park. The court held that the federal trust obligation could be discharged by payment to the University of the value of the lands taken.

It is tempting to apply the same logic to section line easements. There are, however, reasons for resisting such a solution. First, some of the section line easements were "taken" prior

42 624 P.2d 807 (Alaska 1981).

to the repeal of federal statutory restrictions on the use of university lands. One of the restrictions was that any interest created in university lands other than for university purposes would be null and void.⁴³ This restriction had been repealed prior to creation of Chugach State Park.⁴⁴ Second, calculating compensation for section line easements created at diverse locations at various times would be far more complex than calculating the value of block of land placed into Chugach State Park by a single legislative action. Third, it is more reasonable to infer (as the court did in the Chugach Park case) that the legislature really did mean to for the use of a single block of university lands within a specifically described park boundary, than it is to infer that the legislature intended to evaluate and pay for section line easements sprinkled across the expanse of non-contiguous university grant lands

V. IF A SECTION LINE EASEMENT EXISTS, WHAT IS THE PERMISSIBLE EXTENT OF ITS USE?

At the outset mention was made that a section line easement is an easement for highways across unreserved public lands which is 66 or 100 feet wide. By now the discerning reader will

43 Section 7, Act of January 21, 1929 (45 Stat. 1091)

44 Sections 3-7 of the 1919 Act were repealed in 1966. PL 89-588 (80 Stat. 811).