

From: [Gerald Jennings](#)
To: [Bennett, John F. \(DOT\) \(johnf.bennett@alaska.gov\)](mailto:johnf.bennett@alaska.gov)
Subject: Re: another question
Date: Wednesday, May 19, 2004 3:14:53 PM
Attachments: [ATT06252.gif](#)

John,
Thank you very much for your time on this. Regarding the protracted section line easement issue, we probably won't get back on that until after May, if you'd prefer to postpone.

Thanks again and have a great vacation.


Gerald


John F. Bennett wrote:


Gerald, two things that I was trying to remember when we talked about the University lands and SLE's yesterday: First I went back to a couple of 20 year old papers on Section Line Easements by John Sedwick. He stated that in 1978, the state passed legislation making mental health lands and school lands part of the state's unrestricted grant public domain. However, university lands remain subject to the trust obligations imposed by federal law. The University trust lands were lands granted to the territory by the Act of March 4, 1915 and the Act of January 21, 1929. "A literal application 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."

The other thing I remembered was

Sec. 14.40.291. Land of the University of Alaska not public domain land.

 (a) Notwithstanding any other provision of law, university-grant land, state replacement land that becomes university-grant land on conveyance to the university, land selected by and conveyed to the University of Alaska under [AS 14.40.365](#), and any other land owned by the University of Alaska is not and may not be treated as state public domain land. Land conveyed to the University of Alaska under [AS 14.40.365](#) shall be managed under [AS 14.40.365](#) - 14.40.368 and policies of the Board of Regents of the University of Alaska.

 (b) Title to or interest in land described in (a) of this section may not be acquired by adverse possession, prescription, or in any other manner except by conveyance from the university.

 (c) The land described in (a) of this section is subject to condemnation for public purpose in accordance with law.

This made me question whether University land might be subject to state section line easements. However, University lands that were selected from the Statehood Act land selection conveyances might be subject. These lands are subject to AS 14.40.365. Section (h) "Land transferred or conveyed to the University of Alaska under this section

...is subject to (C) AS 19.10.010 [state section line easements], and (E) any easement, right of way or other access under former 43 USC 932" [RS2477 or federal section line easements]

It seems clear that lands conveyed under AS 14.40.365 will be subject to SLE's, but grant land or replacement land might not be. I'm not aware of a legal opinion out there that deals with this unless the University already has one. Even if the state SLE might not attach to the trust lands, it is possible that trust lands conveyed under the Act of Jan 21, 1929, after the territorial acceptance of the RS2477 grant might be subject to the federal SLE. I guess one of these days we'll have to pick a situation where we really want to push the University on SLE's and see what the result is. JohnB

----- Original Message -----

From: [Gerald Jennings](#)

To: [John F. Bennett](#)

Sent: Tuesday, May 18, 2004 1:45 PM

Subject: another question

John,

Thank you for your help. I left you a voice mail earlier today. Hopefully I didn't sound as stressed as I think I did. Anyway, I have another question. For lands that were conveyed directly from the BLM to the University of Alaska, do you believe there is or is not a 50' section line easement under AS 19.10.010? If you don't have a ready answer to this, it is not critical, as I can work around the issue.

Thanks,
Gerald