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UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR

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Anchorage Region
P. O. Box 166
Anchorage, Alaska

February 21, 1961

Memorandum

To: Area Administrator, Area, 4, Bureau of Land Management

From: Regional Solicitor, Anchorage

Subject: Conveyance of Dedicated Areas within Townsites

Your memorandum of February 3 requests our views as to whether it is necessary or appropriate for the townsite trustee to issue deeds for streets, alleys or parks which have been dedicated to the public within the boundaries of a patented townsite.

Previous consideration has been given to your question in the following:

Memorandum dated March 16, 1953 from the Chief Counsel to the Regional Administrator, Region VII.

Memorandum dated May 9, 1955 from the Acting Assistant Solicitor, Branch of Land Management, to the Director, Bureau of Land Management.

Memorandum dated August 5, 1957 from the Associate Solicitor, Division of Public Lands to the Director, Bureau of Land Management.

Gamble v. Sault Ste. Marie, 10 L.D. 375.

O. P. Petman, 52 L.D. 558.

In these memoranda and decisions it has uniformly been held that when land in a townsite has been dedicated for public use jurisdiction over such land as well as the title and right to possession and control thereof passes from the United States (and the trustee) and that the right and title to such land is subject to disposition in the courts in accordance with applicable local law. Accordingly, you are advised that it is not necessary and would not be appropriate for the townsite trustee to issue deeds to dedicated areas because after dedication he no longer has title to nor jurisdiction over them. Copies of the memoranda referred to above are enclosed.

If we can be of further assistance in this matter do not hesitate to call upon us.

/s/ William W. Redmond

William W. Redmond
Regional Solicitor

Attachments

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UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
WASHINGTON 25, D. C.

March 16, 1953

TITLE TO STREETS AND ALLEYS IN THE CITY OF ANCHORAGE, ALASKA; PATENTS FOR THE STREETS AND ALLEYS IN THAT CITY SHOULD NOT BE ISSUED.

TOWNSITES -- STREETS AND ALLEYS -- PATENTS

The Federal Government has established many hundreds of townsites on the public lands, and sold lots in such townsites under conditions substantially the same as those existing in the City of Anchorage, Alaska, and all questions of title to the streets and alleys in such townsites have been left for determination by the local authorities, or in the courts. The same procedure should be followed in the case of townsites in Alaska.

Title to streets and alleys in a Government townsite may, under certain conditions, vest in the municipality, in trust for the public. The matter of enacting such legislation for Alaska is within the jurisdiction of the Territorial legislature.

In the absence of a statutory provision, as indicated, the lot purchasers become the successors in interest of the Government with respect to the ownership of the fee to the center of the streets and alleys abutting on their respective holdings in the city or town, subject to the use of the streets and alleys for the purpose for which they were dedicated.

No patent should be issued to the City of Anchorage, Alaska, for streets and alleys in that city.

Attachment

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Distribution: Regional Administrators, 2 each
Regional Counsels 1 each
Managers of Land Offices 1 each
Chief, Division of Lands 2
Solicitor's Office 2

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March 16, 1953

Memorandum

To: Regional Administrator, Region VII

From: Chief Counsel

Subject: Title to streets and alleys in the City of Anchorage, Alaska; patents for the streets and alleys should not be issued.

On December 31, 1952, you forwarded to the Director, for consideration by the Chief Counsel, an opinion of the Regional Counsel of the same date, concerning the title to streets and alleys in the City of Anchorage, Alaska. Your memorand states:

> "The City of Anchorage is natuaally very anxious to obtain full title to the streets, in part because it will enable them to close certain streets now shown on the plat, but impossible or unnecessary to construct, and devote these lands to some other worthwhile public use, such as schools, parks, recreational facilities, etc. I personally feel that it would be a good idea to encourage them in this, and to remove such legal obstacles as may exist at the present time, particularly since I do not believe that it was intended that the U. S. Government should indefinitely retain title to the dedicated streets."

The opinion of the Regional Counsel contains the following statements as to the title to the streets:

> "The adoption by the Government of a townsite plat and the sale of lots, as contemplated by the regulations just referred to, constitute a dedication to public use of the streets and alleys laid out on the plat of survey, 52 L.D. 558. In the absence of specific statutory provisions to the contrary, such a common law dedication results merely in creating an easement or public right of user, while the fee to the land remains in the land owner. Harris v. Elliott (U.S.) 10 Pet. 25, 9 L. ed. 333; Barclay v. Howell, (U.S.) 6 Pet. 498, 8 L. ed. 477; 4 Tiffany on Real Property, (3rd ed.), Secs. 1105 and 1112. The fee to the land may vest either in the abutting land owner or the original proprietor or dedicator. In the case of a townsite entered under the public land laws, patentees of abutting lots do not acquire the fee of adjacent streets or alleys,

because,by the very nature of the proceedings, streets and alleys are already dedicated at the time the lots are sold, and the patents for these lots describe the land exclusive of the abutting streets and alleys. See: Loeber v. State General Electric Co., (Mont.), 39 P. 912, 913; 50 Am. St. Rep. 468. Neither does the municipality acquire the fee to streets so dedicated by the U. S. Government in the establishment of the townsite. See: Dubuque v. Maloney, 9 Ia. 450, 47 Am. D. 358."

The townsite of Anchorage, Alaska, was subdivided, and lots therein were sold, under authority of Executive Order No. 3489, of June 10, 1921, as amended (43 CFR. Part 297). The Executive Order was issued pursuant to section 1 of the act of March 12, 1914 (38 Stat. 305, 48 U.S.C. sec. 303).

The Federal Government has established many hundreds of townsites on the public lands and has sold lots in such townsites under conditions substantially the same as those existing in the case of the City of Anchorage. In no instance, howeve so far as I am able to ascertain, has patent been issued to such a city for the stre and alleys therein. All questions of title to the streets and alleys have been left for determination by the local authorities, or the courts. The same procedure shoul be followed, in my opinion, in the case of townsites in Alaska.

The Regional Counsel stated his conclusion as follows:

"Accordingly, it is my conclusion that while at the present time vacating of a public street in the City of Anchorage would merely result in the reversion of the lands to the Railroad Townsite without incident authority of further disposal to the municipality by the Superintendent of Sales, (except perhaps by reservation, based upon a supplemental survey), such authority, as well as the power to convey to the municipal government the fee to all existing public streets in the City of Anchorage, could be created by an executive amendment of the existing regulations, and without the need of further legislation, in the event that this should be deemed advisable and proper as a matter of policy."

The above conclusion is based, no doubt, on the fact that, in Alaska, there is no Territorial law providing that upon the recording of a townsite,plat, a the sale of the lots in the townsite, title to the lands shown on the plat as street and alleys shall vest in the municipality in trust for the public. In jurisdiction which statutes of this kind have been enacted, it has been held that the fee title t the streets and alleys vests in the municipality in trust for the public and that a interest and control of the United States over the streets and alleys cease with the recording of the plat and the sale of the adjoining lots (United States v. Illinois Central Railroad Company, 154 U.S. 225 (1893)); Tiffany on Real Property, Third Edition, V. 4, Section 1112, Dillon on Municipal Corporations, Fifty Edition, V. 3, sections 1071 and 1072. The matter of enacting legislation of this kind applicable to townsites in Alaska is within the jurisdiction of the Territorial legislature.

In the absence of a statutory provision, as indicated, the rule generally followed by the courts in the States has been that a deed for a lot in a townsite, c cribing the tract by lot and block numbers, conveys to the grantee the fee of an

abutting street to the center thereof subject to the rights of the grantor and his successors in title to use the same for the purposes of a way. (Dillan, Municipal Corporations, Fifth edition, V. 3, section 1084, 9 Iowa 450 (1859), cited by the Regional Counsel, seems to support that view. That case involved the Government townsite of Dubuque, in which the lots alone were sold, and the court stated:

> "***, the city by virtue of the dedication by the United States, took no title to the streets; that it has no right to use them for its own purposes, nor to employ them for any purpose different from that for which they were designed; that subject to the public easement, the owner of the adjoining lots is the absolute owner of the soil of the streets, and retains his exclusive right in all mines, quarries, springs of water, timber and earth, for every purpose not inconsistent with the public right-of-way."

It is noted that Tiffany on Real Property, also referred to by the Regional Counsel states in section 1113:

> "As between the abutting owner and the original owner, it is generally held that the title reverts to the abutter, although this rule is not without exceptions."

It is true, as pointed out by the Regional Counsel that the common law fule (sic) is that the owner of land who grants an easement over it for a highway retains the ownership of the fee in the road, subject to the easement. If, however, the owner transfers the title to the entire tract subject to the easement, the interest of the owner in the fee in the road ordinarily would pass to his transferee. In Government townsites in which the lots above are sold, the lot purchasers are the transferees of the Government. As was said by the Supreme Court in the case of Barkley v. Howell's Lessee, 6 Pet. 498, 513, (1832):

> "Where the proprieter of a town disposes of all his interest in it, he would seem to stand in a different relation to the right of soil, in regard to the streets and alleys of the town, from the individual over whose soil a public road is established, and who continues to hold the land on both sides of it."

Therefore, in the absence of a Territorial recordation statute such as was consider by the Supreme Court in the case of United States v. Illinois Central Railroad Comp mentioned above, the lot owners become the owners of the fee of an abutting street alley to the center thereof, subject to the right of the public to use the same for the purpose for which the dedication was made. The situation, as pointed out in yc above-mentioned memorandum of December 31, is different than that which exists in the case of a trustee townsite in Alaska affected by section 11 of the act of March 1891 (26Stat. 1099, 48 U.S.C. sec. 355), in which patent for the entire tract including the streets and alleys, is issued to the trustee.

In these circumstances, I am of the opinion that no patent should be issue to the City of Anchorage, Alaska, for streets and alleys within its limits, and that each case involving the closing of streets and alleys in the city, or other actions affecting the, should be left for determination by the local authorities, c the courts. Consideration should be given in each case to all the interest involve including the interests of the United States, which owns certain lots and Federal

reserves in the City.

/s/ Jacob N. Wasserman
Chief Counsel

Approved:

/s/ William Purvus
Assistant Director

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