

LEGAL SERVICES

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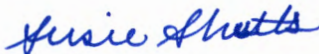
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MEMORANDUM

February 10, 2017

SUBJECT: Alaska Railroad Corporation land (Work Order No. 30-LS0487\A)

TO: Senator John Coghill
Attn: Rynniva Moss

FROM: Susie Shutts 
Legislative Counsel

Attached is the bill draft you requested.

The attached bill draft, in repealing AS 42.40.285(1) and 42.40.285(4), removes the legislative approval currently required for the Alaska Railroad Corporation (ARRC) to "exchange, donate, sell, or otherwise convey its entire interest in land" and "lease land for a period in excess of 95 years unless the corporation reserves the right to terminate the lease if the land is needed for railroad purposes." There is no constitutional requirement that ARRC receive legislative approval before exchanging, donating, selling, or otherwise conveying a land interest, or leasing or encumbering its land interest. The attorney general has opined that such legislative approval requirements are unconstitutional as a violation of the doctrine of the separation of powers.¹

However, note that railroad land is state land, and disposal of this land is therefore subject to constitutional requirements under art. VIII, Constitution of the State of Alaska, related to the state and legislature's natural resources ownership and management responsibilities.² Article VIII, in part, requires that the state's natural resources be made available for maximum use consistent with the public interest³ and that the legislature provide for the utilization, development, and conservation of the state's resources for the

¹ See, e.g., 1987 Inf. Op. Att'y Gen. (663-88-0094; Sept. 17).

² In *Laverty v. Alaska Railroad Corporation*, 13 P.3d 725 (Alaska 2000), a citizen-taxpayer brought suit seeking to block a contract for removal of gravel from railroad land, alleging that the contract violated the Public Notice Clause by disposing of an interest in state lands without prior public notice. The Alaska Supreme Court held that railroad land is state land and that disposal of that land is subject to public notice under art. VIII, sec. 10, Constitution of the State of Alaska.

³ Art. VIII, sec. 1, Constitution of the State of Alaska.

maximum benefit of the state's people.⁴ Article VIII authorizes the legislature to provide for the sale or grant of state lands and the establishment of sale procedures,⁵ and under the Public Notice Clause, "[n]o disposals or leases of state lands, or interests therein, shall be made without prior public notice and other safeguards of the public interest as may be prescribed by law."⁶ Although the ARRC is, for example, exempt from the Alaska Land Act (AS 38.05),⁷ the Alaska Supreme Court has held that this exemption "simply allows ARRC to develop its own procedures for complying with the Public Notice Clause, which need not mirror the rigorous procedural safeguards set out in the Alaska Lands Act."⁸ Therefore, any disposal of railroad land would be subject to the art. VIII constitutional requirements of state land. The attached bill draft does retain the fair market value requirement of AS 42.40.350(d) and requires public notice of the conveyance, disposal, or encumbrance of the ARRC's entire interest in land under new subsection 42.40.352(a). Whether a particular land disposal under the attached bill draft met art. VIII requirements would be fact specific.

A new subsection created by the attached bill draft, 42.40.352(b), requires that the proceeds from an exchange, donation, sale, or other conveyance or disposal of the corporation's entire interest in land be separately accounted for and appropriated in accordance with 45 U.S.C. 1207(a) (Alaska Railroad Transfer Act of 1982). 45 U.S.C. 1207(a)(5) states:

Revenues generated by the State-owned railroad, including any amount appropriated or otherwise made available to the State-owned railroad, shall be retained and managed by the State-owned railroad for railroad and related purposes.

Note that if the governor provided for the sale or lease of the Alaska Railroad and the dissolution of the ARRC, the sale would still require legislative approval under AS 42.40.940. If dissolution of the ARRC occurred other than through such a sale, its assets would revert to the state.⁹

⁴ Art. VIII, sec. 2, Constitution of the State of Alaska.

⁵ Art. VIII, sec. 9, Constitution of the State of Alaska.

⁶ Art. VIII, sec. 10, Constitution of the State of Alaska.

⁷ Under AS 42.40.920(b)(11), AS 38 does not apply to the operations of the corporation.

⁸ *Laverty*, 13 P.3d at 733.

⁹ AS 42.40.950.

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Finally, although the attached bill draft removes the legislative approval requirement for the ARRC's encumbrance of its entire interest in land, legislative approval is still required for the corporation to issue bonds.¹⁰

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Attachment

¹⁰ AS 42.40.285(2).