

# LEGAL SERVICES

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## MEMORANDUM

February 13, 2015

**SUBJECT:** Constitutionality of a state law requiring the federal government to transfer certain lands to the state (Work Order No. 29-LS0587\A)

**TO:** Representative Mike Chenault  
Speaker of the House  
Attn: Donald Bullock

**FROM:** Alpheus Bullard   
Legislative Counsel

This note accompanies the bill described above. The bill directs the federal government to relinquish certain federal lands on certain terms. The bill is unconstitutional.

The state disclaimed all right and title in property belonging to the United States at the time the state achieved statehood. Article XII, sec. 12, Constitution of the State of Alaska substantially incorporates sec. 4 of the Alaska Statehood Act.<sup>1</sup> Article XII, sec. 12 reads as follows:

**Disclaimer and Agreement.** The State of Alaska and its people *forever disclaim all right and title in or to any property belonging to the United States or subject to its disposition, and not granted or confirmed to the State or its political subdivisions, by or under the act admitting Alaska to the Union.* The State and its people further disclaim all right or title in or to any property, including fishing rights, the right or title to which may be held by or for any Indian, Eskimo, or Aleut, or community thereof, as that right or title is defined in the act of admission. *The State and its people agree that, unless otherwise provided by Congress, the property, as described in this section, shall remain subject to the absolute disposition of the United States.* They further agree that no taxes will be imposed upon any such property, until otherwise provided by the Congress. This tax exemption shall not apply to property held by individuals in fee without restrictions on alienation.

(Emphasis added.)

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<sup>1</sup> *Aquilar v. Kleppe*, 424 F. Supp. 433 (D. Alaska (1976) (48 U.S.C. Prec. Sec. 1 has been substantially incorporated into art. XII, sec. 12, Constitution of the State of Alaska)).

Even if the state had the power to order the federal government to transfer federal public land to the state, the order could not be based on any interest in that land retained by the state after achieving statehood. That interest was disclaimed at statehood. Where ownership or a right-of-way is in dispute, the appropriate remedy would be to pursue a quiet title action. See, for example, *Alaska v. United States*,<sup>2</sup> where the state filed an action against the federal government to resolve the state's interest in submerged land in Glacier Bay and parts of Southeast Alaska.

Please also note that the substance of the bill you requested is subsumed by the broader provisions of AS 38.05.500 - 38.05.505, the codified provisions of an initiative passed in 1982<sup>3</sup> that purports to gain control of federal land in the state on the following findings in AS 38.05.500:

**Sec. 38.05.500. Electorate determinations.** The people of the State of Alaska determine that:

(1) the intent of the framers of the Constitution of the United States was to guarantee to each of the states sovereignty over all matters within its boundaries except for those powers specifically granted to the United States as agent of the states;

(2) the attempted imposition upon the State of Alaska by the Congress of the United States of a requirement in the Statehood Act that the State of Alaska and its people "disclaim all right and title to any land or other property not granted or confirmed to the state or its political subdivisions by or under the authority of this Act, the right or title to which is held by the United States or is subject to disposition by the United States," as a condition precedent to acceptance of Alaska into the Union, was an act beyond the power of the Congress of the United States and is thus void;

(3) the purported right of ownership and control of the public land in the State of Alaska by the United States is without foundation and violates the clear intent of the Constitution of the United States; and

(4) the exercise of that dominion and control of the public land in the State of Alaska by the United States works a severe, continuous and debilitating hardship upon the people of the State of Alaska.

The provisions in AS 38.05.500 - 38.05.505 have never been implemented. In 1983, the Attorney General advised the commissioner of natural resources that the initiative, popularly known as the "Tundra Rebellion", was unconstitutional under art. XII, secs. 12

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<sup>2</sup> 545 U.S. 75, 125 S.Ct 2137, 162 L.Ed.2d 57 (2005).

<sup>3</sup> 1982 Initiative Proposal No. 5.

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and 13, Constitution of the State of Alaska.<sup>4</sup> The commissioner followed the advice in the opinion, and the State has not implemented the provisions enacted by initiative.<sup>5</sup>

If you have questions, please do not hesitate to contact me.

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Enclosure

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<sup>4</sup> 1983 Att'y Gen. Op. No. 2, 1983 Alas. AG LEXIS 365 (February 18, 1983).

<sup>5</sup> Although the Attorney General opined that the law enacted by the initiative is unconstitutional, AS 38.05.502 has been cited by some as the codification of the public trust doctrine, a common law principle that the state has the responsibility of a trustee to its citizens as beneficiaries of the state's resources. AS 38.05.502 reads as follows:

**Sec. 38.05.502. Property of the people.** Subject to valid existing rights of applicants for land, upon February 21, 1983, all land in the state and all minerals not previously appropriated are the exclusive property of the people of the state and the state holds title to the land and minerals in trust for the people of the state.