

LDIR#038

EMINENT

DOMAIN

1960-1962

Assistant Attorney General

Declaration of Taking - When does title vest?

This will answer your letter dated June 13, 1968. You ask whether title to property vests in the State upon the filing of a declaration of taking.

Section 3, Ch. 90, SLA 1953 provides that upon the filing of the declaration of taking and the deposit of the stipulated compensation, title to the real property vests in the State of Alaska. However, Sec. 1, Art. I, Ch. 152, SLA 1957, provides that a declaration of taking shall be sufficient to vest title in Alaska. It provides that the declaration of taking shall not be effective until eminent domain proceedings have been instituted and a copy of the declaration has also been filed in the precinct recorder's office. If there is any inconsistency between these two statutes the later statute is controlling. For this reason, the declaration has no effect until it is recorded as required by the 1957 statute and title does not vest in the state until the day it is actually recorded.

I understand there is some delay in the recording of declarations of taking in the Third Judicial District in cities and towns outside of Anchorage. Mail accounts for part of the delay but for the most part the delay is due to the failure of the recording officer to promptly record the documents immediately upon receipt thereof. It is very possible that the delay in recording is due to the fact that the recording officers do not understand the importance of immediate recording. I will attempt to rectify this situation by writing to the Administrator of Courts, explaining the situation, and requesting that he instruct the recorders to record all declarations of taking upon receipt thereof.

MEMORANDUM

State of Alaska

TO: Mr. Stan Howett, Research Counsel
Legislative Council
Box 2199, Juneau

DATE : April 30, 1962

FROM: Alex McRea, Director *AM*
Sport Fish Division
Dept. of Fish and Game

SUBJECT: Land acquisition activities of the
Alaska Dept. of Fish and Game

As requested in our conversation of this date, the following is a resume of the Department's land acquisition activities. These to date have concerned only the Sport Fish Division:

1. The enclosed Dingell-Johnson Progress Reports for 1959-60 and 1960-61, Job No. 5 in both reports, covers our Federal Aid Sport Fish access work. This program is essentially an investigation which provides other agencies, both state and federal, with completed information for action on their part.

No declaration of taking or condemnation is involved.

2. Three small lots were purchased by the Sport Fish Division on Birch Lake, near Fairbanks, for recreational fishing access. This was negotiated with the Fairbanks Township Trustees.

3. A road right of way and a pipeline easement were purchased for access and a water supply line respectively, at the Fire Lake Hatchery, Upper Cook Inlet. These were negotiated with private property owners.

4. Sport fishing access sites and easements have been negotiated with private property owners without payment involved. These include:

Big Beaver Lake, Matanuska Valley
Falk Lake, Matanuska Valley
Keppler and Bradley Lakes, Matanuska Valley
Meirs Lake, Matanuska Valley
Tex Smith Lake, Glenn Highway
Tolsona Lake, Glenn Highway

AHM:ja
cc: Kirkness
encl: D-J reports

MEMORANDUM**State of Alaska**

RECEIVED
 JUL 20 1962
 ALASKA LEGISLATIVE COUNCIL
 JUNEAU, ALASKA

TO: Stanley Howitt
 Legislative Council

DATE: July 18, 1962

FILE NO:

SUBJECT: Use of Declaration of
 Taking in Condemnation

FROM: Norman L. Schwalb, Special Assistant
 Department of Public Works

The undersigned has been connected with Eminent Domain proceedings for approximately the last two years while in the Attorney General's office. During this period he devoted his full time to Public Works, including Highways.

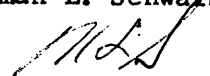
Of course, the Declaration of Taking is used in every case of condemnation involving highways. If this were not used, it would be necessary to add at least six months, or more in the event of appeal, to all highway eminent domain proceedings. By the time that planning, engineering, etc., has taken place on highway construction, it is necessary to acquire the property expeditiously. There is no way that a condemnation could be started before the preliminary engineering, appraisal, offer, etc., were accomplished.

In addition, because of the uncertainty in title records in the State of Alaska, many times, even after construction might have started, it is necessary to start a condemnation to clear title. Without the Declaration of Taking, it would mean that the whole construction job would have to sit while a regular law suit proceeded. Of course, this would result in large penalties paid the contractor by the State.

This condemnation procedure has also been used in acquiring aviation property, and, although not as yet used, should be available for future use of our Department of Buildings and Water and Harbors.

The use of Declaration of Taking is also of great advantage to the property owner, as he has immediate money available to help him mitigate his damages because of the take, including inconvenience. If a regular law suit were started without the Declaration of Taking and deposit of compensation, the property would immediately have a cloud on it. The owner would know he was going to have the property taken, could make no proper use of it in the way of improvements, and yet would receive nothing in the way of compensation for six months to a year while the action was pending. The State by dragging its feet could force a settlement in full at almost any price set by the State. Removing the Declaration of Taking procedure would be eminently unfair to the property owner as well as to hamper the State's operation.

Norman L. Schwalb



ALASKA
STATE LEGISLATURE

LEGISLATIVE COUNCIL

To: Legislative Council
From: City Attorney, Fairbanks

RECEIVED
JUN 15 1962

ALASKA LEGISLATIVE COUNCIL
JUNEAU, ALASKA

BOX 2199-JUNEAU
MAY 3 10 33 AM '62
CITY CLERKS OFFICE
CITY OF FAIRBANKS
RECEIVED

003553

The Honorable Joseph M. Ribar
Mayor
Fairbanks, Alaska

To City

Dear Dr. Ribar:

We have been directed by the Legislature to study and report on the need for and use of eminent domain and the declaration of taking by state agencies in carrying out state programs.

Information is therefore requested on:

1. The need and use of the power of eminent domain by your agency. *Definitely needed*
2. The number of condemnation proceedings and petitions of declaration of taking instituted during 1960, 1961, and those either commenced or to be commenced in 1962.
1 in 1960, 0 in 1961, 1 to date in 1962
3. Future need for the power of eminent domain and especially the necessity for retaining the declaration of taking by your agency. *Definitely needed - our program is beginning to consume more projects where eminent domain and decl. of taking must be retained*
4. The number of condemnation proceedings during the years for which figures are available, which were:

- (a) Uncontested; *1*
- (b) Contested on the grounds that the agency was taking property which was not for a public use; or *0*
- (c) Contested on the basis of an insufficient award or offer of compensation for the property taken. *1*

5. The number of instances in which the agency purchased or negotiated a settlement for property without commencing condemnation proceedings.

about 12 cases (with numerous parcels) in past 3 years. This is the preferred procedure, and works well if only a few property owners are involved or if we can "pick and choose" or where we are "loosely" picking up money. In latter case... DIVER

STAN

of
ANCHORAGE

ALASKA

International

Polar air cross roads of the world

May 29, 1962

Mr. John C. Doyle
Executive Director
Alaska State Legislature
Legislative Council
Box 2199
Juneau, Alaska

RECEIVED
MAY 31 1962
ALASKA LEGISLATIVE COUNCIL
JUNEAU ALASKA

Attention: Mr. Stanley Howitt,
Research Counsel

Gentlemen:

This office has had an opportunity to completely review the eminent domain law of Alaska since our letter of May 15, 1962. Due to a fortuitous coincidence we commenced a condemnation action on May 25th in which the "Declaration of Taking" was employed. (See enclosure).

The condemnation action is for a sanitary sewer easement. The particular sewer project was engineered last year and, about October 1, last, we began acquiring the necessary easements. Fourteen (14) easements were needed but we could only acquire thirteen (13) by voluntary grant. We cajoled and pleaded with the hold-out for almost nine months. He was adamant and absolutely refused to negotiate. Construction on the particular project was ready to commence in the week of May 21. After receiving one last refusal by the hold-out, we filed the action with the Declaration of Taking and a sum representing appraised just compensation.

The foregoing should emphasize the absolute need to continue the Declaration of Taking as part of the Alaskan law of eminent domain. Without the use of the Declaration or a satisfactory substitute procedure, the particular public improvement, a sewer in this case, would not have a ghost of a chance of being completed this year unless the City chose to trespass on the defendant's property and incur his enmity and certain legal liabilities.

Ketchikan Independent School District

P. O. Box 2550
KETCHIKAN, ALASKA

May 8, 1962

Mr. Stanley Howitt, Research Counsel
Alaska State Legislative Council
P.O. Box 2199
Juneau, Alaska

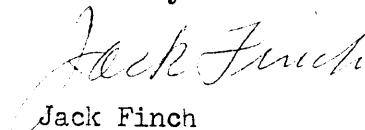
Dear Mr. Howitt:

In the years that are mentioned, the power of eminent domain has not been used:

However, we are contemplating the construction of a new elementary school in a residential district, where the power of eminent domain will probably have to be employed. Specifically:

1. The need could arise in the next year.
2. None.
3. I feel sure that the declaration of taking is, in most cases, unnecessary. However, it would be a serious mistake to remove the clause permitting taking by the district, as certainly its shadow is most necessary.
4. During the years mentioned, no cases arose.
5. Two plots of land were purchased - one for an elementary school, one for a right-of-way.

Sincerely



Jack Finch
Superintendent of Schools

JF:bh

RECEIVED
MAY 10 1962
ALASKA LEGISLATIVE COUNCIL
JUNEAU, ALASKA



CITY OF ANCHORAGE

ALL AMERICA CITY - 1956

May 15, 1962

POST OFFICE BOX 400
ANCHORAGE, ALASKA

Please USE AIR MAIL

Mr. John C. Doyle
Executive Director
Alaska State Legislature
Legislative Council
Box 2199
Juneau, Alaska

RECEIVED
MAY 16 1962
ALASKA LEGISLATIVE COUNCIL
JUNEAU, ALASKA

Attention: Mr. Stanley Howitt,
Research Counsel

Gentlemen:

This office is exceedingly busy and cannot review the law of eminent domain in toto in order to fully evaluate the problem. However, one thing needs mention, namely: the admission of certain evidence in condemnation trials.

It has been the City of Anchorage's unhappy lot to have had an expensive lesson in an eminent domain action because evidence of tax valuation, offers of sale at a price set by the owner and an unexercised option value as established by the owner were admitted into evidence over objection. Once evidence of this type comes before a jury, the mischief is done and no admonition by a court can undo the harm.

Therefore, I can only suggest that some legislation or court rule be enacted prohibiting the admission of certain evidence in eminent domain trials. I feel that such is necessary because not all of the judges are knowledgeable on the matter of admissibility of eminent domain value evidence.

As authority that tax valuation is inadmissible, I cite 39 ALR 2d at page 214 and the case of McCandless v. the U. S., 74 Fed. 2d 396. Inadmissibility of offers by the owner as to what price he offers to sell the property is shown by the authority cited in 7 ALR 2d at page 795. As to the evidence of unexercised options being

ANCHORAGE

DON M. DAFOE, Superintendent



INDEPENDENT SCHOOL DISTRICT

1602 WEST HILLCREST DRIVE PHONE FA 2-4942
ANCHORAGE, ALASKA

May 8, 1962

Mr. Stanley Howitt, Research Counsel
Alaska State Legislature
Legislative Council
Box 2199
Juneau, Alaska

RECEIVED
MAY 9 1962

ALASKA LEGISLATIVE COUNCIL
JUNEAU, ALASKA

Dear Mr. Howitt:

The following paragraphs are in reply to your request of April 30, 1962 re eminent domain and the use of the declaration of taking:

1. The need and use of the power of eminent domain by this School District - The available land for construction of school buildings is gradually diminishing as far as raw acreage is concerned in this District. Therefore it is becoming increasingly more evident to the Administration and Board of this District that we shall need, in the future, to exercise the power of eminent domain in the best interests of economy to the public as well as fairness to the owners of property to be condemned.

2. The number of condemnation proceedings, etc. - None.

3. Future need for the power of eminent domain and especially the necessity for retaining the declaration of taking by the School District - The matter of time being of the essence in the acquiring of school building sites makes it necessary that the District have the power of the declaration of taking in order that the long detailed process of court procedures may be avoided and the progress in developing capital improvements can be carried on as the facilities are needed.

4. The number of condemnation proceedings during the years for which figures are available, etc. - None

5. The number of instances in which the School District purchased or negotiated a settlement for property without commencing condemnation proceedings - As near as the record reflects, approximately 25. This District, as far

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ALASKA
STATE LEGISLATURE

LEGISLATIVE COUNCIL

BOX 2199-JUNEAU

April 30, 1962

Mr. Sterling S. Sears, Superintendent
Juneau Independent School District
1250 Glacier Avenue
Juneau, Alaska

RECEIVED
MAY 1 1962

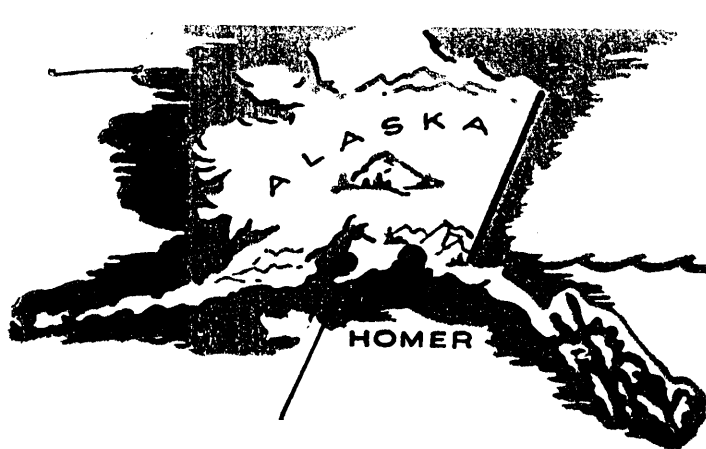
ALASKA LEGISLATIVE COUNCIL
JUNEAU, ALASKA

Dear Mr. Sears:

We have been directed by the Legislature to study and report on the need for and use of eminent domain and the declaration of taking by state agencies in carrying out state programs.

Information is therefore requested on:

1. The need and use of the power of eminent domain by your agency. *1. See next page.*
2. The number of condemnation proceedings and petitions of declaration of taking instituted during 1960, 1961, and those either commenced or to be commenced in 1962. *2. None*
3. Future need for the power of eminent domain and especially the necessity for retaining the declaration of taking by your agency. *3. Occasionally*
4. The number of condemnation proceedings during the years for which figures are available, which were:
 - (a) Uncontested; *None*
 - (b) Contested on the grounds that the agency was taking property which was not for a public use; or *None*
 - (c) Contested on the basis of an insufficient award or offer of compensation for the property taken. *One*
5. The number of instances in which the agency purchased or negotiated a settlement for property without commencing condemnation proceedings. *Two*



KENAI PENINSULA PUBLIC UTILITY DISTRICT No. 1

BOX 391 • TELEPHONE CEDAR 2-2281
HOMER, ALASKA

3 May, 1962

A FEW

FACTS ABOUT HOMER

*"Where People
Like to Live"*

TEMPERATE CLIMATE. SELDOM COLDER THAN ZERO DEGREES, NEVER WARMER THAN 85 DEGREES ABOVE. AVERAGE RAINFALL 25.06 INCHES.

107 DAY GROWING SEASON WITH 20 HOURS OF DAY-LIGHT PRODUCES MOST VEGETABLES, BERRIES IN ABUNDANCE.

HOME OF THE GIANT KENAI MOOSE FOR THE BIG GAME HUNTER.

EXCITING SPORT FISHING FOR KING SALMON, RED AND SILVER SALMON, HALIBUT, FLOUNDER, SOLE, DUNGENESS CRAB AND DIGGING FOR RAZOR AND BUTTER CLAMS.

EXCELLENT VIEWS OF KACHEMAK BAY, KENAI MOUNTAINS, GLACIERS, ISLANDS, WILDLIFE AND LONGEST INHABITED SPIT IN THE WORLD. 4½ MILES LONG.

SEVENTY MILES OF LOCAL ROADS WITH THE STERLING HIGHWAY TERMINATING AT HOMER. CONNECTED TO CENTRAL ALASKA HIGHWAY SYSTEM.

TELEPHONE AND TELEGRAPH SERVICE.

PAVED AIRPORT FACILITY. TWICE DAILY MAIL SERVICE. FLOAT PLANE BASE.

DEEP WATER PORT. ICE FREE.

SMALL BOAT HARBOR.

GRADE AND HIGH SCHOOL. ESTIMATED 1961 ENROLLMENT, 400.

HOMESTEADING FOR THE HARDY.

OVER 100 LOCAL BUSINESSES AND GROWING FASTER EVERY YEAR. THE TOURIST BUSINESS INCREASING STEADILY.

Mr. John C. Doyle, Executive Director
Alaska Legislative Council
Box 2199
Juneau, Alaska

RECEIVED
MAY 7 1962

ALASKA LEGISLATIVE COUNCIL
JUNEAU, ALASKA

Dear Mr. Doyle:

In reply to your series of inquiries dated 30 April, 1962 regarding eminent domain proceedings, endeavor is made to reply specifically by numbers indicated.

1. There is no lessening of the need for the powers of eminent domain in the Homer area, in order that developments may occur for construction of roads, streets, airport facilities, waste disposal sites, communications, utilities etc. To date this District has not exercised eminent domain procedures by reason of the fact that the stage of development is only now being reached when such procedures will be required to promote the development of the community.

2. No eminent domain proceedings were scheduled for 1961 or in 1960, however it is quite likely that developments in progress will require 25 eminent domain proceedings for a waste disposal project under study during 1962.

3. The future need for eminent domain procedures is very apparent in the Homer area. There has never been a townsite survey, hence it follows that any planned development will result in the need for lands now in private persons ownership. There is no water or sewer system and due to the nature of the terrain in Homer, it is very evident that private properties will be needed for the construction of such sewer and water systems. With only one main road and a few miles of secondary roads and the absences of registered surveys, land conflicts are certain to occur.

4. Not applicable

5. Two instances have occurred in which negotiations alleviated the need to proceed to eminent domain procedures.

In furnishing comments on existing eminent domain procedures, it is our firm belief that due process of law should be preserved in every instance to the benefit of the majority of the residents. We are not aware that declarations

TO ALASKA, PLEASE USE AIR MAIL

KODIAK INDEPENDENT SCHOOL DISTRICT

P. O. BOX 886
KODIAK, ALASKA

May 4, 1962

Stanley Howitt, Research Counsel
Alaska State Legislature
Legislative Council
Juneau, Alaska

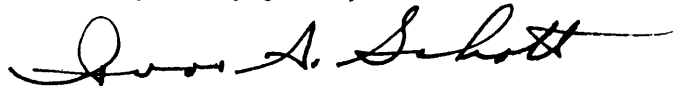
RECEIVED
MAY 7 1962
ALASKA LEGISLATIVE COUNCIL
JUNEAU, ALASKA

Dear Mr. Howitt:

In answering your request for information it may sound as though this district believes the eminent domain authority inherent in quasi-governmental units could very well be disregarded; this is not so. The need for eminent domain authority and power resting with a school district board is at times highly desirable. Having no foreseeable future need for this authority does not justify barring a school district board from use of this power.

This district as now constituted and organized has never had occasion to exercise the power of eminent domain nor does it foresee when such a need would arise.

Very truly yours,



Ivor A. Schott, Superintendent

ALASKA
STATE LEGISLATURE

LEGISLATIVE COUNCIL

BOX 2199-JUNEAU

April 30, 1962

RECEIVED
MAY 7 1962

ALASKA LEGISLATIVE COUNCIL
JUNEAU, ALASKA

Mr. Henry G. Bryant
Superintendent of Schools
Sitka, Alaska

Dear Mr. Bryant:

We have been directed by the Legislature to study and report on the need for and use of eminent domain and the declaration of taking by state agencies in carrying out state programs.

Information is therefore requested on:

1. The need and use of the power of eminent domain by your agency.
2. The number of condemnation proceedings and petitions of declaration of taking instituted during 1960, 1961, and those either commenced or to be commenced in 1962.
None previous One contemplated.
3. Future need for the power of eminent domain and especially the necessity for retaining the declaration of taking by your agency.
We would be in a poor position without it.
4. The number of condemnation proceedings during the years for which figures are available, which were:
 - (a) Uncontested; 0
 - (b) Contested on the grounds that the agency was taking property which was not for a public use; or 0
 - (c) Contested on the basis of an insufficient award or offer of compensation for the property taken. 0
5. The number of instances in which the agency purchased or negotiated a settlement for property without commencing condemnation proceedings. 2

MEMORANDUM

State of Alaska

TO: Starr Howitt
Legislative Counsel's Office

DATE : September 12, 1962

FROM: Leroy J. Barker
Assistant Attorney General

SUBJECT: Tongass Avenue Project

This is in response to your request regarding the Commissioners' hearing in the Tongass Avenue Project.

There were twenty-four parcels in which there was a dispute over value. Seven of the parcels were settled (i.e. not appealed) by the Commissioners' hearings and seventeen were appealed to a jury trial.

The State's appraised value of the seven was \$10,771.77, and the State's appraised value of the seventeen was \$114,172.16.

GEORGE N. HAYES
ATTORNEY GENERAL

By 
Leroy J. Barker
Assistant Attorney General

LJB:jj

RECEIVED
SEP 13 1962
ALASKA LEGISLATIVE COUNCIL
JUNEAU, ALASKA

U. S. DEPARTMENT OF COMMERCE
BUREAU OF PUBLIC ROADS
Western Office of the General Counsel
833 Market Street
San Francisco, California

August 13, 1962

Mr. Stanley Howitt
Research Counsel
Alaska State Legislative Council
Juneau, Alaska

Re: Eminent Domain Study

Dear Mr. Howitt:

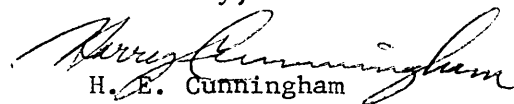
It is with personal regret that at least an acknowledgement was not heretofore made to your letter of May 9th. When I returned to the office after more than a month's absence I found that the matter was under consideration and the comments of the Washington office had also been requested.

So with my sincere apologies I am forwarding you the enclosed three special reports of the Highway Research Board on Condemnation of Property for Highway purposes. Also enclosed is a copy of memorandum from our General Counsel having before him at the time your inquiry of the 9th.

As you indicate, the declaration of taking or immediate right of possession does have great importance in highway construction particularly when a State may be behind schedule in obligating available funds. The present authority under Federal statute and the existing law in Alaska have much by way of recommendation combining both elements of speedy clearance for proceeding with the public work and equitable treatment to the property owner with full protection of his rights to just compensation. It has been the experience of the minority states (Idaho, South Dakota, Vermont and Washington) who are unable to secure possession until completion of the proceedings and payment of judgment that aggravating and often wholly unnecessary delays have frequently occurred.

I trust that you will find this material helpful.

Sincerely,


H. E. Cunningham
Western Counsel

HEC: jc

Mr. H. E. Dunningham, Western Counsel
San Francisco, California

36-24 David S. Black, General Counsel
by:
H. J. Morton, Assistant General Counsel

Alaska - Condemnation procedures - Declaration of taking

Pursuant to the informal request of Mr. Peebles, we have considered the letter dated May 9, 1962, from the Legislative Council of the Alaska State Legislature to you. The writer of the letter reports that during the last legislative session a bill to abolish the use of the declaration of taking by the State or its political subdivisions was tabled, and that the council was directed to study and report on eminent domain and the declaration of taking.

Specifically, you are requested to comment on "the importance of the declaration of taking insofar as the problems it solves under PFM 21-12 (7) and any other situation which I may not be aware of."

The writer is referring to paragraph 7 of PFM 21-12, issued October 10, 1958. The subject of the PFM is construction authorization: the subject of paragraph 7 thereof is authorization for physical construction. Sub-paragraph "e" of paragraph 7 of PFM 21-12 imposes as a condition to authorization to advertise physical construction for bids, or to proceed with force account construction, that the State furnish the Bureau with a statement certifying that either: (1) all necessary rights-of-way, including control of access rights when pertinent, have been acquired; (2) although all necessary rights-of-way have not been fully acquired, the right to occupy and to use all rights-of-way required for the proper execution of the project has been acquired; etc.

It is our opinion that the word "acquired" in the context of paragraph 7 means legal title in fee simple, or in such lesser interest in the land as is adequate for the construction, operation and maintenance of a project. See section 1.23 of the Federal-aid highway regulations. Paragraph 7c(2), (3), (4), describe under what conditions and circumstances something less than the acquisition of legal title will be permitted. It is evident, however, that at the minimum the State must have such an interest in the land as will justify the construction of permanent highway improvements thereon.

The advantages to be gained by the use of the Federal-type declaration of taking are, of course, quite obvious to all of us who are interested

MEMORANDUM

State of Alaska

TO: Mr. John C. Doyle, Executive Director
Alaska Legislative Council
Juneau

DATE: May 8, 1962

FILE NO: 2-23-00

ATTENTION: Stanley Howitt

SUBJECT: Proposed Legislation - 1962

FROM: Thomas E. Fenton, Right of Way Agent I *TF*
Department of Highways
Juneau

This is in reply to your request for information concerning our experience with the Declaration of Taking in Eminent Domain Proceedings.

The following is a list of cases we have had since 1958. In all cases, the Declaration of Taking was utilized. Most of the cases went into condemnation because the State and the property owner failed to agree on value. A few of the cases are in the nature of quiet title actions and are designated "Title". All cases are in the Third Judicial District unless otherwise noted.

		<u>1958</u>				
<u>DECLARATION OF TAKING FILED</u>	<u>OWNER</u>	<u>AMOUNT OF APPRAISAL</u>	<u>AWARD</u>	<u>STATUS</u>	<u>REMARKS</u>	
9/22/58	Hillstrand	\$ 1,519.00	\$ 7,065.48	Appealed		
9/19/58	Estle	19.00		Pending		
9/19/58	Dell	456.00	456.00	Closed		
9/19/58	Peterson	308.00		Settled	Title	
10/6/58	Radle	1,818.00		Settled		
9/19/58	Simms	672.00	672.00	Closed		
11/29/58	Johnson	1,730.00		Settled		
11/29/58	Martin	53.00		Settled		
11/29/58	Larry's Inc.	592.00		Settled		
11/29/58	Anch. Bedding	3,152.00	3,269.00	Closed		
11/29/58	Waldron	2,000.00		Settled		
11/29/58	Eagleston	4,225.00		Settled		
11/29/58	Hoadley	17,000.00		Settled		
11/29/58	Ward	4,832.00		Pending		
11/29/58	Larry's Inc.	1,710.00		Settled		
12/1/58	Houck	1,578.00	1,785.00	Appealed		
11/29/58	Barber	5,680.00		Pending		
		<u>1959</u>				
3/27/59	McCauley	\$ 86.00	\$	Settled		
3/27/59	Frankworth	39.00		Settled		
3/27/59	Lloyd	24.00		Settled		
3/27/59	Burriss	144.00	180.00	Closed		

August 13, 1962

Miss Mary Frank
Assistant Attorney General
Department of Law
Woolworth Building
4th and F. Streets
Anchorage, Alaska

Dear Mary:

Thank you for your lengthy memorandum concerning the eminent domain laws of the state. I realize the time it took to prepare it, and accordingly, will review it thoroughly.

I will reserve comment until I do review your report and then consider exactly what changes are necessary in order to have an efficient and clear law. This is easier said than done.

However, these are my problems.

I certainly shall consult you if necessary for additional comment and further suggestions.

Thanks again.

Very truly yours,

JOHN C. DOYLE
EXECUTIVE DIRECTOR

By: _____
Stanley Howitt
Research Counsel

SH:vd

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

①	②	3	4	5	6	7	8
ALASKA LEGISLATIVE COUNCIL							
Staff Routing							
WILLIAM A. EGAN, GOVERNOR							

BOX 2170 - JUNEAU

1962 Opinions of the
Attorney General No. 11

July 26, 1962

Mr. Donald A. McKinnon, Commissioner
Department of Highways
Douglas, Alaska

Attention: Mr. Alfred A. Baca
State Right of Way Agent

Re: Section Line Dedications;
An interpretation of Ch. 19,
SLA 1923, Ch. 123, SLA 1951
and Ch. 34, SLA 1953.

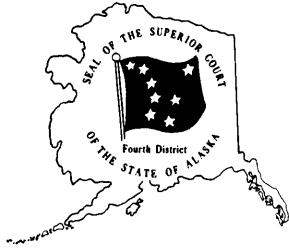
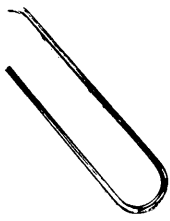
Dear Mr. McKinnon:

You have asked whether the State has a right of way easement along certain section lines, which can be used for highway purposes without compensation.

If the State has such an easement it must be based upon either Ch. 19, SLA 1923, Ch. 123, SLA 1951 or Ch. 35, SLA 1953. The relevant language of Ch. 19, SLA 1923 states:

"Section 1. A tract of four rods wide between each section of land in the Territory of Alaska is hereby dedicated for use as public highways, the section line being the center of said highway. But if such highway shall be vacated by any competent authority the title to the respective strips shall inure to the owner of the tract of which it formed a part by the original survey."

The legislature could not be referring to sections which have passed to private ownership because dedication of easements on private property would be an infringement of vested property rights prohibited by the fifth amendment to the Constitution of the United States. Nor could the territorial legislature legally dedicate an easement in section lines over the public domain. Section 9 of the Alaska Organic Act (48 USCA § 77) reads in part as follows:



Superior Court
State of Alaska
Fourth District Fairbanks

RECEIVED
AUG 23 1962
ALASKA LEGISLATIVE COUNCIL
JUNEAU, ALASKA

EVERETT W. HEPP, PRESIDING JUDGE
JAY A. RABINOWITZ, JUDGE

August 22, 1962

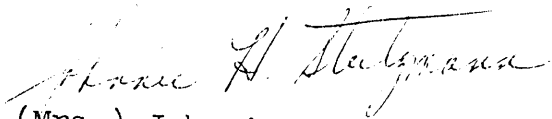
Stanley Howitt, Esq.
Research Counsel
Alaska State Legislature
Legislative Council
P.O. Box 2199
Juneau, Alaska

Dear Mr. Howitt:

Enclosed please find the Order entered by Judge Hepp on September 21, 1961 in the case of State of Alaska vs. Fricke, et al, Civil Action No. 61-163.

No opinion was written because it hinged on a fact finding of the test prescribed by Section 57-7-7, ACLA, 1949.

Sincerely,


(Mrs.) Johnnie H. Stutzmann
Secretary to Judge Hepp

Enc.

August 17, 1962

The Honorable Everett W. Hepp
Presiding Judge, Superior Court
Fourth District
Box 1270
Fairbanks, Alaska

Dear Judge Hepp:

Would you be so kind as to forward to the undersigned a copy of your opinion and holding in the following case:

State of Alaska v. Fricke et al., including A.G.
Hiebert, Civil Action No. 61-163

We are making a study on eminent domain for the legislature and this case is of some interest to us.

Your prompt reply is most appreciated since we have a deadline to meet.

Very truly yours,

JOHN C. DOYLE
EXECUTIVE DIRECTOR

By: _____
Stanley Howitt
Research Counsel

SH:vd

September 11, 1962

California Law Revision Commission
School of Law
Stanford, California

Gentlemen:

Re: Pretrial Conferences and
Discovery in Eminent Domain
Proceedings

We have been requested by the Legislature to make a study on eminent domain proceedings in this state.

We have studied your tentative report, dated October 26, 1961, on the above subject, and would appreciate receiving the final report containing your recommendations if it is available.

Your reports concerning eminent domain proceedings have been particularly helpful to our study.

Very truly yours,

JOHN C. DOYLE
EXECUTIVE DIRECTOR

By: _____
Stanley Howitt
Research Counsel

SH:vd

August 13, 1962

Miss Mary Frank
Assistant Attorney General
Department of Law
Woolworth Building
4th and F. Streets
Anchorage, Alaska

Dear Mary:

Thank you for your lengthy memorandum concerning the eminent domain laws of the state. I realize the time it took to prepare it, and accordingly, will review it thoroughly.

I will reserve comment until I do review your report and then consider exactly what changes are necessary in order to have an efficient and clear law. This is easier said than done.

However, these are my problems.

I certainly shall consult you if necessary for additional comment and further suggestions.

Thanks again.

Very truly yours,

JOHN C. DOYLE
EXECUTIVE DIRECTOR

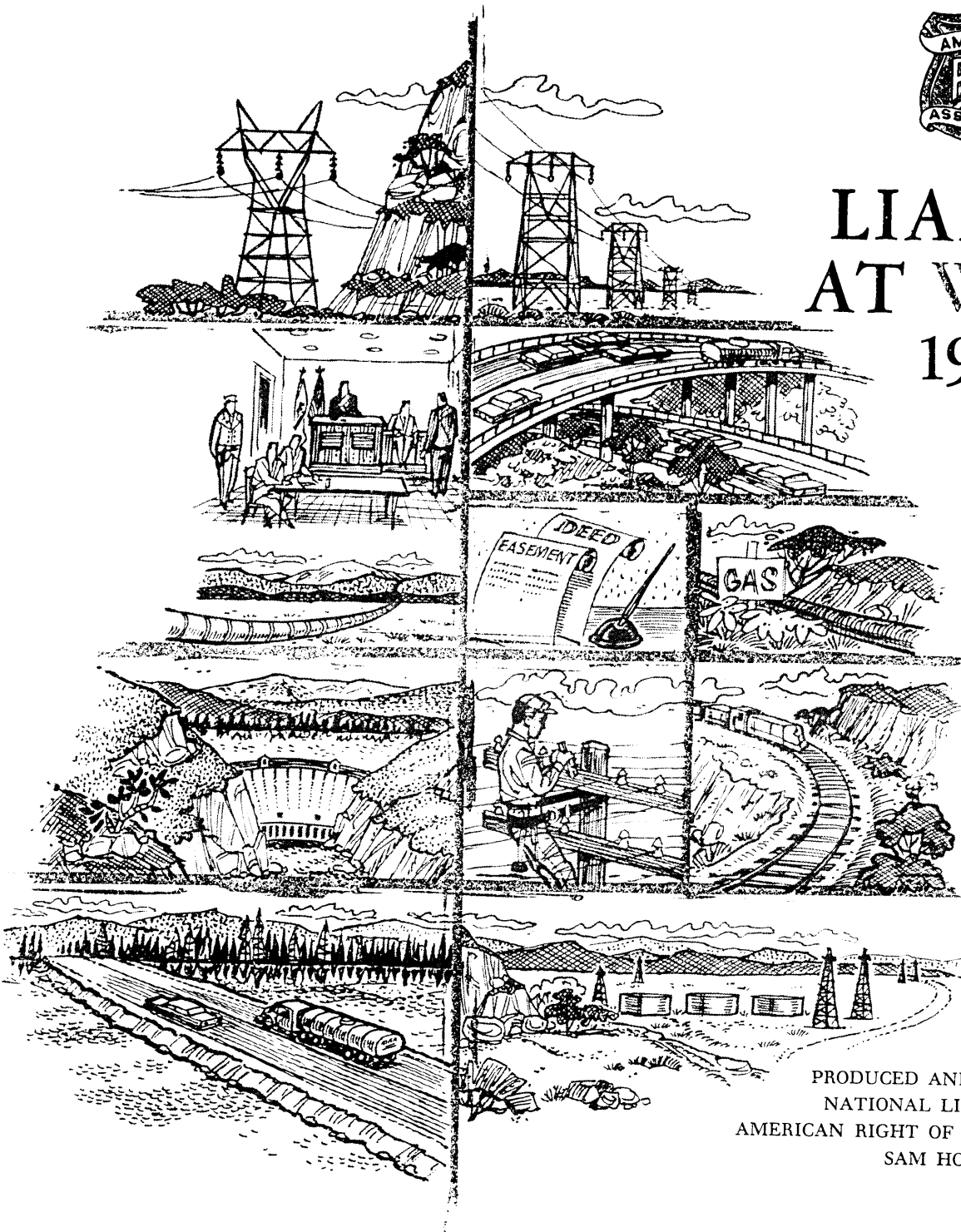
By: _____

Stanley Howitt
Research Counsel

SH:vd



LIAISON AT WORK 1962



PRODUCED AND DISTRIBUTED BY:
NATIONAL LIAISON COMMITTEE,
AMERICAN RIGHT OF WAY ASSOCIATION,
SAM HOUSTON, CHAIRMAN

SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT

CITY OF ANCHORAGE, a municipal)
corporation,)

Plaintiff)

v.)

The South 8 ft. of Lot 24 of the)
LINGO SUBDIVISION, according to)
the official plat thereof filed)
March 14, 1950 under Plat No.)
P-141-A, in the Anchorage Re-)
cording Precinct, State of Alas-)
ka; Henry S. Pratt and Donna H.)
Pratt; Alaska Title Guaranty)
Company, Trustee; First Federal)
Savings and Loan Association;)
Robert W. Beatty and Patricia M.)
Beatty; and all unknown owners,)

Defendants)

*Filed
25 May 62*

DECLARATION
OF
TAKING

NO. 62-680

1. The plaintiff is a municipal corporation created by and existing under the laws of the State of Alaska.
2. Authority for the taking of the perpetual sewer easement is found in Section 57-7-1, ACLA 1949, as amended.
3. The public use for which a perpetual sewer easement is sought is in connection with the construction, operation and maintenance of a sanitary sewer system.
4. The description of the property taken is as follows:

The South 8 ft. of Lot 24 of the LINGO SUBDIVISION, according to the official plat thereof filed March 14, 1950 under Plat No. P-141-A, in Anchorage Recording Precinct, State of Alaska.

To place the subsequent discussion properly in focus, an important distinction must be made between the terms "public use" and "public necessity". "Public use" or "public purpose" refer to the constitutional requirement that private property can be acquired only for a public use or purpose.

Two separate and distinct requirements are included within the term "public necessity". One is that the admitted public use, such as a highway, be needed by the community. The other is that the specific parcel of property sought be necessary for the establishment of that highway. The question of "public use" is always open to judicial determination. The same is not true in regard to the question of "public necessity".

In most states the right to decide what property is necessary is vested in the condemner. In fact only 9 states permit their courts to pass on the question. This is indicative of the trend away from the common law that a man owns his land absolutely, from the center of the earth to the heavens, irrespective of the needs of his fellow citizens.

Before land can be condemned in Alaska, the condemner must allege that the taking is "necessary" as provided by 57-7-6 ACLA 1949. This section was taken from the Montana Code of Civil Procedure; Rev. Codes 1907, title 7, § 7334; Codes Mont. adopted in 1895, § 2214. This statute was taken from and uses the same language as California Civil Procedure, § 1241 enacted in 1872.

The meaning of the word "necessary" has been adjudicated by the courts of California and Montana. Chief Justice Beatty of the California Supreme Court in City of Pasadena v. Stimson, 271, 604, 608 (Calif. 1891) stated:

"The state or its agents in charge of a public use must necessarily survey and locate the land to be taken and are by statute empowered