

#9.13

MEMORANDUM

State of Alaska

TO: Dick Chitty  
Right of Way Director  
Juneau

DATE: February 25, 1970

FILE NO: 52A-2901

FROM: R. Eugene King  
Right of Way Agent III  
Anchorage

SUBJECT: Project No. S-0490(3)  
McGahn vs. State of Alaska  
Civil Action No. 67-328B

Attached herewith is a copy of a Memorandum Opinion signed by Judge Warren Taylor February 6, 1970, which was handed down as a result of a trial held in Kenai several months ago and concerning the applicability of the Public Land Order which we think you will find to be very interesting reading.

It is not known now whether Mr. Hornaday will appeal or be willing to accept the inevitable. In any event, this Opinion makes very present reading for some of us who have held for sometime that our State courts could give full weight and credit to the Public Land Orders, the publication in the Federal Register along with several other items covered by Judge Taylor.

~~One of the more interesting comments in this opinion is the first full paragraph of the last page in which Judge Taylor states unequivocally that there was no reservation in the patent needed to reserve the 200 foot of right of way. We are aware that everyone has run into this problem many times in the past.~~

Enclosure

cc: Van Cothern  
John Jordan  
Douglas Putnam

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FEB 25 1970

FAIRBANKS DISTRICT OFFICE

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT

NORMAN K. MCGAHAN and LOIS  
ANN MCGAHAN,

Plaintiffs,

vs.

STATE OF ALASKA,

Defendant.

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Civil Action No. 67-328 B

MEMORANDUM OPINION

During the summer of 1955, the United States Government by and through the Alaska Road Commission, an agency of the United States Department of Interior, constructed a road in the vicinity of Kenai, Alaska, over certain public lands of the United States. Among other lands, the road traversed in a northeasterly direction the East 1/2 of the Southeast 1/4 of Section 32 and the West 1/2 of the Southwest 1/4 of Section 33, Township 8 North, Range 11 West, Seward Meridian, Alaska. This road with its travel surface and ditches occupied a strip approximately 40 to 50 feet wide. The road was used by the public for access and was maintained by the United States through the Alaska Road Commission. The type of road constructed was typical of the roads of that time in that area as access to homestead sites. The constructed road was an extension of what was referred to by the residents of the Kenai area, and employees of the Alaska Road Commission, as the North Kenai Fawn Road, the North Kenai Road, or the Kenai Spur. The route is also referred to as P.A.S. Road.

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actual knowledge of its existence, and that he is therefore entitled to compensation for this 6.767 acres.

~~Because the land in question over which the Royal Spinn  
Road was constructed in 1955 was public domain, the United States  
needed no reservation in the patent subsequently issued to the  
Plaintiff. It is further found that 200 foot right-of-ways~~

The United States government, pursuant to the authority contained in Section 21 of the Act of June 25, 1959, (73 Stat. 141) by quitclaim deed dated June 30, 1959, conveyed to the State of Alaska all its right, title and interest in and to the 200 foot easement (100 feet on each side of the centerline) and the State of Alaska received valid title to such easement.

This decision shall constitute findings of fact and conclusions of law. Defendant may submit a form of judgment, each party to bear its own costs and attorneys fees.

DATED this 6 day of February, 1970.

*[Handwritten Signature]*  
Superior Court Judge

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Supra note 2.

STATE OF ALASKA )  
THIRD JUDICIAL DISTRICT ) ss.

I, the undersigned, certify that this is a true and full copy of an original document on file in the Superior Court, Third Judicial District, State of Alaska.

Witness my hand and the seal of this court this \_\_\_\_\_ day of \_\_\_\_\_, 1970.

A. M. VOORACHE