

November 12, 1937

Mr. Sid Smyth  
Deputy State Engineer  
Phoenix, Arizona

LAW LIBRARY  
ARIZONA ATTORNEY GENERAL

Attention: Jack D. Sheley  
Right of Way Agent  
Re: Rights of Way over state  
lands.

Dear Sir:

Your question as to whether state highways now located upon state lands or hereafter to be built upon state lands have a perpetual right of way, or whether they terminate upon lease or sale of such state lands to an individual lessee or purchaser, has been considered by us and we are of the following view.

You call our attention to an opinion from the Attorney General to the land department in which language is used which might be construed to mean that the state land department would be required to advertise and sell such lands under the laws relative to sale or lease of state lands before the state could acquire an easement, either temporary or perpetual. We have carefully read the opinion, which was written by Mr. Cline, and are satisfied that such was not the effect of his letter. He had under consideration the granting of a right of way to an irrigation district. Under paragraph 3005 of the code, the granting of a right of way to such district, which is a quasi municipal corporation or individual.

Such would not be the case with respect to the state highway department. Such department is merely an administrative body, the same as the land department. The state highway department has the same right of ownership and use of state lands as does the land department. The only difference is that the land department has the administration

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of state lands, and it probably directs the highway department in its selection of routes for highway rights of way, and it probably has some administrative control over the method of construction of highways upon state lands, and matters of that character, but we can see no reason why the state when it seeks to grant an easement to the state would be required to go through the formality of a sale under the land code.

We are inclined to the view that when the highway department wants to put a highway upon state lands, any form of permission would be sufficient; that if the state land department afterwards seeks to sell the land, the purchaser takes it with the easement of the highway upon it, and that the same rule would apply to present highways upon state land.

We are also of the opinion that the easement is in perpetuity and can only be defeated by abandonment of the highway of the state, in which event it would revert to the then owner of the land.

Very truly yours,

JOE CONWAY  
Attorney General

A. R. LYNCH  
Assistant Attorney General