

# STATE SUPREME COURT OKAYS MUELLER APPEAL

The Alaska State Supreme Court has ruled that Richard D. Mueller is entitled to a hearing on his dismissal from the State Division of Lands.

Mueller was dismissed from the position of lease and sales manager after he discovered that the State was planning to sell "wilderness estates" on land claimed by Tanacross Natives.

He appealed his dismissal to the State Personnel Board, but the Board refused to hear the case because Mueller had been promoted to his position 9½ months earlier, and was thus within the one-year probationary period for the job.

Superior Court Judge William Taylor in Fairbanks agreed

that, because he was on probationary status, he could be dismissed without right of appeal.

The Supreme Court, however, noted that the Personnel Rules were ambiguous in this respect, and decided that such an ambiguity was to be decided in favor of the employee.

Mueller's attorney, Stephen DeLisio, said that the State had the right to appeal the ruling, but he did not expect it to do so.

If the State does not appeal, the Superior Court will be instructed to order a hearing by the Personnel Board. The case will then be judged on its merits, DeLisio said.

# Okays Mueller Appeal . . .

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When contacted by the TUNDRA TIMES for an interview, Mueller had not yet heard of the decision. When the staff told him, his surprised reaction was "Oh, Boy! I've been waiting a long time for this."

"I know the decision of the Superior Court was a bum decision, and I had hoped the Supreme Court would overthrow it," he added.

"All I wanted was the hearing," he said, adding his regret that it had taken him two years to get it. When asked about his future actions he said he would have to play it by ear.

Mueller is now working as an appraiser for the Greater Anchorage Area Borough. He has held the job for about one and one-half years, following about two and one-half months he was out of work because of the dismissal.

The case began in the spring of 1965, when the State was trying to sell "wilderness estates" at the New York World's Fair. The land, at Lake George in the Tanacross area, had been selected by the State in 1961, and tentative approval had been made by the Bureau of Land Management in 1963.

Mueller, the State Lease and Sale Manager, was told by a Fish and Game official that previously Tanacross natives had run out some White trappers in the area, claiming the land was theirs.

He checked with the Bureau of Indian Affairs and found that a blanket ancestral land claim had been filed in 1950. The claim description, drawn up by a BIA employee, was ambiguous; the accompanying map, drawn up by the Natives, clearly showed Lake George was claimed.

Mueller said that, when he told his superiors about the cloud on the title of the land, he was told to drop his investigation, and that the sale would proceed.

The Tanacross natives refiled their claim, however, making sure this time that it adequately described the Lake George area. After this action, the State dropped its sales plan.

During the controversy, Mueller said he was given the choice of either resigning or being fired. He submitted his resignation, but then withdrew it and was fired by the Division of Lands.

In dismissing Mueller, the Division used his trip to Fairbanks, on which he had verified the problem with the title.

It contended "He had been unaccountably absent from his position for several days and that he had acted in defiance of established policy in contacting the BIA and BLM in connection with the sale of wilderness lands."

Mueller's reply was that it was his duty to make sure that the title to such land was clear of such clouds, to protect both the State and the purchasers of the land.

Mueller appealed the dismissal to the State personnel Board, and many people at the time felt that some very revealing testimony might develop on the attitude of the Division of Lands toward the Native land claims.

However, Mueller had been promoted from realty assistant II to lease and sales manager less than a year before. Under State personnel rules, a person was on probationary status for his first year in a position.

Since persons in probationary status could be fired

by the State at the direction of the appointing authority, the Board ruled in August, 1965, that Mueller had no right to a appeal. Thus they refused to hear any testimony on the merits of the case.

Mueller's attorney, Steve DeLisio, took the case to court, using another provision of the rules. This section, although it referred back to the probationary dismissal rule, also said that such promotional probationary employees had the right to appeal.

In April, 1966, Superior Court Judge William Taylor in Fairbanks upheld the action of the Personnel Board. Mueller, who commented that "it appears hopeless," hesitated before finally filing an appeal with the State Supreme Court.

This past Monday, the Supreme Court reversed the lower court decision. In an opinion by Justice Rabinowitz of Fairbanks, the court held that the ambiguity of the rules should be resolved in favor of Mueller, and that he had a right to the hearing.

If the State doesn't appeal the case before its deadline, the Supreme Court will have the Superior Court order a hearing be granted to Mueller by the State Personnel Board.

Following this order, an appointment must be made by the Board and two weeks notice given. After that, the Board will have to decide the case on its merits.

This means that testimony on both sides will be given. Mueller will be represented by his attorney, who will be able to cross-examine witnesses.

And Native leaders say this testimony may be very revealing of the State Division of Land's attitude regarding Native claims.