

ALASKA
STATE LEGISLATURE
LEGISLATIVE COUNCIL

6300310 PART 3
Legislative Council
Legislative Building
Pouch 3
Juneau, Alaska 99811

BOX 2199-JUNEAU

November 6, 1963

FILE COPY

MEMORANDUM

SUBJECT: Highway Right-of-Way Law and Pending Legislation

TO: Members of the Legislative Council

During the Legislative Council subcommittee hearing at Kodiak on October 7 a witness raised questions on the subject of recent highway right-of-way legislation. The subcommittee directed the staff to explore existing, new and pending legislation on the subject to resolve the questions raised by the witness and the subcommittee.

The staff has examined existing law and pending legislation on the subject and discussed the matter with the Department of Highways.

This year the Legislature approved one of two companion bills on the subject of right-of-way (Ch. 35, SLA 1963) which was introduced as Senate Bill No. 165. Ch. 35 amends AS 19.10 (State Highway System) by adding a new section (.015) which provides:

"Establishment of highway widths. It is declared that all officially proposed and existing highways on public lands not reserved for public uses are 100 feet wide. This section shall not apply to highways which are specifically designated to be wider than 100 feet."

SB #165 was introduced by request of the Governor. The bill was supported by a letter of purpose which stated that the bill would "establish a uniform right-of-way width for all highways running through any part of the public domain." This language, however, must be construed with reference to applicable existing law and another bill now before the House Judiciary Committee. AS 19.10.010 (Dedication of land for public highways) dedicates a tract 100 feet wide, for use as a public highway, between each section of land owned by, or acquired from, the state. CS for SB #166, now before House Judiciary, will, if enacted, repeal and re-enact AS

19.10.010 in order to: (1) retain the existing dedication of 100-foot rights-of-way on state section lines, and (2) accept 100-foot tracts between sections of federal public lands for state highway purposes. (CS for SB #166, in the opinion of the Attorney General, will constitute a valid acceptance of right-of-way over federal lands on behalf of the state. These rights-of-way were offered by the Federal Government in 14 Stat. 253, 43 USCA Sec. 932, but have not been legally accepted to date by the state.)

The purpose of SB #166 is to establish 100-foot rights-of-way along state and federal section lines, while the effect of SB #165 is to establish the uniform right-of-way width for highways established anywhere on state or federal public lands, except on section lines. According to the Department of Highways, SB #165 affects existing or planned ("officially proposed") highways within the designated primary and secondary road system of the state, as well as roads established by public use on public lands.

The letter of purpose indicates that the establishment of 100-foot rights-of-way was not sought solely for the purpose of having width uniformity throughout the highway system. As stated in the letter of purpose, "At present if a highway is created by public use, it is often difficult to determine the exact limits of the right of way." Or, as a recent letter to the Council from the Department of Highways stated:

"The Department of Highways recently encountered serious difficulties in establishing right of way widths either through proprietary jurisdictional control, by usage, or by a possessory right. This was dramatically illustrated in *State vs. Fowler*, 4th Judicial District, wherein the State was unable to legally establish right of way widths on a road which had been in use for many years."

Before SB #165, the Department had considered the width of a right-of-way to be that distance measured from ditch line to ditch line. However, owners of property abutting a road often contended that only the traveled or surfaced areas, or areas intermediate between the surface and ditch lines constituted the right-of-way. With the establishment of 100-foot rights-of-way, future litigation regarding rights-of-way should be substantially reduced and money, which would otherwise be paid in condemnation proceedings, saved by the state. In addition, the act advises future entrymen

on public lands of a definite area adjacent to a road on which they may not put improvements .

The act, which became law on April 6, 1963, is only prospective in its effect upon private property rights. Any landowner who located within a 100-foot right-of-way prior to the date of the act will have to be compensated if the road is widened at a later date. Settlers or purchasers who acquire public land abutting a road after the date of the act will take their property subject to the uniform right-of-way.


John C. Doyle
Executive Director

JCD:vd

cc: The Hon. Peter M. Deveau
Mayor, City of Kodiak