

7

MEMORANDUM

State of Alaska

Department of Transportation & Public Facilities
Engineering and Operations Standards

TO: Regional Directors
Section Chiefs, E&OS

DATE: June 21, 1993

FILE NO:
TELEPHONE NO: 465-2951
FAX NUMBER: 465-2460
TEXT TELEPHONE: 465-3652

ROS

FROM: R. D. Shumway, P.E.
Chief Engineer

SUBJECT: Legal Opinions -
Requests to AG's Office

Please be advised that any future request for legal opinions to the office of the Attorney General should be cleared with the Commissioner's office. Right-of-Way condemnations are excluded. If this results in major problems please advise on a case by case basis. It appears as if there are too many opinion requests that could be resolved through an administrative review and decision.

cc: Dick Chitty, Deputy Commissioner

RECEIVED

JUN 21 1993

RECEIVED
Anchorage, Alaska

JUL 1 1993

DOT & PF
M & O
Central Region

| | |
|-------------------|--------------------------|
| Regional Director | <input type="checkbox"/> |
| Central Region | <input type="checkbox"/> |
| Design & Const. | <input type="checkbox"/> |
| Maint. & Oper. | <input type="checkbox"/> |
| Admin. Serv. | <input type="checkbox"/> |
| Planning | <input type="checkbox"/> |
| AIA | <input type="checkbox"/> |
| RIA | <input type="checkbox"/> |
| Commissioner | <input type="checkbox"/> |
| Dep. Comm. Oper. | <input type="checkbox"/> |
| Dep. Comm. Budget | <input type="checkbox"/> |
| | <input type="checkbox"/> |
| | <input type="checkbox"/> |
| | <input type="checkbox"/> |
| | <input type="checkbox"/> |
| FILE | |

MEMORANDUM

State of Alaska

Department of Transportation & Public Facilities
Office of the Commissioner

RECEIVED

TO: R. D. Shumway, P.E.
Chief Engineer

DATE: June 22, 1993 JUN 23 1993

AND: All Regional Engineers

TELEPHONE NO: 465-3900
TEXT TELEPHONE: 465-3652
FAX NUMBER: 586-8365

FROM: Dick Chitty
Deputy Commissioner

SUBJECT: Litigations
DOT&PF

| | COORD | ACTION |
|-------------------------------------|-------|--------|
| Regional Director Central Region | | |
| Design & Const. | | |
| Maint. & Oper. | | |
| Reg. Serv. | | |
| Planning | | |
| AIA | | |
| FIA | | |
| Commissioner | | |
| Dep. Comm. Oper. | | |
| Dep. Comm. Budget | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| FILE | | |

Recently, the State of Alaska completed litigation concerning a 1986 contract dispute.

Both Mr. Shumway and Mr. Campbell were involved on behalf of the contractor.

This matter consumed approximately six years of various State employees' time from the first whisper of dispute in June 1987 until now (June 1993).

There can be no doubt that this matter could have been addressed and settled in a "partnering" procedure, if such has existed, probably for a fraction of the final State cost.

The ultimate cost to the State is recorded at about \$700,000, and this does not include the salaries and expenses of State employees who attended depositions, gave testimony, provided documents, etc. Probably, the overall cost approached \$800,000.

I will leave it to the individual to determine if this lawsuit was really in the best interest of the State of Alaska.

I wish all persons involved in disputes on behalf of this Department to realize that economics must be a factor in all decisions regarding settlement of disputes.

This Department has the authority to make administrative settlements without resorting to legal actions.

In making settlement decisions one should at least consider the following:

- 1) Crusades went out with the middle ages.
- 2) "A bad settlement is better than a good lawsuit."

RECEIVED
Anchorage, Alaska.

JUL 1 1993

DOT & PF
M & O
Central Region

- 3) An attorney's perspective is generally geared toward "winning" or "losing" hence economics are sometimes not given proper evaluation once legal action commences.
- 4) Ask yourself what settlement ground you would occupy if you were personally liable instead of the State.
- 5) Time is money.

Attachment: Final Settlement Documents and Costs

#16,8

C
C
P
Y

September 1, 1960

C
O
P
Y

MEMORANDUM

Ref: Project FAS 6804

SUBJECT: Manley Hot Springs-Eureka

TO: Donald R. Roser, Assistant State Highway Engineer

FROM: Paul B. Larsen, Law Clerk, Right of Way Section

A right of way width of 66 feet was established in Alaska by usage. Chapter 19, SLA 1923 established a 66 foot right of way on all section lines and this law is the origin of the claim of 66 feet even where the right of way does not follow section lines.

The right of way width along section lines is now 100 feet as established by Chapter 35, SLA 1953, (14A-5-2).

Where a road is not a section line, we must go back to a 1917 law, Chapter 36, SLA 1917, Section 13, which establishes a 60 foot right of way. This section reads:

"The Divisional Commission shall classify all public Territorial roads and trails in the divisions as wagon roads, sled road, or trails and shall by appropriate signs or notices posted on each public bridge and ferry in the division prescribe the maximum load which may be hauled thereon. The lawful width of right of way of all roads or trails shall be sixty feet (60). The width of traveled ways, the grade and character of improvements of each road or trail shall be determined by the Divisional Board of Commissioners in view of the requirements of the traffic on each road."

Conclusion: That we can under any circumstances claim 60 feet. If the road is also a section line we can claim more.

Paul B. Larsen

Copied 8/7/60:ts

Status History - Alaskan Roads

A brief history of "feeder roads" in Alaska, particularly the Taylor Highway, is as follows:

Public Land Order No. 601, dated August 10, 1949, withdrew certain lands for highway purposes. Among these were the Tok-Eagle Road which was designated as a "feeder road" with a width of 200 feet.

Public Land Order No. 757, dated October 16, 1951, revoked the highway withdrawals on all "feeder" and "local" roads established by PLO 601, while retaining the highway withdrawals for the "through roads."

Simultaneously, Secretarial Order No. 2665, dated October 16, 1951, entitled "Rights-of-way For Highways in Alaska" was issued pursuant to the authority contained in section 2 of the act of June 30, 1932 (47 Stat 446; 48 U.S.C. 321a). This order established easements for certain through, feeder and local roads. Additionally, this also established a "floating easement" concept for new construction if staked on the ground, notices posted at appropriate points along the route, and road maps filed in the proper land office. However, it should be noted that the purpose of the order was:

. . . to fix the width of all public highways in Alaska established or maintained under the jurisdiction of the Secretary of the Interior and (2) prescribe a uniform procedure for the establishment of rights-of-way or easements over or across the public lands for such highways. (Emphasis added.)

Section 119 of Public Law 85-767 (72 Stat. 898), dated August 27, 1958, entitled "Administration of Federal Aid for Highways in Alaska," transferred jurisdiction for the administration of all roads in Alaska from the Secretary of the Interior to the Secretary of Commerce and provided that the Secretary of Commerce by order or regulation distribute the functions, duties and authority required to administer these roads. This means that the Secretary of Commerce promulgated his own orders and regulations and that orders issued by the Secretary of the Interior would not be binding upon him. Thus, S.O. 2665 was canceled as to the easement procedures.

Finally, Public Law 86-70 (73 Stat. 141), dated June 25, 1959 (the Omnibus Act), repealed section 119 of P.L. 85-767 by section 21(d)(3) and the act of June 30, 1932 (47 Stat. 446; 48 U.S.C. 321a) the authority under which S.O. 2665 was issued by section 21(d)(7). Thus, not only were the procedures for a floating easement canceled by the transfer of

jurisdiction, but the statutory authority for issuing those procedures and the transfer of jurisdiction was repealed by the Omnibus Act. Accordingly, the Secretary of Commerce transferred to the State of Alaska under section 21 only that interest which existed on the ground and did not convey a floating easement.

History of PLO 1613 lands is essentially similar

Executive Order 9145, dated April 23, 1942, reserved for the Alaska Road Commission in connection with construction, operation and maintenance of the Palmer-Richardson Highway (now Glenn Highway), a right-of-way 200 feet wide from the terminal point of the highway in the NE $\frac{1}{4}$ of section 36, T. 20 N., R. 5 E., Seward Meridian, to its point of connection with the Richardson Highway in the SE $\frac{1}{4}$ of section 19, T. 4 N., R. 1 W., Copper River Meridian. The area described is generally that area between Chickaloon and Glennallen.

Public Land Order 12, dated July 20, 1942, withdrew a strip of land 40 miles wide generally along the Tanana River from Big Delta to the Canadian Border. It also withdrew a 40-mile wide strip along the proposed route of the Glenn Highway from its junction with the Richardson Highway, east to the Tanana River.

Public Land Order No. 84, dated January 26, 1943, withdrew all lands within 20 miles of Big Delta which fell between the Delta and Tanana Rivers. The purpose of the withdrawal was for the protection of the Richardson Highway.

Public Land Order No. 270, dated April 15, 1945, modified PLO 12 by reducing the areas withdrawn by that order to a 10-mile wide strip of land along the then constructed highways. The highways affected by this order were:

1. Alaska Highway - from Canadian border to Big Delta.
- 2 Glenn Highway - from Tok Junction to Gulkana.

Public Land Order No. 386, dated July 31, 1947, revoked PLO 84 and PLO 12, as amended by PLO 270. The order withdrew the following land under the jurisdiction of the Secretary of the Interior for highway purposes:

- 1 A strip of land 600 feet wide along the Alaska Highway as constructed from the Canadian boundary to the junction with the Richardson Highway at Delta Junction.
2. A strip of land 600 feet wide along the Gulkana-Slana-Tok Road (Glenn Highway) as constructed from

Tok Junction to its junction with the Richardson Highway near Gulkana. This order also withdrew strips of land 50 feet wide and 20 feet wide along the Alaska Highway for purposes of a pipeline and telephone line, respectively. Pumping stations for the pipeline were also withdrawn by this order, as well as 22 sites which were reserved pending classification and survey.

Public Land Order No. 601, dated August 10, 1949, revoked E.O. 9145 as to a 200-foot wide withdrawal along the Glenn Highway from Chickaloon to Glennallen.

It also revoked PLO 386 as to the 600-foot wide withdrawal along the Alaska Highway from the Canadian boundary to Big Delta and along the Glenn Highway from Tok Junction to Gulkana.

It withdrew lands for highway purposes along the highways given below. The width of each withdrawal is shown to the right of the name of the highway.

Alaska Highway: 600 feet wide
Richardson Highway: 300 feet wide
Glenn Highway (Anchorage to Glennallen) 300 feet wide
Haines Highway: 300 feet wide
Tok Cut-off (Tok Junction to Gulkana): 300 feet wide

The above roads were designated as "through roads" by this order. The following roads were designated as feeder roads and a strip of land 200 feet wide was withdrawn for each of them.

| | |
|------------------------------|-------------------------|
| Steese Highway | Elliott Highway |
| McKinley Park Road | Ruby-Long-Poorman Road |
| Anchorage-Potter-Indian Road | Nome-Solomon Road |
| Tok-Eagle Road | Kenai Lake-Homer Road |
| Fairbanks-College Road | Circle Hot Springs Road |
| Anchorage-Lake Spenard Road | |

All other roads were classified as local roads and a strip of land 100 feet wide was withdrawn for each of them.

Public Land Order No. 757, dated October 16, 1951, accomplished two things:

1. It revoked the highway withdrawal on all "feeder" and "local" roads established by PLO 601.

It retained the highway withdrawal on all the "through roads" mentioned in PLO 601 and added three highways to the list.

After issuance of this order, the only highways still withdrawn were those listed below. Also shown is the total width of the withdrawal.

Alaska Highway - 600 feet
 Richardson Highway - 300 feet
 Glenn Highway - 300 feet
 Haines Highway - 300 feet
 Seward-Anchorage Highway - 300 feet
 (exclusive of that portion in the Chugach
 National Forest)
 Anchorage-Lake Spenard Highway - 300 feet
 Fairbanks-College Highway - 300 feet

The lands released by this order became open to appropriation, subject to the pertinent easement set by Secretarial Order No. 2665, discussed below.

Secretarial Order No. 2665, dated October 16, 1951, issued on the same date as PLO 757, fixed the width of all public highways in Alaska which were established or maintained under the jurisdiction of the Secretary of the Interior. It restated that the lands embraced in "through roads" were withdrawn as shown under PLO 757 above. It also listed all roads then classified as feeder roads and set the right-of-way or easement (as distinguished from a withdrawal) for them at 200 feet. The right-of-way or easement for local roads remained at 100 feet. Additionally, the "floating easement" concept for new construction was provided.

Amendments 1 and 2 to SO 2665 added and deleted various highways to the list of "through roads."

Public Law 892, dated August 1, 1956, provided for the disposal of public lands within highway, telephone and pipeline withdrawals in Alaska, subject to appropriate easements. This act paved the way for the issuance of a revocation order (PLO 1613) which would allow claimants and owners of land adjacent to the highway withdrawal a preference right to acquire the adjacent land.

Public Land Order 1613, dated April 7, 1958, accomplished the intent of the act of August 1, 1956. Briefly, it did the following:

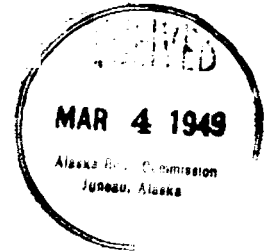
1. Revoked PLO 601, as modified by PLO 757, and provided a means whereby adjacent claimants and owners of land could acquire the restored lands, subject to certain specified highway easements. The various methods for disposal of the restored lands are outlined in the order.

Revoked PLO 386 as to the lands withdrawn for pipeline and telephone line purposes along the Alaska Highway. It provided easements in place of the withdrawals.

Section 119 of the act of August 27, 1958 (Public Law 85-767), transferred jurisdiction over roads in Alaska from the Secretary of the Interior to the Secretary of Commerce and canceled the "floating easement" concept.

Section 21(d) (3) and 21(d) (7) of the act of June 25, 1959 (the Omnibus Act), repealed section 119 of the act of August 27, 1958 and the act of June 30, 1932 (47 Stat. 446; 48 U.S.C. 321a), and transferred all existing through roads to the State of Alaska.

The act of June 11, 1960 (Public Law 86-512), amended the act of August 1, 1956. This was a special act to allow the owners and claimants of land at Delta Junction and Tok Junction a preference right to purchase the land between their property and the centerline of the highway. The act was necessary since the land in both towns was still reserved for townsite purposes, even after the highway, telephone line and pipeline withdrawals were revoked.



February 22, 1949

Hon. Julius A. Krug,
Secretary of the Interior,
Washington, D. C.

| |
|---------------|
| Col. N. D. W. |
| IPT |
| AFG |
| GMT |
| WHD |
| GHS |

My dear Mr. Secretary:

I appreciate the opportunity afforded by your invitation of February 10 to comment on the department's proposal that the width of right-of-way for roads in Alaska should be as follows:

| | |
|-------------------------|----------|
| Alaska Highway | 600 feet |
| Other primary Roads | 300 feet |
| Secondary Roads | 200 feet |
| Feeder and Branch Roads | 100 feet |

The proposal is simply fantastic. If adopted it would push the would-be settler back as if he were not wanted in Alaska. It would in many cases push him up a mountain, over a cliff, or into a stream or lake. It would multiply the difficulties which for him are very considerable already. It would present problems in driveway construction, maintenance, snow clearance and in the obtaining of driveway permits through your right-of-way in the first place. (Don't try to tell any Alaskan who has had dealings with the department that there would not be red tape and delay in connection with that.) It would be an open invitation to trespass.

And for what? I confess I am unable to think of a single good reason for tying up all this territory right where we want people, accommodations for travelers, service facilities, etc. I drove to Alaska over the Alaska Highway last summer and am willing to testify that, even from the standpoint of appearance and interest to the traveler, developments along the road itself are exactly what is needed.

My idea of a reasonable right-of-way reservation, which would amply protect all the interests of the federal government, is as follows:

| | |
|--|----------|
| Alaska Highway, Other Primary Roads, and Secondary Roads | 200 feet |
| Feeder and Branch Roads | 100 feet |

No reply will be made other than simple acknowledgment
JAS

You mention that the proposal of the department represents a compromise between a recommendation of the Alaska Field Committee and some other unnamed interests. I find it impossible to believe that anyone acquainted with actual conditions in Alaska would recommend a 600-foot right-of-way or anything approaching that dimension. Accordingly, I am sending a copy of this letter to the head of each of the Interior Department agencies in Alaska for comment. When such comments have been received, I will communicate further with you.

Sincerely yours,

E. L. Bartlett

cc: Governor Gruening
Kenneth Kadow
Lowell Puckett
Col. John Noyes
Clarence Rhode
Don C. Foster
Col. J. P. Johnson
G. D. Jermain
Jos. M. Morgan (Recl.)
Grant Pearson
John Reed
Alfred Kuehl

February 25, 1949.

Mr. William J. Niemi,
District Engineer,
Alaska Road Commission,
Anchorage, Alaska.

Dear Sir:

Mr. Tapley advises you desire information regarding the established widths of rights-of-way along existing roads.

Where the road passes through patented lands or lands on which an entry was made prior to July 24, 1947, we actually have no fixed right-of-way width except in the few cases where easements have been obtained. On the established roads where the location has not been changed, we can actually hold only the width of road we have been using. If additional width is needed, it can be obtained from the owner by negotiation.

On July 24, 1947, an act of Congress was signed by the President providing for a reservation for road rights-of-way in all patents for public lands on which an entry was made after date of the act. This means that where an existing road or a new road passes through lands on which a homestead entry had not been made prior to the above date, the reserve provision automatically operates.

Recommendations have been made to the Department to fix the right-of-way widths on through public lands as described above at 300 feet for through roads, 200 feet for feeder roads, and 100 feet for local roads. The classification of roads has not been finally determined.

The tentative classification of the roads in your District is as follows:

Through Roads

Glenn Highway (including the road from Anchorage to Palmer)

Turnagain Arm Road (the road from Anchorage to connect with the Hope Highway)

24/226

2—Mr. William J. Hemi, February 25, 1949.

Feeder Roads

Forest Boundary to Hamer
Anchorage Lake Spemard Road
Parson's to Mt. McKinley Park Road
The Road in Mt. McKinley Park

All other roads are classified as Local Roads.

You will readily see that it is not possible to state definitely the right-of-way width of any roads except those through public domain on which applications for homesteads had not been made prior to July 24, 1947.

Very truly yours,

Ilse P. Taylor,
Chief Engineer.

IPT/lcs



UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
Anchorage, Alaska

22506 "L:RKC"

14 1949

April 11, 1949

MEMORANDUM

To: Director, Bureau of Land Management, Washington, D. C.
From: Lowell H. Suckett, Regional Administrator
Subject: Establishment of rights-of-way for public roads and highways in Alaska

| |
|-----------------|
| Col. [initials] |
| IT [initials] |
| AFC |
| GMT |
| WHL |
| GHS |
| WHL |

Reference is made to your memorandum of February 23, 1949, to the Director, Division of Territories, a copy of which was sent to this office, concerning the proposed withdrawal by public land order of rights-of-way for certain classes of roads or highways.

① Not attached
EW
H
OK
rw

In the memorandum you expressed concern about obtaining approval of the order by the Department of Justice, unless a list by classes of the several roads is incorporated in the order. From this, it is presumed that the roads in question to be listed, have been actually constructed or have been surveyed on the ground for construction in the near future. In such case, it appears to me that the purpose of the proposed withdrawal may well be accomplished by filing of maps showing the location of the roads and width of the rights-of-way therefor, for notation on the land office records in accordance with Departmental instructions of January 13, 1916 (44 L.D. 513), and an exception clause inserted in any final certificate and patent which may subsequently be issued for the land on which the road is located. This would do away with the necessity for the survey of the right-of-way strip, in the event the public land surveys are extended over the areas crossed by the roads or highways. Moreover, if the right-of-way is established by a withdrawal over surveyed lands, entry of the legal subdivision affected by the withdrawal may not be made unless and until a segregation survey is made of the road right-of-way.

24/226

The filing of maps as suggested would definitely place on record the width of the right-of-way shown thereon, which, it is believed, would also be protected by R.S. 2477 (43 U.S.C. sec. 932) in the event of the subsequent disposal of the land. This general right-of-way statute is considered applicable to Alaska as well as other Federal rights-of-way laws. See statement in opinion of the Attorney General (30 Op. Atty. Gen. 387) as to the general applicability of right-of-way laws in the territory of Alaska. While the statute does not require the filing of maps or specify the width of rights-of-way that may be established thereunder, it is believed that the recordation of such right-of-way maps, taken together with notation under 44 L.D. 513, supra, would effect to definitely establish the width of the right-of-way strip appropriated. In this connection I wish to also

call attention to the act of June 30, 1932 (47 Stat. 446, 48 U.S.C. sec. 323), which is administered by the Alaska Road Commission, and which contemplates that maps and plans shall be made showing the location of roads constructed or to be constructed thereunder.

This matter was not presented for discussion or consideration at either of the conferences held at Juneau by the representatives of the Alaska Field Staff, as it appeared that the plans for establishing rights-of-way withdrawals were well formulated and far advanced. Our discussions were more or less centered on the proposition of reaching an accord on the width of certain classes of roads rather than the method by which they were to be established. The Regional Counsel and I had the opportunity recently of discussing with Colonel Noyes and certain members of his staff the matter of establishing road rights-of-way by the filing of maps in lieu of withdrawals, as herein above indicated, and they appeared to be favorably impressed with the suggestion from a practical standpoint. I am, therefore, sending a copy of this memorandum to Colonel Noyes for his information.


If, however, it is deemed desirable that the withdrawals as contemplated be made, it is recommended that they be followed as soon as possible, with the filing of maps of definite locations, as herein above suggested, and the withdrawals thereafter lifted, so as to avoid the necessity of making segregation plats of surveys of the rights-of-way in order to permit entry and disposal of the lands adjoining.

In view of the present situation in regard to rights-of-way for existing roads, some of which are covered by withdrawals and others are not, we are meeting with some confusion and difficult problems in connection with our small tract program, which will continue until some definite policy or program is adopted for the establishment of the rights-of-way. For instance, where we have under consideration an area for small tract classification involving surveyed lands, traversed by an existing road for which no maps have been filed nor covered by a withdrawal, the question arises as to how the small tracts should be laid out with relation to such roads. We have in such cases two alternatives, (1) lay out the small tracts in the most desirable pattern without regard to the road, since the rights of the public in and to the road are fully protected by R. S. 2477, supra, or (2) in anticipation of a future withdrawal for the rights-of-way, to lay out the tracts so that they will not come within 50-100 or 150 feet from the center line of the road as constructed on the ground, dependent upon the class of road and the width to be prescribed therefor. Under alternative (1), no supplemental plat or segregation survey would be necessary, as the lessee or purchaser of the tract would take the same subject to the right-of-way. If alternative (2) is adopted, which would appear in order for the purposes of leasing, it will

be necessary to make supplemental or segregation plats of survey to give proper designation to the tracts, before sale and patent could be permitted. It is the Regional Counsel's opinion that in case of existing roads where no previous withdrawal has been made or contemplated, if any, that alternative (1) be adopted, and in case of such existing roads for which withdrawal has been made or will be made, that alternative (2) be followed, pending the announcement by the Department of a definite policy for the establishment of roads and highways in Alaska. This procedure in connection with our small tract program will be followed unless and until otherwise advised by the Washington office.


Lowell M. Tuckett

Approved:


Abe Barber
Abe Barber
Regional Counsel

LMP/AB/fp

cc: Mr. Kadow
Mr. Noyes /

[Handwritten initials]

47

ADDRESS REPLY TO
DISTRICT ENGINEER
ALASKA DISTRICT

CORPS OF ENGINEERS, U. S. ARMY
OFFICE OF THE DISTRICT ENGINEER
ALASKA DISTRICT
Anchorage, Alaska

15

15

NPARC
601.1
Alaska General

30 June 1949

Mr. John R. Noyes
Commissioner of Public Roads for Alaska
Alaska Road Commission
Department of the Interior
Juneau, Alaska

Dear Sir:

Information is requested concerning road rights-of-way in the Territory of Alaska.

Definite rights-of-way distances which legally apply to various types of roads on public domain are required for the exclusion of public roads from military reservations.

Public Law No. 229 (H.R. 1554) approved 24 July 1947, an act authorizing construction of roads on lands patented subsequent to date of enactment, does not establish any right-of-way widths.

This office has been informally advised by the Bureau of Land Management that an agreement exists between that office and the Alaska Road Commission which does establish the following widths for rights-of-way:

| | |
|-----------------|----------|
| Local Road | 100 feet |
| Feeder Road | 200 feet |
| Through Highway | 300 feet |

A copy of this agreement or a definite statement that such an agreement exists, together with confirmation of the above figures, is requested.

Your cooperation in supplying this information is appreciated.

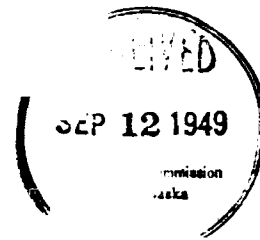
FOR THE DISTRICT ENGINEER:

Very truly yours,

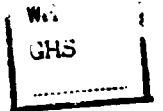
[Handwritten signature]
HENRY H. STERLING
Real Estate Director



UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
Anchorage, Alaska



September 9, 1949



Mr. Kenneth J. Kadow
Director, Alaska Field Staff
Juneau, Alaska

Dear Ken:

Since your inquiry as to whether or not the Bureau of Land Management has administrative problems to discuss at the Field Committee meeting, the public land order withdrawing areas parallel to roads in Alaska has been promulgated. The problems which this has brought about probably should be considered as administrative, and although we have taken considerable time discussing rights-of-way at other committee meetings, this is of such deep concern to me that I present it for your decision as to whether or not the matter should be discussed.

There have been several discussions as to the designation of road rights-of-way as easements or withdrawals. You will probably recall that I have indicated our feeling in the Anchorage office that easements would present far fewer problems to the disposal of the land.

Let us assume that the road goes through the SW $\frac{1}{4}$ of a section at an angle, and does not follow along any of the borders of the quarter section. Through the promulgation of the withdrawal order, there is now a withdrawn strip along the road. As homesteaders are not permitted to file on non-contiguous tracts, the homesteader will not be able to obtain the full 160 acres in that quarter section. At the present time few of the roads are actually shown on the plats of the Bureau of Land Management, as many of the roads have been built since the areas covered by the plats were surveyed. The Bureau of Land Management District Land Office, therefore, cannot locate the road on their maps. At the present time it is necessary that we follow the procedure of allowing the homestead entry as to the full 160 acres, but we are obliged to advise the entryman that when the road is located and with it, the withdrawal, it probably will be necessary to cancel a portion of his entry. Therefore, he should place all of his improvements and all of his cultivation on one side of the road. You can well see the handicap and the confusion that is to result.

*Easement
much
better*

24/226

Then, too, the matter of the description of the tract lying on one side of the road arises. It will be necessary for the Bureau of Land Management Engineering Department to survey all areas traversed by roads so as to give a definite indication by lots as to the lands that must be described in the patent. In other words, where the roads have already gone through surveyed lands, we will have no description of the land to definitely put in a

patent, unless we resurvey all of the areas in order to describe the lands adjoining the highways by lots.

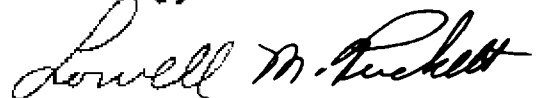
On the other hand, if the roads were considered as easements, the homestead entry would go across the road, and if at any time the road were changed or abandoned, the homesteader would automatically have title to that area formerly included in the right-of-way. If the designation of the rights-of-way continues as withdrawal, each time the road is changed it will be necessary to open the strip of land formerly occupied by the right-of-way, to preference right filing by veterans.

Of course any plans regarding rights-of-way must necessarily be considered by the Alaska Road Commission. However, representatives of our Washington office have indicated that as rapidly as the Alaska Road Commission files maps showing the location of the roads and the rights-of-way, with the district land offices involved, action will be initiated to revoke the withdrawals, and to leave the rights-of-way as easements across the land.

It does appear that proper procedure will require in either case the filing of plats or maps with the district land offices by the Alaska Road Commission, showing the location of the roads, and the widths of the rights-of-way along each road. We have indicated to the A.R.C. our reasons for believing that this procedure is necessary. The whole project has not yet been worked out between us, but is in a process of being developed.

Perhaps you will consider that this is a matter which should be worked out entirely by the Bureau of Land Management and the Alaska Road Commission. However, I would like to have an expression of the Field Committee's opinion relative to the matter of easements vs. withdrawal, if you see fit to present the matter.

Sincerely,



Lowell M. Fickett
Regional Administrator

cc: Col. John Noyes, ARC

LMP/fp

INTRA-DEPARTMENTAL CORRESPONDENCE

SUBJECT: Right of Way Widths on existing roads

DATE: November 28, 1961

TO: Robert V. Barnes, R/W Research Analyst III (HPS)
Division of Highways

FILE REFERENCE: 2-23-00
D-Legislation and
ATTENTION OF: Legal

FROM: Thomas E. Fenton, R/W Agent I
Division of Highways

QUESTION: What width may the HPS program claim on roads which are not covered by deed or recorded plat?

ANSWER: I. Roads Built prior to July 24, 1947.

The Department of Law in Attorney General's Opinion No. 29 of November 4, 1960, declared that the width of Alaskan highways constructed under 43 U.S.C. 932 is 66 feet. Forty-three U.S.C. 932 provides: "The right of way for the construction of highways over public lands, not reserved for public use, is hereby granted."

An office memorandum of the BPR, dated April 1, 1958, casts some doubt as to whether roads in Alaska built over public domain were constructed under 43 U.S.C. 932. In that opinion, however, the General Counsel for the BPR believed that a 66 foot right of way could be supported.

It would appear therefore that we can claim 66 feet for all right of way when the highway was built prior to 1947 or thereafter. This 66 feet width applies even though the land was entered prior to construction because 66 feet should be easily supported on the theory of prescriptive easement.

II. Roads Built after July 24, 1947.

In a letter dated November 17, 1960, the Department of Law stated that the width of right of way utilized under the Act of 1947 was unlimited. Therefore, you may claim any amount in addition to the basic 66 feet by use of the Notice of Utilization if the land is subject to said Act of July 24, 1947. It must be remembered however, that we are required to pay for improvement if we claim under the authority of this act. 14 Alaska Admin. Code 382.

To claim more than 66 feet without paying for improvements we must turn to other authority. United States Department of the Interior, Order 2665, October 16, 1951, as amended on July 17, 1952 and September 15, 1956, and P.L.O. 1613, April 7, 1958, provided for easements for highway purposes along certain existing roads. You may claim right of way widths consistent with these regulations.