



UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
300 NORTH LOS ANGELES STREET, ROOM 7759
LOS ANGELES, CALIFORNIA 90012

1	ASRS
2	ASD
	PES.
	ASD
	OP
	SSD
	STD
	HD
	ED

July 22, 1968

Action
Return to:

Memorandum

To: Manager, District and Land Office
Bureau of Land Management, Riverside, California

From: Regional Solicitor, Los Angeles Region

Subject: Rights-of-way in connection with small tracts

Your office has requested our opinion as to whether the rights-of-way in connection with lands classified for small tracts under the Act of June 1, 1938, as amended, 63 Stat. 239, 43 U.S.C. 623(b)(1964), but not patented, may be used for the construction of roads and public utilities without the necessity of a formal grant by your office for the purpose.

The Associate Solicitor, Division of Public Lands, in a memorandum opinion to the Director, Bureau of Land Management, dated August 5, 1957, subject: "Elimination of a Right-of-Way Reservation from Patent", held that the rights-of-way in connection with small tracts are common-law dedications. It is stated in that opinion in applicable part, as follows:

"The reservation undoubtedly stems from a similar provision in Form 4-775, the small tract lease form issued under the same statute. Back as far as 1945, the lease form contained this provision to allow ingress to and egress from the area of the tract along the boundary lines. The Commissioner of the General Land Office was authorized to make the final decision as to the location of the right-of-way whenever necessary. In 1949, the lease form specifically provided for a maximum 33-foot right-of-way. This provision was included in the form adopted in 1950 when the regulations first provided for an option to purchase the lands under lease. Circular 1764, September 11, 1950, 43 CFR, 1954 ed. 257.16(c), since revised by Circular 1859, January 15, 1955, 43 CFR 1954 ed. Cum. Supp. 257.17(b).

Encl. 1-97

"This provision in the small tract lease form was inserted, clearly, for the mutual benefit of the lessees. It is equally clear that the identical provision was included in patents under the regulations which provided for sale as well as leasing of tracts under the Small Tract Act to give patentees the same ready access from area to area.

* * *

"No apparent 'public' purpose or governmental use was contemplated except to carry out the purposes of the Small Tract Act to provide for intensive utilization of the public lands. It was not intended to reserve rights to the United States. Compare Augusta G. Stanley, et al., A-26959 of November 15, 1954."

The current regulation pertaining to rights-of-way in connection with small tracts and which has been in force and effect since January 15, 1955, is stated in 43 CFR 2233.5(b)(1967), as follows:

"The classification order may provide for rights-of-way over each tract for street and road purposes and for public utilities. If the classification order does not so provide, the right-of-way will be 50 feet along the boundaries of the tract."

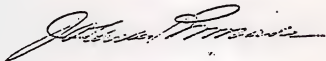
When land is patented under the Small Tract Act the whole of the tract is described in the patent subject to the right-of-way for roads and public utilities.

No particular formality is necessary to effect a common law dedication. The requisite intention may be established in almost any conceivable way. It may be shown by written instrument, by oral declaration of the owner or by some other explicit manifestation by the owner of his purpose to devote the property to public use. The intention may be implied from circumstances, or by acts or conduct of the owner which clearly indicate an intention to devote the land to public use or from which a reasonable inference of his intent may be drawn. 23 Am. Jur. 2d, Dedication, Section 21, page 19, and the cases cited therein. Under a common-law dedication fee title does not pass and the public acquires only an easement in the land designated for its use. Carter Oil Company v. Myers, 105 F.2d, 259 (1939). Even though a common-law dedication does not pass the legal title to the land out of the party making it, it is sufficient to defeat an action for the recovery of the property as against those who are using the land in accordance with the purpose for which it was dedicated. No obstruction of the subject of a dedication or encroachment on it by the dedicator or by anyone else will affect the dedication or impair the right of the public to its benefits, unless

the land so dedicated has been abandoned by the public or by proper authority pursuant to due course of law. 23 Am. Jur. 2d, Dedication, Section 60, page 53.

In our opinion the provision in 43 CFR 2233.5(b) that if the classification order does not provide for rights-of-way in connection with small tracts, the right-of-way will be 50 feet along the boundaries of the tract, is a clear and explicit manifestation on behalf of the United States to dedicate a portion of each small tract to public use. Accordingly, in light of the above discussion we believe that the rights-of-way in connection with classified but unpatented small tracts may be used for the construction of roads and public utilities, as is expressly stated in the regulation, to serve patented small tracts, without the necessity for your office making a formal grant for the purpose.

- - -

A handwritten signature in cursive script, appearing to read "John W. P. ...", is written in dark ink. The signature is fluid and somewhat stylized, with a long horizontal stroke at the end.