

November 23, 1950

from appropriate federal officials.....If the Territory embarks upon its own road building program it cannot take advantage of the right of way clause found in all patents and deeds issued by the United States since such rights of way are reserved only for road construction by or under the authority of the United States or of any state created out of the Territory of Alaska (48USCA 321d). In summation it can be stated that when the Territory desires to expend monies for road construction over Federal lands it must first secure express permission before such construction is undertaken. Recognition must be given to the fact that only the United States and future State of Alaska have authority to build roads over patented land. It may be however that the United States will authorize the Territory to exercise the Federal Government's rights under its grants but this is a matter of speculation."

Now arise the questions:

- a. On roads to be built by the Territory under the Federal-Aid Highway Act will the Territory have to have "express permission" from the Department of Interior to build such roads across the public domain?
 - b. Will the United States extend to the Territory when building roads under the Federal-Aid Highway Act the same rights as the Alaska Road Commission (Bureau of Public Roads) as set forth in 48 USCA 321(d) wherein it is provided that in all patents and deeds by the United States issued for lands in Alaska there must be reserved therein rights of way "for roads.... to be constructed under the authority of the United States or any State created out of the Territory of Alaska", or will the Territory have to use its condemnation proceedings to secure these rights of way?
3. Public Law 627 Section 107(b) states: "Transfer of functions: Effective not more than ninety days after the approval of this Act the functions, duties, and authorities pertaining to the construction, repair and maintenance of roads, tramways, ferries, bridges, trails and other works in Alaska conferred upon the Department of Interior.....". The Act of Congress approved January 27, 1905 (33 Stat., 616) states: "To provide for the construction and maintenance of roads, tramways, bridges, ferries and trails in the District of Alaska". (Emphasis mine). From the foregoing two quotations it would seem that by Federal as well as by Territorial law ferries are considered as roads or parts of a road system.

Southeastern Alaska comprising the First Judicial Division is mostly in the Tongass National Forest and consists of a narrow precipitous coast line divided into short sections by fjords and glaciers. Off this coast line lies

an archipelago of the largest islands under the jurisdiction of the United States. A tremendous development of pulp, lumber, and, in the near future, of mining is taking place in Southeastern Alaska. Tourism is also increasing and is only held back from being equal in economic value to lumber and mining by a lack of transportation facilities. At present almost all passenger transportation is by air and air facilities even at this stage of industrial development airplane companies have difficulty in handling the passenger, not to mention the freight, load. Some kind of trunk transportation system will have to be worked out to take care of the rapidly increasing automotive and passenger traffic throughout Southeastern Alaska.

This office has presented a plan for a system of roads and ferries connecting the main towns of the island and mainland of Southeastern Alaska with the Alaskan Highway System at Haines in the north and the Canadian Highway System at Prince Rupert, British Columbia, in the south. Now the questions arise which can be only answered by higher authorities in Washington D. C.:

- a. May the aforesaid road and ferry system be placed on the Federal-Aid Highway Program for Alaska?
- b. May the tolls received for ferry operations (which of course will be for passengers, automobiles and trucks only) be placed under the Federal-Aid Highway Act into a revolving fund for maintenance of the ferries, or;
- c. May the operations of the ferry be contracted to private parties, the fares to be set and operations supervised by the Bureau of Public Roads and/or the Territory?

For further discussion reference is made to my letter of September 23, 1953 to the Alaska Road Commission and to the Bureau of Public Roads. A copy of the letter to the Alaska Road Commission is herewith enclosed.

4. The Territorial Board of Road Commissioners has authority under Territorial statutes Section 41-2-2 ACLA 1949 to make matching payments as required under the Federal Aid Highway Act. Will the Territory under the elected Highway Engineer do the engineering work on such roads as may be designated under the aforesaid Act and gradually take over the maintenance and construction by contract of all roads with Federal-Aid Highway funds, or will the methods followed in previous years under the Alaska Road Commission still be in effect? Without implying the shadow

of any criticism of a splendid organization, I feel that there were weaknesses in the old Alaska Road Commission set-up due to all maintenance work and 17% of all new road construction being done by force account (besides most of the new road construction built with contributions from the Territory with Territorial highway funds). As the Territory gradually works into a major maintenance and construction program, this force account program could be changed to a contractual set-up and the above mentioned weaknesses corrected.

5. Will the Territory be given the right to indicate the standards and methods of construction, and the amount and methods of maintenance (either by force account or by contract) on roads built by Federal-Aid Highway funds?

6. It seems to this office that the operation of scale houses for weighing trucks and other automotive equipment for overloads is part of highway maintenance. As I understand it, in most states scale houses are operated by the state highway patrol which in turn is a part of the state highway department. In Alaska there is no highway patrol under a highway department but a territorial police which operates throughout the Territory irrespective of the highways. In the past the operation of the scale houses has been a joint venture between the Territory and the Alaska Road Commission. The Alaska Road Commission construct and furnished, except for minor items, the scale houses, the Territory paying a greater part of the operator's salaries and running expenses. In the present biennium (1955-1956) the Territory has operated the scale houses, the operators being given the status of deputy police officers. Expenses are paid from the Highway Fund from an appropriated amount upon vouchers approved by the Territorial Highway Engineer. In other words the Territorial Legislature recognized that scale houses and their operation are part of road maintenance but also wished to have the authority of the Territorial Police supporting the. This rather peculiar set-up could be changed by very simple legislation specifying that scale house operators should be screened by the Territorial Police and would have deputy police powers.

Now comes the questions:

- a. Can scale houses for weighing trucks and other automotive equipment for overloads be constructed and operated from Federal Aid Funds as part of road maintenance by the Territory and/or by the Bureau of Public Roads, with scale house operators screened by the Territorial Police and given the powers of arrest?
- b. Why is it that, since scale houses may be constructed as part of highway

maintenance, the operation of such scale houses is not part of said maintenance. This last interpretation of the status of scale houses has been specified by the Alaska Road Commission during the last biennium.

7. The Territorial Board of Road Commissioners, under Section 50-1-4(b) ACLA 1949, has the power "To erect and maintain upon the public highways such signs and other devices as it shall deem necessary and advisable".

Now comes the questions:

- a. Will the Bureau of Public Roads, as has been done in the past by both the Bureau of Public Roads and the Alaska Road Commission, erect and maintain directional signs such as railroad crossing, U. S. route markings, destination and distance information, etc. on highways or will the Territory do so with Federal-Aid Highway funds?
- b. Will the aforesaid Board designate and furnish speed limits and other special signs as now, and formerly erected by the Alaska Road Commission, or will the Bureau of Public Roads take over this function with Federal-Aid Highway Funds?

At no time has there been any formal agreement between the Territory and the former Alaska Road Commission or the Bureau of Public Roads as to responsibility for road signs. It was tacitly agreed, and so recognized by the courts, that the Territory, through its Board of Road Commissioners, should designate speed limits and furnish speed limit and special signs. A formal agreement between the Territorial Board of Road Commissioners and the Bureau of Public Roads on road signs under the new Federal-Aid Highway Act for Alaska should be entered into.

8. Is it possible for the Territory to receive credit on Federal-Aid matching funds, Public Law 627, Section 107(a), in fiscal year 1957 for funds contributed to the Bureau of Public Roads after July 1, 1956 on the farm (and access) road program for which Congress did not appropriate funds to the Alaska Road Commission and which the Territory was forced to take over. This matter was tentatively broached at the October 22 conference but the idea was so quickly repudiated by the Bureau of Public Roads officials present that the idea was not pressed farther. I can find no legal reason why the Territory should not be thus credited. It seems to me to be a matter of administrative decision.

Perhaps at this time a further word on the farm (and access) road program

November 23, 1956

is in order. For a great many years the heads of the Alaska Road Commission had presented to the Alaska Territorial Legislature that, if the motor fuel tax were raised above 2¢ per gallon, Congress could be persuaded to raise the appropriation to the Alaska Road Commission for the construction of roads in Alaska. I personally heard such a presentation to the 1953 (Twenty-first) Legislature. Acceding to the aforesaid presentation the 1955 (Twenty-second) Legislature raised the motor fuel tax on highway using vehicles to 5¢ per gallon. Then in the summer of 1955 the Office of Territories, Department of Interior, announced that since the Territory had raised the motor fuel tax and now would have more funds available for road construction, Congress would not be asked to provide an appropriation for the farm (and access) road program but such a program would be turned over to the Territory--which action of course contravened the original concept of the Legislature and in a sense was an allocation of Territorial funds by a Federal agency. I therefore believe that in all justice to the Territory the funds advanced on the aforesaid farm (and access) road program should be credited to Territorial matching funds under the Federal Aid Highway Act for the fiscal year 1957.

9. Must all the Territorial matching funds under the Federal-Aid Highway Act be paid as of July 1 of each year in order to obtain Federal matching funds? This question is probably covered by existing regulations but these are not known to this office.

In closing I must say again how very disappointed I was in the conferences held on October 22 and 25. The difficulty seems to be in assigning the roads in Alaska on primary and secondary systems. Why this should take so long or be so mysteriously hard to do is beyond my understanding. The old Alaska Road Commission had data covering the condition, length and status of every road that had been constructed under their jurisdiction in Alaska. Copies of these are in my office. Personally I have been over almost every road in Alaska even to most of the short farm and access roads and believe I am qualified to judge the condition of the greater part of them. If the very liberal decisions arrived at at the conference in Denver held September 13, 1956 between yourself, the Honorable B. Frank Heintzelman, Governor of Alaska, and Mr. Frank Turner of the Bureau of Public Roads, are followed, it does not seem to me that there should be any difficulty in assigning the roads in Alaska to three classes as specified in the Federal-Aid Highway Act, namely urban, primary and secondary.

As to the proportion of funds to be spent on each road, the Territorial Highway Engineer for Alaska and the Governor of Alaska can only recommend

Commissioner Curtiss

8.

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to the Secretary of Commerce how these funds are to be divided. The final decision as to this matter rests with the Secretary, as I understand the law.

As a final word, it seems to me that the Territorial Highway Engineer should be appointed by a strong Territorial Board of Road Commissioners rather than be an elected political official. The terrific political pressure put on the office would not then tend to warp the judgement of the Highway Engineer. I hope the coming Territorial Legislature will correct this matter.

Sincerely yours,

IRVING REED
Highway Engineer

cc: Governor Heintzelman

CONTINUITY REFERENCE

FILE DESIGNATION: *Alaska (x to Alaska Land 3)*

FILE DATE: *Nov. 21, 1956*

TO: *ghiglione*

FROM: *Booth (30.02)*

SUMMARY: *Litigation concerning rails located on abandoned R/W of Copper River + Northwestern Railway*

att: copy memo 11/7 from Clark to Booth; copy memo 11/1 from Flint to Clark (2 pages). above returned to Bardales
BROUGHT FORWARD TO *12/7/56 -*

FILE DESIGNATION: *F.H. - Alaska Copper River ~~Route~~ ^{Rail}*

FILE DATE:

TO:

FROM:

SUMMARY:

BUREAU OF PUBLIC ROADS

Charge Slip 10-01

BUREAU OF PUBLIC ROADS

Alaska
Alaska #42
of 3

November 14, 1956

Acting Division Engineer
Juneau, Alaska

C. D. Curtiss, Commissioner

Federal-Aid for ferry operations

Reference is made to the memorandum of October 29 on the above subject. Specifically, the Acting Solicitor advises that Federal-aid funds may not be spent in a foreign country. Accordingly, Prince Rupert could not have Federal-aid funds spent on a terminus. Additional legislation by Congress would be necessary to expend funds on a terminus in Prince Rupert.

A copy of Mr. Booth's opinion on certain phases of Alaska is attached. While not entirely germane the answer to Question 1 has some relationship to the question involved here.

Attachment
RLangdon:je

- cc: Mr. A. C. Clark
- Mr. J. C. Allen
- Mr. S. H. Booth
- Files (2)
- Legal

Mr Booth
5-20-58

BUREAU OF PUBLIC ROADS

Office Memorandum • UNITED STATES GOVERNMENT

TO : Mr. C. D. Curtiss, Commissioner
Washington, D. C.

FROM : M. M. Flint, Division Engineer
Juneau, Alaska

SUBJECT: Legality of Federal-Aid for ferry operations

DATE: October 29, 1956

During the recent visit of Messrs. Turner and Allen, the legality of the use of Federal-Aid funds for ferry operations in Alaska was the subject of several conferences.

Recently, in the Governor's Office, the subject was discussed again, particularly the possibility of placing a proposed ferry route from Haines to Prince Rupert on the Federal-Aid system and providing Federal-Aid funds for the construction of ferry boats and/or the operation of the ferry system.

The desirability of such an operation has not been fully explored as yet, but it would be appreciated if legal advice in the matter could be at hand for future discussions.

13
11-5-56

Office Memorandum

1-1

BUREAU OF PUBLIC ROADS

Mr. Tolson

November 10, 1936

Mr. Beach

Memorandum presented by Territorial Highway Engineer David of Alaska in his letter of September 11, 1936, to the Secretary of Commerce

Several weeks ago a copy of Mr. Beach's letter was referred to this division inasmuch as several of the questions asked therein involved legal matters. Some of these questions are not sufficiently clear-cut so that at this time a legal opinion should be written in the absence of a specific factual situation. Further, we delayed the preparation of this memorandum in order to consult with Mr. J. L. ... to ascertain if on their recent trip to Alaska any discussions took place concerning the specific questions.

Question No. 1: Can tolls such as tariffs on ferry services be charged on projects financed by Federal aid?

Section 107 of the Federal Aid Highway Act of 1936 (49 Stat. 177) states that Federal-aid highways constructed under the provisions of that act shall be free from tolls of all kinds. Under certain conditions section 9 is not applicable in toll bridges or toll tunnels (see Act of March 1, 1937 (50 Stat. 1394) and section 104 of Act of June 14, 1937 (50 Stat. 2307). Section 107 of the Federal Aid Highway Act of 1936 (49 Stat. 177) states that the Territory of Alaska is entitled to share in funds for expenditure for projects on the Federal-aid system under the Federal-aid road act approved July 11, 1936 (50 Stat. 239) and tolls, mandatory or supplementary thereto, upon the same terms and conditions as the several States. Therefore it would seem that tolls could not be charged on projects financed by Federal aid.

However, under an act of June 30, 1936 (49 Stat. 246) entitled "An Act Providing for the transfer of the various authorized and authority conferred by law upon the Board of Land Commissioners in the Territory of Alaska to the Department of the Interior, and for other purposes." The Secretary of the Interior was given power to distribute the titles and authority transferred and to make rules and regulations governing the use of roads, trails and other works including the fixing and collection of tolls where deemed necessary and advisable in the public interest. Section 107 of the Federal-aid Highway Act of 1936, in paragraph 2 thereof, transferred the functions, duties and authority pertaining to roads to Alaska to the Secretary of the Interior by virtue of the act of June 30, 1936, referred to above, to the Secretary of Commerce. The word "ferrous" would apply concerning this section. Therefore the Secretary of Commerce certainly would have the power to charge tolls on certain and roads that are ferrous.

RG30, Bur. of Public Roads
E. G. D., Gen. Corr. & Related Recs, 1955-59
Box 1129

... prior to the introduction of the Federal-aid theory. It is also possible that there may be charges on Federal aid roads that will be of assistance with Federal-aid activity in the future on the theory that the power of the Secretary of the Interior derived from the 1907 act takes precedence over Section 1 of the 1916 Act. However, before expressing this opinion with firmness the matter would have to be examined more carefully. Possibly it may be necessary to call to the attention of Congress the possible conflict between the two acts and request further legislation to clarify the matter.

Question No. 2: "Can the operation of truck routes be charged to road maintenance -- and if so, any such expenditures be assigned by the Territorial Legislature and incurred by the Department of Territorial Police?"

As understood Mr. Allen and Mr. Turner, when in Alaska, answered the above question in the negative.

Question No. 3: "The Act of Congress, approved June 20, 1906 and a part of the Organic Act for the Territory states, in part: '...That the Legislatures of the Territories of the United States now or hereafter to be organized shall not need local or special laws to any of the following enumerated classes: --laying out, opening, altering, and working roads or highways, --locating roads, town-plats, streets, alleys and public grounds.' In 49 U.S.C. 1116, it is provided that in all sections and lands by the United States reserved for lands in Alaska, there shall be reserved therein rights of way if and so far as circumstances may require under the authority of the United States or any State created out of the Territory of Alaska.

"Will our inclusion under Federal aid be enough 'authority of the United States' for the Territory to take these rights of way" with the Organic Act cited limit our activities in any manner?"

The inclusion of the highway activities in Alaska within the Federal-aid program would be adequate "authority of the United States" for the former Alaska Road Commission to take rights-of-way across private property so reserved by 49 U.S.C. 1116. The Organic Act would not seem to limit the activities in any manner.

Question No. 4: "Does the Department of Commerce in Alaska now have the right to take rights of way across the public domain as the Alaska Road Commission has been doing?"

November 17, 1956

Under the provisions of the Federal-aid Highway Act of 1956, the Department of Commerce succeeded to all authority formerly vested in the Department of the Interior, and the Bureau of Public Roads would now have the right to take rights-of-way across public domain to the same extent that the Alaska Lands Commission formerly had such authority.

Section No. 5: "With whom will actual title rest for the roads constructed and maintained with Federal aid monies?"

Actual title to the right-of-way for roads constructed and maintained with Federal-aid monies would be vested in the United States of America.

Section No. 6: "With whom will actual title rest for the roads constructed by the Federal Government and to be maintained with Federal aid monies?"

Title to the right-of-way for roads constructed by the Federal Government and maintained with Federal-aid monies would be in the name of the United States of America.

Section No. 7: "With whom will actual title rest for the roads constructed by the Territory or municipalities and to be maintained with Federal aid monies?"

Title to the right-of-way for roads constructed by the Territory or municipalities and maintained with Federal-aid monies would be vested in the Territory or the appropriate municipality.

Section No. 8: "If the Territorial road system were laid out to connect to Prince Rupert, British Columbia, roads via ferry, would Federal aid funds be used for construction or maintenance of the roads facilities at Prince Rupert if such were not undertaken by the Canadian Government?"

We do not believe that there is legal authority at the present time to expend Federal-aid funds in a foreign country.

Section No. 9: "Will the Territory be allowed to take on more activities under Federal aid as it prepares itself for such tasks or is a general firm distribution of function between the Federal and Territorial agencies planned?"

This is purely a policy question and not a legal one.

Question No. 10: "Under present Territorial statutes, the Secretary of Highway is authorized to submit a territorial budget to the Territorial Legislature. Due to uncertainty as regards the functions and duties that may be assigned the Territory from Federal aid funds it would appear almost impossible to prepare such a budget at this time. Will there be a provision by the Secretary of Commerce for the review of such items on administrative and engineering subjects of either the local Federal agency or the Territory from the Federal aid funds or the budgets in their entirety?"

As we understand it, Mr. Allen, when in Alaska, stated that he did not believe the Secretary of Commerce cared to look at the Territorial financial budget nor that there was no need for the highway engineer to look at the Federal subject.

Question No. 11: "The Territorial Board of Road Commissioners has authority under Territorial statute 11-203, 1948 to make matching payments on the Federal aid act. The Territory now has under the Territorial Highway Act and the funding for a full scale highway department which can be fully functioning in another year or at the most two years.

"Will the Territory do the engineering on such roads as may be designated under the aforesaid act and gradually take over the maintenance of all roads from the Federal aid funds, or will the present methods (as under the Alaska Road Commission) still be in effect?"

This purely a policy question.

Question No. 12: "May the Territory maintain a flexible classification of primary and secondary roads during this stage of development of the Territory's road system?"

Yes.

Question No. 13: "Will the Territory have the opportunity to designate the standards and methods of construction of roads built by Federal Aid Highway Funds?"

As a matter of law, the full authority for standards and methods of construction is vested in the Secretary of Commerce but he may seek the cooperation of the Territorial Board of Road Commissioners.

Section 10, 11: "The Territorial Board of Land Administration has not indicated the method of calculation used for determining the amount of Federal 100% highway funds available for other uses. It was assumed by the Board that this item was to be 5% of the total funds available under the Federal Highway Act of 1956.

This is purely a fiscal question which we believe Mr. Allen explained when he was in Alaska.

Phillips as to questions 3, 4, 5, 6, and 7
 Muryle and Langdon as to question 1
 Langdon as to questions 2, 8, 9, 10, 11, 12, 13 and 14
 "yes": 3

cc: Mr. J. C. Allen
 Mr. F. L. Turner
 Mr. L. C. Clark
 Mr. J. T. Booth
 Mr. W. L. Phillips
 Acting Division Engineer, Juneau, ALASKA
 Files (2)
 Legal

WPK

Alaska

Mr. C. C. Curtiss

November 13, 1956

R. E. Smith

Questions presented by Territorial Highway Engineer Reed of Alaska in his letter of September 21, 1956, to the Secretary of Commerce

Several weeks ago a copy of Mr. Reed's letter was referred to this division since several of the questions asked therein involved legal matters. Some of these questions are not sufficiently clear-cut so that at this time a legal opinion should be written in the absence of a specific factual situation. Further, we delayed the preparation of this memorandum in order to consult with Mr. J. C. Allen and Mr. F. C. Turner to ascertain if on their recent trip to Alaska any discussion took place concerning the specific questions.

Question No. 1: "Can tolls such as tariffs on ferry services be charged on projects financed by Federal Aid?"

Section 9 of the Federal Highway Act (42 Stat. 212) states that Federal-aid highways constructed under the provisions of that act shall be free from tolls of all kinds. Under certain conditions section 9 is not applicable to toll bridges or toll tunnels (see Act of March 3, 1927 (44 Stat. 1398) and section 204(g) of Act of June 16, 1933 (48 Stat. 303)). Section 107 of the Federal-Aid Highway Act of 1956 (70 Stat. 371) states that the Territory of Alaska is entitled to share in funds for expenditure for projects on the Federal-aid system "under the Federal-aid Road Act approved July 11, 1916 (39 Stat. 955) and Acts Amending thereof or supplementary thereto, upon the same terms and conditions as the several states". Therefore it would seem that tolls could not be charged on projects financed by Federal aid.

However, under an Act of June 30, 1932 (47 Stat. 446) entitled "An Act Providing for the transfer of the duties authorized and authority conferred by law upon the Board of Road Commissioners in the Territory of Alaska and the Department of the Interior, and for other purposes," the Secretary of the Interior was given power to distribute the duties and authority transferred and to make rules and regulations governing the use of roads, trails and other works "including the fixing and collection of tolls where deemed necessary and advisable in the public interest." Section 107 of the Federal-aid Highway Act of 1956, in paragraph (b) thereof, transferred the functions, duties and authority pertaining to roads in Alaska which the Secretary of the Interior had under the Act of June 30, 1932, referred to above, to the Secretary of Commerce. The word "ferries" specifically appears in this section. Therefore the Secretary of Commerce certainly would have the power to charge tolls on ferries and roads that are constructed

Copy of this attached
to memo 11-14-56 to
Dir 10

CONTINUITY REFERENCE

FILE DESIGNATION:

Alaska

FILE DATE:

Nov. 7, 1956

TO:

Booth

FROM:

Clark (40-90)

SUMMARY:

*to increase length of Copper River Hwy. (sect. C,
under contract between McLaughlin, Inc + B-E-C-K Const.
+ the Alaska Road Commission - etc.*

BROUGHT FORWARD TO

Robert McLaughlin

FILE DESIGNATION:

F.H. Alaska Copper River Dam etc -

FILE DATE:

TO:

FROM:

SUMMARY:

BUREAU OF PUBLIC ROADS

DEPARTMENT OF COMMERCE
BUREAU OF PUBLIC ROADS
Washington 25, D. C.

orig + mgmt 1
Pers 20
Alaska
Pers 2

November 6, 1956

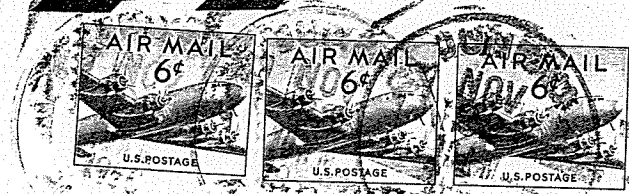
CIRCULAR MEMORANDUM TO: Deputy Commissioners and Division Engineers
FROM: C. D. Curtiss, Commissioner
SUBJECT: Acting Division Engineer, Division Ten, Alaska

I am saddened to have to advise you that Mr. Morton M. Flint, newly appointed Division Engineer at Juneau, died suddenly of a heart attack the evening of November 5 at Sacramento, California, while preparing to move his family to his new headquarters.

I have asked Mr. A. F. Ghiglione to serve temporarily as Acting Division Engineer, effective today.

C. D. Curtiss

TERRITORY OF ALASKA
OFFICE OF HIGHWAY ENGINEER
Box 2073
JUNEAU, ALASKA



VIA AIR MAIL

Mr. Charles D. Curtiss
Commissioner of Public Roads
Bureau of Public Roads
Department of Commerce
Washington 25, D. C.

RG 30, Bur. of Public Roads
E. G. D., Gen. Corr. + Related Recs., 1955-59
Box 1129