

FEDERAL BUREAU OF INVESTIGATION
INTERVIEW REPORT

3-4-59

MARVIN L. SMITH, truck driver, Bureau of Public Roads Depot, Haines, Alaska furnished the following sworn signed statement on February 20, 1959.

"2/20/59
Haines, Alaska"

"I, Marvin L. Smith, after being duly sworn, furnish the following free and voluntary statement to Charles R. St. John who has identified himself to me as a Special Agent of the FBI. No threats or promises have been made to me. I understand I need make no statement, but any statement I do make may be used in a court of law."

"I have observed records of my time spent on hooking the BPR water system into the Haines water system in Oct. & Nov. 1958 as kept by Karl Comstock, and believe them to be correct."

"During the hours I worked on the project, Kenneth Searcey was on the job site approximately 50% of the time. I would estimate that of the time he was there he actually performed work on the project approximately three-fourths of the time and the rest of the time he supervised."

"I have read the above statement and it is true and correct to the best of my knowledge."

/s/ Marvin L. Smith
truck driver

Sworn to and subscribed by:
/s/ Charles R. St. John, Special Agent, FBI 2/20/59
Haines, Alaska
Witnessed: /s/ Karl O. Comstock"

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Interview with MARVIN L. SMITH File # 46-609
on 2-20-59 Haines, Alaska Dictated: 2-20-59
by Special Agent CHARLES R. ST. JOHN/dca

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E.6D, Gen Corr + Related Recs, 1955-59
Box 1131

FEDERAL BUREAU OF INVESTIGATION
INTERVIEW REPORT

3-4-59

JOHN W. THOMPSON, SR., employee, Haines Pipeline, Haines, Alaska, and former Bureau of Public Roads employee and former Mayor, City of Haines, furnished the following sworn signed statement on February 20, 1959.

"2/20/59
Haines, Alaska

"I, John W. Thompson, Sr., after being duly sworn, make the following free and voluntary statement to Charles R. St. John who has identified himself to me as a Special Agent of the FBI. No threats or promises have been made to me. I understand I need make no statement but any statement I do make may be used in a court of law."

"I have observed the records of my time spent on hooking the BPR water system into the Haines water system in Oct. & Nov. 1958 as kept by Karl Comstock, and believe them to be correct."

"During the hours I worked on the project, Kenneth Searcey did not spend a full 8 hours a day at the job site. I do know he spent a considerable amount of time making special tools, adapters, locating & melting down lead to use in caulking etc. How much of this time spent away from the job site, he spent in performing necessary functions for the completion of the project I have no way of estimating. On one day he repaired the shovel that was being used on the project. I don't know of any city work performed by Searcey during the pertinent period."

"As far as I know Searcey was working at some phase of the project 10/27/58-10/29/58, and 11/4/58-11/7/58. On Oct. 30, 1958 I don't know of any work Searcey did on the project over the 2 hours put in by BPR employees. I don't know what he could have been doing on the morning of 11/4/58 since the parts didn't arrive until about noon. Similarly, I know of nothing he could have been doing on 11/7/58 unless possibly picking up tools since the job was

Interview with JOHN W. THOMPSON, SR. -14- File # 46-609

on 2-20-59 Haines, Alaska Dictated: 2-20-59

by Special Agent CHARLES R. ST. JOHN/ada

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AN 46-609

completed the day before. I believe he did check a couple of guages for pressure that day though."

"I have read the abve statement & it is tire & corect to the best of my knowlage."

/s/ John W. Thompson

"Sworn to and subscribed by:

/s/ Charles R. St. John Special Agent, FBI
2/20/59 Haines, Alaska

Witnessed:

/s/ Karl O. Comstock"

FEDERAL BUREAU OF INVESTIGATION
INTERVIEW REPORT

3-4-59

Mrs. EDNA SMITH, City Clerk and Treasurer, City of Haines, Alaska made available her records pertaining to the Bureau of Public Roads water system installation in October and November, 1958. These records reviewed February 20, 1959 contain only a handwritten time sheet submitted by SEARCEY listing the dates he worked on the project and the number of hours worked each day, a copy of the bill dated November 13, 1958 submitted to the Bureau of Public Roads, voucher and requisition #204 claiming reimbursement for SEARCEY's services and City check #1864 showing payment to SEARCEY by the City of Haines for the work on the project, as previously reported.

She stated there was no break down of the time spent on each particular phase of the project and there was no indication SEARCEY spent time on City work during the days he claimed to have worked on the Bureau of Public Roads project.

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Interview with _____ File # _____
 MRS. EDNA SMITH 46-609
 on _____ at _____
 2-20-59 Haines, Alaska Dictated: 2-25-59
 by Special Agent _____
 CHARLES R. ST. JOHN/daw

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Office Memorandum • UNITED STATES GOVERNMENT

TO : SAC, ANCHORAGE (46-609)

FROM : SA CHARLES R. ST. JOHN

SUBJECT: KENNETH LEROY SEARCEY,
Bureau of Public Roads
Funds-1958
FAG

DATE: 3-4-59
Dictated: 2-20-59

KENNETH LEROY SEARCEY, water superintendent and Mayor, City of Haines, furnished the following sworn signed statement on February 20, 1959.

"2/20/59
Haines, Alaska"

"I, Kenneth Leroy Searcey, after being duly sworn, make the following free and voluntary statement to Charles R. St. John who has identified himself to me as a Special Agent of the FBI. No threats or promises have been made to me. I have been advised of my right to counsel. I understand I need make no statement but any statement I do make may be used against me in a court of law."

"I was born Oct. 31, 1913 at Covina, Calif. and can read and write the English language."

"In approximately Feb. 1958, Charles R. Burnett and myself went to Juneau and conferred with a Mr. Steers of the BPR about the faulty water system then in effect at the BPR Depot in Haines, Alaska. We advised Steers that the system must be replaced at the expense of the BPR or else the water to the Depot would be shut off by the city. Steers indicated he would have to take the matter up with appropriate officials."

"In Oct. 1958, Fred McRae, foreman in charge of the Depot at Haines contacted me, stating the BPR wanted to get the new system in before freeze-up and set a date to start. Neither I, nor the City of Haines had had any correspondence with the Juneau BPR office in the meantime. There was no written or verbal agreement between the Juneau BPR

CRS:ddw

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Office and the city of Haines or myself as water Supt. of the city for reimbursement for city employees' time spent on the project. Neither was there a written or verbal agreement to this effect with McRae. Since this point had been made clear to Steers in Juneau, I assumed there would be no argument on the point. I further assumed that either McRae had received authorization from Juneau or else had the authority to hire me himself. I do not recall the subject of who would pay for the city employees' time on the project, being mentioned by either McRae or myself but I believe that in the general course of conversation, McRae had the impression that all costs of the project including my labor would be borne by the BPR."

"Regarding the discrepancies in time claimed as wages for myself as opposed to time claimed by BPR employees, it is noted that I observed the records of time spent by the BPR employees on this project as kept by Karl Comstock, and made a copy of this record for myself. I claim that I spent 8 hours a day on this project from 10/27/58-10/31/58, and 11/4/58-11/6/58 and 4 hrs on 11/7/58, either on the job site or performing work in the city shop necessary for the satisfactory completion of the job. Discrepancies in my time and the BPR employees' time on the project involve work done in connection with the project but away from the job site as follows to account for the full 8 hour day's work claimed. On 10/27/58 my extra time involved looking up references for the end of the line, digging up the line, and shutting off the valve. On 10/28/58 extra time was utilized in making up a pulling tool. On 10/29/58 it was used in making up an adapter to tie in two different styles of transite pipe. On 10/30/58 it was used in making up a list of needed fittings, and conferences regarding same for ordering. On 10/31/58 I made up an adapter to use the old hydrant on a new 6 inch line. On 11/4/58 it was used in looking over fittings sent from Juneau that were wrong. The other three days were actually spent working on the job site."

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"After reading this over I would like to point out that I know I was not hired by the BPR or by McRae but rather was hired by the City of Haines as Water Supt. in charge of the water system, to see that this extension of the water system was properly installed. On one of the days during the project, approximately 3 hours of my time was spent repairing the back Hoe that was furnished by the City of Haines at no charge to dig the ditches for this water extension. This repairs was re-welding the dead end for the bucket cable that was pulled loose during the job."

"I have read the above statement which consists of this page and two others, and it is true and correct to the best of my knowledge."

/s/ Kenneth L. Searcey

"Sworn to & Subscribed by:

/s/ Charles R. St. John, Special Agent, FBI

2/20/59 Haines, Alaska

Witnessed:

/s/ Edna Smith, City Clerk & Treasurer"

SEARCEY further stated that he was found by Haines City Ordinance #92 which states in effect that no water line installations will be made or constructed by any person other than by employees of the town of Haines. This ordinance precludes use of Bureau of Public Roads (BPR) labor for the installation of the BPR water system and makes it mandatory that an employee of the city perform the actual work. He furnished a copy of City ordinance #92 to back up his position. This copy which will be maintained in the files of the Anchorage Division is quoted as follows:

"City of Haines, Alaska
Haines General Code
Ordinance No. 92"

"An ordinance to amend Section 3 (b) of Ordinance No. 81 and relating to the construction of laterals to provide municipal water service to private property or premises and the payment of installation costs therefor."

AN 46-609

"Be It Ordained by the Common Council of the Town of Haines, Alaska, as follows:

Section 1.

That Section 3(b) of Ordinance No. 81 adopted by the Common Council of Haines, Alaska on the 2nd day of March, 1953, is hereby amended to read as follows:

"(b) All water line laterals shall be constructed by the Town of Haines, each of which must be specifically authorized by the Common Council, and shall be constructed under the supervision of and according to the specifications of the Council or the City Engineer. No water line lateral on private property, or between private property and an existing water main, shall be constructed except at the expense of the owner or person in possession of such private property who shall request the construction of the same; PROVIDED, however, that the City shall bear the cost of laterals constructed from an existing water main to the property line of the private property concerned if an existing water main lies beneath a street or alley which adjoins one side of the private property for which water service is requested. The Council will determine at the time of authorizing the construction, the time when the cost thereof shall be payable to the Town of Haines and the amount of advance deposit required. The work shall be done at the cost of the labor and materials to the Town plus 10% for supervision and overhead. No water line lateral shall be constructed by any person other than by employees of the Town of Haines. Requests for lateral construction on or to private property shall be accompanied by a permit fee of Two Dollars (\$2.00).

Section 2

This ordinance shall take effect upon its passage and approval by the Common Council and shall be posted in three public places in Haines, Alaska."

"PASSED AND APPROVED THIS _____ day of _____, 1956."

First reading _____, 1956
Second reading _____, 1956
Third reading _____, 1956

Mayor

ATTEST:

Municipal Clerk"

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SEARCEY explained that since Haines is such a small community, it is imperative that the town work very closely with the Bureau of Public Roads Depot which results in mutual benefit by both the town and the Bureau of Public Roads (BPR) when on occasion City ordinances are skirted and the City helps the BPR on some projects and in return, the BPR does some work for the City on an informal basis.

SEARCEY stated he believes there is an honest misunderstanding between the BPR officials and the City of Haines. He basically believes that the City of Haines is entitled to reimbursement for his labor spent on the BPR water installation project. He stated he had no intention of submitting a false claim to the U. S. Government.

SEARCEY furnished the following physical description of himself:

Name	KENNETH LEROY SEARCEY
Race	White
Sex	Male
Birth Data	Born 10-31-13, Covina, Calif.
Height	6'
Weight	190
Eyes	brown
Hair	Brown
Occupation	Steamfitter
Residence	Haines, Alaska
Marital Status	Married - wife, ADA JANE SEARCEY
Relatives	Daughter-MARGARET SEARCEY, age 7, Haines, Alaska;
Mother	Mrs. J. O. CHAMBERLAIN, 3056 McKenzie Avenue, Fresno, California

FEDERAL BUREAU OF INVESTIGATION
INTERVIEW REPORT

3-4-59

CHARLES R. BURNETT, owner, Harbor Bar, and former City Councilman, Haines, Alaska, advised he went to Juneau, Alaska with Water Superintendent KENNETH SEARCEY some time in early 1958 and together they talked with a Bureau of Public Roads official by the name of Mr. STEERS. He stated they made it clear to STEERS that the Bureau of Public Roads (BPR) would have to fix up their water system or else the City would cut the water supply off to the Depot in Haines, Alaska. STEERS understood the situation and indicated he would talk with other officials about it.

BURNETT stated he did not receive the impression that STEERS okayed the job or had authority to authorize it being performed. He stated they made no written or verbal agreement with STEERS at this time for the project.

He stated he was sure that it was made clear to STEERS at the time that the City would have to do the hook-up work but the whole project's cost would have to be borne by the BPR and at no cost to the City of Haines. He said he had the impression that the Juneau office did authorize the work to be done or sent the authorization through to the Haines Depot to proceed with the work.

He got off the City Council shortly thereafter and does not know anything about any contract or agreement being signed subsequent to his leaving the council.

He noted that by city ordinance the city is required to do the actual hook-up work on any water installation project and by this ordinance the BPR would not be allowed to do the work. He did not believe that Mr. STEERS in Juneau was left misinformed regarding this situation. He believes there is an honest misunderstanding and is sure that the town of Haines does not want any trouble with the BPR since they have to get along in such a small community and he is positive neither the BPR nor the City of Haines are trying to get the better of the other party.

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Interview with CHARLES R. BURNETT File # 41-609
 on 2-21-59 at Haines, Alaska Dictated: 2-25-59
 by Special Agent CHARLES R. ST. JOHN/adw

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0-14 (Rev. 5-8-57)

From
Director
Federal Bureau of Investigation
To

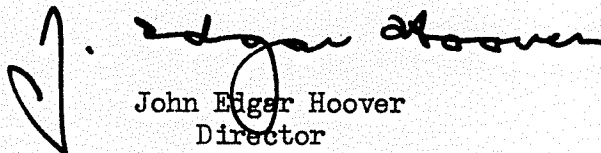
3/5/59

Mr. John W. Phillips
Security Control Officer
Room 5423
Department of Commerce
Washington, D. C.

Dear Sir:

For your information, I am enclosing
herewith communications which may be of interest
to you.

Very truly yours,


John Edgar Hoover
Director

Enclosures

Jan 1959

Commence

1959 MAR 6 AM 11 16
SECURITY CONTROL OFFICE

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

Copy to: USA, JUNEAU

Report of: CHARLES R. ST. JOHN
Date: February 17, 1959

Office: ANCHORAGE

File Number: AN 46-609

Title: KENNETH L. SEARCEY; Bureau of Public Roads Funds - 1958

Character: FRAUD AGAINST THE GOVERNMENT

Synopsis:

Allegation received subject unlawfully submitted bill to BPR in amount of \$306.00 for claimed services in October and November, 1958, which were not performed. BPR protested bill. BPR official and records indicate subject not hired by BPR, but it was agreed he should inspect installation of water system by BPR employees. Time sheets show BPR employees completed job in eight days at average of 5 3/4 hours per day. Subject submitted bill for nine days work at approximately 7 1/2 hours per day.

- P -

DETAILS:

Investigation in this case was instituted upon receipt of information that KENNETH L. SEARCEY submitted a bill to the Bureau of Public Roads (BPR) in the amount of \$306.00 for claimed services in October and November, 1958, which allegedly were not performed.

This document contains neither recommendations nor conclusions of any kind. It is the property of the FBI, and is a loan to your agency; it and/or its contents are not to be distributed outside your agency.

16-74625-1 GPO

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FEDERAL BUREAU OF INVESTIGATION
INTERVIEW REPORTDate February 16, 1959

HARRY E. ELLINGEN, Real Estate Broker, Haines, Alaska, and former city councilman of Haines, Alaska, advised that various Haines residents are suspicious of the activities of their mayor and water superintendent, KENNETH L. SEARCEY, and have reason to believe he has bilked the city unlawfully for a substantial amount of money. In reviewing the financial records of the city, ELLINGEN ascertained that the City sent a bill dated November 13, 1958, to the Bureau of Public Roads (BPR), in the amount of \$306.00 for payment of wages for Water Superintendent KENNETH L. SEARCEY from October 27, 1958, through November 7, 1958, totaling 68 hours work at \$4.50 an hour for installing a new water main to the Bureau of Public Roads at Haines, Alaska.

He made available a typed copy of the financial transaction in this matter obtained from the books of the City of Haines, which is as follows:

"November 13, 1958, voucher and requisition Number 204 check number 1864. Billed to Bureau of Public Roads - paid out of general fund. Water Superintendent wages.

"Installation new water main to BPR Hours - 68

October 27	8
October 28	8
October 29	8
October 30	8
October 31	4
November 4	8
November 5	8
November 6	8
November 7	8

"Gross	\$306.00
FICA	6.88
Federal Tax	40.80
Territorial Tax	5.75
BSC	1.53
"Total Check	\$251.04

Interview with HARRY E. ELLINGEN File # AN 46-609
 on 2-9-59 at Haines, Alaska Date dictated 2-12-59
 by Special Agent CHARLES R. ST. JOHN /sah

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"Paid November 13, 1958, to K. L. SEARCEY - Water Superintendent - wages for installing new main to BP roads as per daily time sheet number 5004 - amount \$306.00. Paid by City of Haines. Bill submitted to BPR."

ELLINGEN stated the original voucher and requisition number 204, check number 1864, and daily time sheet number 5004, are maintained by the City Clerk and Treasurer, EDNA M. SMITH, Haines, Alaska.

By way of background, ELLINGEN stated that the BPR installation at Haines, Alaska, has been receiving water service from Fort Chilkoot water system lines. They have deteriorated greatly recently, causing several bad leaks, which results in a subsequent water shortage in the town of Haines. Haines Council requested BPR to replace the water lines so there would be no shortage of water in the City of Haines. The cost of this repair work was prohibitive, and it was agreed that the BPR would install new lines connecting with the Haines Water System Proper. This work was to be done by BPR employees, and all material would be furnished by the BPR. Upon completion of the installation, it was subject to inspection and approval by the Water Superintendent, SEARCEY.

Several months ago, SEARCEY stated in Council meeting that the BPR wanted to hook into the city water lines and would do their own work at no cost to the city, and the city would benefit by water rental. This was approved by all parties concerned and the construction work was done by BPR employees. SEARCEY inspected the installation, and since he had some special tools belonging to the city which facilitated some aspects of the work, he did perform several minor jobs such as linking a few pipes together. There was to be no charge to the BPR for any of SEARCEY's services, however.

Subsequently, SEARCEY submitted a bill to the City Clerk in the amount of \$306.00 for his labor in installing the new BPR water system, and told the clerk to bill the BPR in turn. As indicated above, SEARCEY was paid \$306.00 by the City of Haines, and a bill was submitted to the BPR on November 13, 1958, for that amount.

AN 46-609

ELLINGEN stated that SEARCEY was definitely not acting according to law in this regard as he should have each job that he works on approved by the full Council and have each bill approved by the full Council. In this case he did unauthorized work, approved the bill in his capacity of Mayor, and forwarded it to the BPR for payment. ELLINGEN pointed out that SEARCEY was only asked to inspect the system upon completion of the installation, and definitely was not authorized to do any work on it in the first place. In ELLINGEN's opinion the bill to the BPR is totally unwarranted. He acknowledged the fact that SEARCEY possibly did some work on the installation, but definitely did not put in 68 hours of labor as claimed by his voucher. At any rate, since the BPR does a lot of work for the benefit of the City of Haines, and since the installation of the new water system was at the request of the City of Haines and also to the town's benefit, ELLINGEN felt that any charge whatsoever by SEARCEY for this work was unwarranted.

He stated the BPR protested the above bill by letter dated February 5, 1959, quoted as follows:

"The Haines Common Council
Haines, Alaska

"Attention: EDNA SMITH, City Clerk and Treasurer

"Gentlemen:

"Your statement of November 13, 1958, in the amount of \$306.00 for installing a new water main servicing public roads and maintenance area has just recently been called to my attention.

"Payment of this statement has been deferred pending a determination as to whether or not the charge is equitable. The statement shows that the Water Superintendent charged a total of 68 hours to this project from October 27 through November 7, 1958. It is our understanding that the Superintendent worked in a supervisory capacity in conjunction with Public Roads personnel on the project. Our records show that our employees charged an average of 38 hours to the water line project for this period.

AN 46-609

"In view of the wide discrepancy of recorded time worked, we feel that an adjustment may be in order reducing the Superintendent's time to approximately the 38 hour average total charged by Public Roads employees. A revised billing will be processed for payment immediately upon receipt.

"In the event, however, it is determined the billing is correct and revision is not required, will you please furnish us with a statement outlining the daily work performed by the Superintendent.

"We will appreciate your early advice, in order to effect settlement of this account.

"Very truly yours,

"s/s CHRIS F. WYLLER,
Division Engineer"

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AN 46-609

United States Attorney ROGER G. CONNOR, First Judicial Division, Juneau, Alaska, was apprised of the facts of this case by SA CHARLES R. ST. JOHN on February 9, 1959. He stated he definitely felt that a violation of Title 18, Section 1001, United States Code, had occurred, and indicated the possibility of a violation of Title 18, Section 1020, Federal Aid Road Act of July 11, 1916, Ammended 1954, providing a penalty for making a false statement as to the quality, quantity, cost, etc. for construction of any highway or related project which was approved by the Secretary of Commerce.

CONNOR desired investigation in this matter be instituted immediately.

FEDERAL BUREAU OF INVESTIGATION
INTERVIEW REPORTDate February 17, 1959

CHRIS F. WYLLER, Division Engineer, Bureau of Public Roads (BPR), U.S. Department of Commerce, Juneau, Alaska, advised that the BPR Maintenance Shop at Haines, Alaska, was serviced by an old water line from the Port Chilkoot area which recently became in need of extensive repair, due to several major breaks in the lines. The town of Haines complained that these leaks were causing a shortage of water in the city, and requested the BPR to replace the lines if they were going to stay on their system. Since the lines were located outside of the City Limits, the town of Haines could not perform the work, and the BPR agreed to furnish the labor and material to replace the system, subject to inspection of the entire installation by the Water Superintendent, KENNETH L. SEARCEY. WYLLER stated it was agreed upon and anticipated that there would be no cost to the Government for this service on the part of SEARCEY, but there could possibly be a reimbursement to him for a few hours of supervisory duty.

WYLLER stated that BPR employees performed all of the labor, and on one occasion did use a steam shovel belonging to the City, because the BPR's shovel was broken. He stated there was an agreement that the Government would not be billed for this use, and had there been any indication that the Government would be billed for use of the shovel it would not have been used.

WYLLER stated there definitely was no agreement to hire SEARCEY to perform any work on the repair job, although it was agreed he should inspect it upon its completion. WYLLER stated he understands, however, that SEARCEY did show up and believed he worked with the BPR employees most of the time. There, of course, was no objection made to this since he was the Water Superintendent, and inspector, and had a right to be on the job as long as he wanted to be. WYLLER stated, however, that SEARCEY then submitted a bill to the BPR for working 68 hours when BPR time sheets show that their own employees finished the job in an average of 38 hours.

He made available records of time sheets of BPR employees on this job, which contained the following information:

Interview with CHRIS F. WYLLER File # AW 46-609
 on 2-10-59 at Juneau, Alaska Date dictated 2-12-59
 by Special Agent CHARLES R. ST. JOHN /sah

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AN 46-609

40-000-98	October 27	October 28	October 29	October 30	Nov. 4	Nov. 5	Nov. 6	Nov. 7
THOMAS HELMS			4		1	4	6	
FRED H. MC RAE	4	4	8	2	4	6	5	8
WARREN E. SHEPPARD			4	2	4	7	6	6
MARVIN L. SMITH			6		4	7		4
JOHN W. THOMPSON	4	4	8	2	4	8	4	4
FRANK L. WALLACE			4	2	4	7	8	6
THOMAS A. WARD	3	4	8	2		8	8	8
LEO R. ALBECKER					4	7		
LEE R. KINNAN							4	

WYLLER pointed out these time sheets show the job was completed in eight days at an average of five and three-quarter hours per day, whereas SEARCEY submitted a bill for nine days work at approximately seven and one-half hours per day. Thus, if SEARCEY worked full time with the BPR employees he could not possibly have put in more hours than they did, although as indicated above, it is not felt he is entitled to any compensation for this work as he was not hired to do any of it.

He made available a copy of the bill to the BPR by the town of Haines, Alaska, dated November 13, 1958, requesting payment of \$306.00 for wages of Water Superintendent SEARCEY, October 27 through November 7, 1958, a total of 68 hours at \$450 per hour, for installing a new water main to the BPR at Haines, Alaska. This bill will be maintained in the files of the Anchorage Division.

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X-Ref Alaska Land 3

WASHINGTON, D. C.

PUBLIC ROADS

24-20

22 1959
APRIL 21, 1959

WILLIAM WIGHT
PUBLIC ROADS
JUNEAU, ALASKA

REFERENCE BEING MADE TO APPLICATION RIGHT OF WAY FOR OLSON HIGHWAY ACROSS
ELMENDORF AIR FORCE BASE ALASKA PROJECT PAP 42. OFFICE ENGINEERING
ADVISES FOLLOWING DISCREPANCIES BETWEEN DESCRIPTION AND PLAN. ONE:
NINETY FOOT DISTANCE SHOWN IN FOURTH CALL DESCRIPTION NOT SHOWN ON
PLAN AND CALCULATION INDICATES SHOULD BE 63 FEET. TWO: CALCULATION
INDICATES DISTANCE 5309.6 NINTH CALL SHOULD BE 4409.6. THREE: DISTANCE
739.4 FIRST TENTH CALL IS SHOWN 727.43 FEET ON PLAN. FOUR: 150 AND
145.54 FOOT DISTANCES SHOWN ON THIRD AND ELEVENTH CALLS NOT SHOWN
ON PLAN. PLEASE FOR FINE ACCURACY. FIVE: DISTANCES IN FIFTEENTH,
SIXTEENTH, EIGHTEENTH, AND TWENTIETH CALLS APPARENTLY REFER TO DISTANCES
BETWEEN QUARTER SECTION LINES WHEN EACH BEING DIFFERENT. PLEASE EXPLAIN.
PAPERS WILL BE PROCESSED PROMPTLY UPON RECEIPT YOUR REPLY.

PREPARED BY KREYFOR

Henry B. Kreyfor

Memorandum
Control No. 13003
cc: CC Unit
Department
Mr. Williams
Mr. Wood (confirmation)
Files
Mr. Enfield
Chasen

See Alaska FAR 42

26-40

Mr. E. E. Lanningham, Western Counsel
San Francisco, California

December 18, 1958

C. W. Enfield, General Counsel

26-20

By:

H. H. Krevor, Acting Assistant General Counsel

Henry H. Krevor

Right-of-Way Over Air Force Lands -- Glenn Highway, Alaska

This relates to your informal inquiry regarding the three parcels of land owned in fee by the Air Force in connection with Elmendorf Air Force Base, which are required for right-of-way for the Glenn Highway. Apparently, the Air Force has suggested that, unless the Region can execute a "paper's oath", it would be necessary to pay fair value for the property. This may be so in situations where acquired lands of the United States are to be transferred to another Federal agency through the General Services Administration.

However, the Section 17 procedure outlined in FH 21-4.) was made specifically applicable to the territories as well as the States by the certification act. Further, the language of the act now makes it clear that this procedure is applicable to all lands owned by the United States and is not limited to "public lands or reservations" as had been contended by some of the Federal agencies in the past (Title 23, U.S.C., Sections 101 and 317). Under this procedure, transfers of necessary rights-of-way to States and territories are effected without compensation except to the extent that it may become necessary to provide for adjustment of Federal facilities within the right-of-way limits. The Air Force may have similar authority under Title 10, U.S.C., Section 2668. However, in any event, Title 23 is available.

Accordingly, if it is satisfactory for the territory or State, as the case may be at the time of the transfer, to acquire title to the right-of-way, there should be no difficulty in arranging for this transfer.

The Region should, at the same time that it forwards the right-of-way application to us, make contact with the local Air Force people, furnish them copies of the papers, and explain the right-of-way needs. It would be helpful in expediting the transfer if Air Force, locally, would forward its recommendations to Washington without awaiting a formal request for comments from its headquarters office. Assuming that the papers reach Air Force and Public Roads in Washington at approximately the same time, we should be able to handle the matter quickly.

HHKrevor:ram

Chron

cc: Mr. C. W. Enfield
Mr. Donald Black (AF Real Estate Div.)Mr. E. H. Swick, Reg. Engineer
Files (2)

12/19

X-Ref - Alaska Land 3

11-20-58

From 26-21 (Goldstein - Enfield)

To - Juneau, Alaska (Swick)

R/w Encroachment - Portage

Alaska FAP - 31

See

See - 12-23-58
to Justice Dept -

~~See - 26-21 Juneau Alaska
11-20-58~~

BUREAU OF PUBLIC ROADS

Alaska Land 3

Mr. E. H. Swick, Regional Engineer
Juneau, Alaska

November 4, 1958

23-10

Paul F. Royster, Assistant Commissioner
Washington 25, D. C. **Paul F. Royster**

Attached is a copy of a letter recently received from Mr. H. E. Poole of Anchorage regarding a right-of-way encroachment at Portage, Alaska, presumably on the Seward-Anchorage road.

Mr. Erhart has some recollection of your having discussed this matter with him during his recent trip. However, in order that we may make a satisfactory reply to Mr. Poole it is necessary that we have some of the background information regarding the encroachment. Therefore, kindly forward a brief report on this situation with such comment that you consider pertinent.

ERH
Attachment (1)

EEErhart:nk
Control No. PR-R
cc - Files (2)
Federal Hwy. Projs. Div.
Mr. Royster - Room 814

11-4-58

BONNI E. BOAZIG

H.E. (Red) Poole
% Union Club
Anchorage, Alaska
Oct. 29, 1958

Supt. Bureau of Public Roads
Justice Dept., Land Division
Washington, D. C.

Dear Sir:

In regards to Portage Bar and Cafe at Portage, Alaska, property of James Toman, deceased, present administrator and heir of estate, Mary Lou Redmond, niece, that is sitting on Bureau of Public Roads right of way, (30 feet from center line) supposed to be 150 feet back, and rear part of buildings on a homestead (150 acres) of which I, H. E. Poole filed on sometime ago but will not improve or put building on same until they (Portage Bar & Cafe) are entirely moved off.

James Toman, when alive was notified several times in the last eight (8) years to move but it was not enforced and he paid no heed to notices (by Territorial Police).

Recently, within the last 18 months I have tried to force an issue on this situation being a detriment to traffic and illegal to have a business or buildings on Bureau of Public Roads right of way. But it is sitting 30 feet from the highway center and myself with a business of the same a quarter of a mile from there, and back 150 feet from the center of the highway is a situation of very unfair competition.

This situation was taken up years ago with Seward branch of Public Road Bureau by myself, (carbon copies of letters in my possession), then it was transferred to Supt. of B.P. R. Zimmerman, this division. Then it was taken up by Zimmerman to Mr. D. H. Swick, Regional Engineer of B.P. R. at Juneau. He thereby turned it over to the District Attorneys office, Wm. Plummer, and Plummer passed it to his assistant Mr. Bonal to work on. In contacting Mr. Bonal he stated he had written to you at Washington, D. C. to get permission on the go ahead sign from you before he could legally do anything about same.

Is it absolutely necessary for all of these people or situations to get permission from you that is absolutely legal on their part if they are doing or want to do something like this that is absolutely in disregard to territorial law or do we just have a play house up here and everything must go through so many channels for so small a situation to the government but means a lot to an individual?

Now then I would appreciate a statement from you.

Does this passing the buck have to be kept up or is it necessary to have to go through an act of Congress to get someone that is illegally squatting on Bureau of Public Roads right-away, (and homestead situation) moved off immediately?

Please advise what I should do.

Yours truly,

H. E. Poole

PR R

HEP:lv

RG 30, Bur. of Public Roads
E. 6 D, Gen. Corr + Related Recs, 1955-59
Box 1131

of the Department of the Interior...
of the Department of the Interior...
of the Department of the Interior...

BUREAU OF PUBLIC ROADS

Files
Alaska Land 3

26-40

Mr. H. E. Cunningham
San Francisco, California

October 6, 1958

26-20

C. W. Raffield, General Counsel C. W. RAFFIELD
Washington, D. C.

Reservation of mineral interests by the Territory of Alaska in
connection with its acquisition of right-of-way

This relates to your informal inquiry of September 19 on
this subject.

In general, there is no legal prohibition against reserva-
tion of mineral interests. While paragraph 1.11 of the regulations
requires that right-of-way be held inviolate for highway purposes,
there would be nothing legally to preclude the Territory from
excepting such interests from its acquisitions, provided that
appropriate controls, satisfactory to the Bureau, were imposed on
the owner's exercise of rights excepted so as to protect the right-
of-way. This principle is recognized in paragraph 4c of FPM 21-4.1,
which provides that right-of-way shall be unlimited in vertical
dimension subject to the enjoyment by others of rights beneath the
surface of the earth that would not impair the highway or interfere
with the free and safe flow of traffic thereon.

However, it would seem generally to be desirable, in the
interest of assuring the safety of the highway and its users, that
the Territory restrict such exceptions to oil, gas, and minerals of
like character, as distinguished from minerals solid in nature, and
to limit development to offset or slant drilling.

In this regard, there is set forth below the form of estate
utilized in a recent Federal condemnation case instituted to acquire
right-of-way for a defense-access road at the Carswell Air Force
Base, Texas:

The fee simple title to the land described in
Schedule "A" excepting and reserving unto the owners,
their heirs, successors, and assigns all gas, oil, and
sulphur interests in the land, together with the right
of exploration, development, and removal; provided,
however, that there shall be no right to enter upon or
use the surface of the land and provided further that
the rights and interests so reserved shall be exercised
in such manner as will not cause damage to the surface
of the land or interfere with the construction,
operation, or maintenance of any public highway or its
appurtenances on said land.

*copy
incoming reply
10-30-58
relayed to
Genl Counsel*

RG 30, Bur. of Public Roads
E. G. D., Gen. Corr + Related Recs, 1955-58
Box 1131

UNCLASSIFIED BY: [illegible] DATE: [illegible]

PROPERTY OF THE U.S. GOVERNMENT
PHOTOCOPYING IS PROHIBITED
EXCEPT AS AUTHORIZED BY THE U.S. GOVERNMENT PRINTING OFFICE

- 2 -

If further restrictions were considered desirable, the estate could provide also that all plans for development within the right-of-way would be subject to the written approval of the representative of the Territory in charge of the project.

HHKrevor:jic
cc--Files (2)

HC
Beep
~~H. S. Cunningham~~
Chron
Lands
Mr. Krevor
Gen. Counsel 10/50
Pres.
R/W/
Mr. Swick

RG 30, Bur. of Public Roads
E. 6 D, Gen. Corr + Related Recs, 1955-59
Box 1131

26.22

Alaska Land 3

BUREAU OF PUBLIC ROADS

**Mr. H. S. Cunningham, Eastern General-Counsel
San Francisco, California.**

August 18, 1958

C. W. Raffield, General Counsel

By:

**H. H. Ewert, Acting Assistant General Counsel
Alaska Right-of-Way**

I believe you may be interested in the marked paragraph of the attached copy of a memorandum prepared by Mr. C. J. Laddell with reference to right-of-way acquisition in Alaska.

Attachment

ggw

**Submitted: Jic
cc--Files (2) ✓
Laddell
Cowan
C. W. Raffield
Right-of-Way**

8/1/58

5

Alaska Land 3

WIM

Mr. G. M. Williams, Assistant Commissioner
for Engineering, Attention: Mr. C. W. Phillips

August 17, 1959

C. W. Enfield, General Counsel

16-20

By

Henry H. Krevor

H. H. Krevor, Acting Assistant General Counsel

Alaska Right-of-Way

Reference is made to your memorandum of August 6 on the subject of Alaska Right-of-Way wherein our attention is invited to the fact that complaints have been received from several property owners regarding the length of time required to secure reimbursement for properties taken for right-of-way, titles to which were required to be approved by the Attorney General in Washington.

Upon reviewing our files we find that on December 24, 1958, we sent the Attorney General's preliminary opinions affecting all these lands to the Regional Engineer, and requested that curative action be taken in accordance with these opinions so as to obtain the necessary final opinions. On May 14, the Regional Engineer advised that the indicated curative action was being taken.

We are presently replying to a title question raised by the Regional Engineer with regard to the title certificates in these matters.

cc: Mr. W. J. Niemi, Regional Engineer

ADGoldstein:if
cc: Mr. Enfield
Chron
Lands
Files (2) ✓
ADG 3

8-17-59

BUREAU OF PUBLIC ROADS

Mr. C. W. Enfield, General Counsel
Washington, D. C.

August 6, 1939

G. M. Williams, Assistant Commissioner
Washington, D. C.

C. W. PHILLIPS

Alaska Right-of-Way

On a recent field trip to Alaska, Mr. S. Z. Phillips was advised that complaints were being received from several property owners about the length of time that it was taking to secure reimbursement for properties, titles to which were required to be approved by the Attorney General in Washington. It appears that some requests for opinions on title have been in the Department of Justice for approximately a year.

The matter was brought up while on a field inspection and it was not possible to determine the names and locations of the properties, but it is thought that you would have a reference to any pending cases with the Department of Justice. The regional men are very anxious that these matters be cleared as it is becoming increasingly embarrassing to them.

This information is furnished you for whatever action you deem appropriate.

HET
SZPhillips:llr

cc: Files (2)

Mr. W. J. Niemi (2)

Mr. C. W. Phillips (2)

Mr. G. M. Williams

8-7-59

Mr. H. H. Sawyer

August 15, 1956

Casner J. Hoidal

Alaska: Right-of-Way -- Delegations of Authority

Agreeable to your request, I have assembled, and attach hereto, documents, including delegations of authority, pertinent to the above question, as follows:

Order No. 2013, April 9, 1956, Delegation, Secretary of the Interior to Director, Office of Territories. Delegates authority vested in the Secretary of the Interior under the act of June 30, 1932, (47 Stat. 445, 48 Stat. 221a et seq.) or any other act with respect to the construction, etc., of roads *etc.* Authorizes re-delegation to Deputy or Assistant Director of Territories, or any officer or employee of the Alaska Road Commission and authorizes written redelegation. Order specifically excludes authority to acquire by condemnation.

Section 107(b), 1956 Act, transfers the functions, duties, and authority pertaining to the construction, repair, and maintenance of roads, etc., in Alaska from the Department of the Interior to the Department of Commerce effective not later than 90 days after approval of the 1956 Act (June 29, 1956). Section 107(c) transfers "all personnel, unexpended funds, equipment, materials, etc." Section 107(e) empowers the Secretary of Commerce, "by order or regulations, to distribute the functions, duties, and authority hereby transferred, and appropriations pertaining thereto, as he may deem proper to accomplish the economical and effective organization and administration thereof."

Memorandum dated August 3, 1956, from the Secretary of Commerce to the Commissioner of Public Roads authorizes the Commissioner of Public Roads to exercise all authority, etc., vested in the Commissioner of Public Roads under any law, order, or regulation in effect immediately prior to the enactment of the 1956 Act, and until appointment of Federal Highway Administrator and thereafter, subject to direction of the Administrator.

Notice dated August 3, 1956, in the Federal Register, of the delegation of authority from the Secretary of Commerce to the Commissioner of Public Roads, to exercise all authority, etc., which had been delegated to the Commissioner under any law, order, or regulation in effect immediately prior to the enactment of Public Law 966, 84th Congress (1956 Act) naming appointment of Administrator, etc. F. R.

Doc. 56-6792 filed August 22, 1956, 8:46 a.m., Federal Register 8-23-56 Vol. 21, No. 164, p 6356 (notices).

Also Memorandum of August 17, 1956, from the Secretary of Commerce to the Commissioner of Public Roads, Subject--transfer of Alaska Road Commission to the Bureau of Public Roads pursuant to authority of re-organization plan No. 3 of 1950, and Section 107(e), 1956 Act, authorizes the Commissioner of Public Roads to perform and exercise the authority of the Secretary of Commerce under Section 107(a) thereof. --authorizes exercise of authority in connection with roads in Alaska transferred from the Department of the Interior to the Department of Commerce by Section 107(b) of the 1956 Act pending the appointment of the Highway Administrator and thereafter subject to his direction. Also authorizes redelegation. (This includes the authority to acquire right-of-way in any way necessary.)

Also Memorandum dated September 16, 1956, from the Commissioner to Deputy Commissioners and Regional Engineers, Subject--establishment of Alaska Division Office. Transfers records, property, personnel, funds, and activities of the Alaska Road Commission to the Alaska Division, and pending amendment of MR 1-10, extends the delegations of authority therein, for Divisions 7, 8, and 9, to Division 10, and continues and applies, as applicable, within procedure and regulations of the Bureau of Public Roads, the existing delegations of authority from the Office of Territorial to the Director of the Alaska Road Commission until December 31, 1956. Note: Mr. Rankin informs me that this application was later extended beyond this date. I have not seen the extension.

Department of Commerce Order No. 109 Revised, Effective January 23, 1957. Section 3, Secretary of Commerce delegates to Federal Highway Commissioner, authority to perform the functions vested in the Secretary of Commerce by the Federal-Aid Road Act of 1916, Federal Highway Act, 1921, and all acts amendatory thereof and supplemental thereto, except appointment and other functions the Secretary may reserve by directive or administrative regulations ***.

Memorandum dated February 21, 1957, from the Federal Highway Administrator to the Commissioner of Public Roads, Subject--delegation of authority. All delegations of authority to the Commissioner of Public Roads, or to any official or officials of the Bureau of Public Roads, in effect immediately prior to February 1, 1957, the date of publication in the Federal Register of the revised regulations under the Federal-Aid Road Act of July 11, 1916, as amended and supplemented, shall continue in full force and effect until revoked or superseded.

Memorandum dated January 1, 1958, from the Federal Highway Administrator to Turner, Williams, Boyter, Allen, Holmes, and McField, Subject--delegation of authority to serve for the Federal Highway Administrator. Authorizes all persons and officials now authorized to sign papers and documents for the Commissioner of Public Roads hereafter and until notified otherwise, to execute such papers and documents for the Federal Highway Administrator. Note: there is nothing contained here in regard to redelegation of this authority

Order No. 2545, 15 P.S. 3738, dated June 3, 1933; The Secretary of the Interior authorized the Commissioner of Public Roads for Alaska and the Chief Engineer of the Alaska Road Commission, severally, to acquire rights-of-way by purchase or donation.

21 FR 2447

Order No. 2547, dated April 9, 1936; The Secretary of the Interior rescinded the above Order, and authorized the Director, Office of Territories, to exercise the authority vested in the Secretary of the Interior by the act of June 30, 1933 (which transferred the duties and authority of the Board of Road Commissioners and Secretary of War to the Department of the Interior, and authorized redelegation; authority described as "grant", and "take" to "inspect", "lay out", and "construct" roads, etc.). He concludes that these powers include the authority to purchase right-of-way, and apparently the Secretary of the Interior interpreted this authority, to this effect, when he issued the delegation above referred to, of June 3, 1933. *

On 8-13-36, I talked to Mrs. Ruth VanDoren, Acting Assistant Solicitor, Branch of Territories, in the Office of the Associate Solicitor for Territories in the Department of the Interior, and was informed that the last above-mentioned order (No. 2547, April 9, 1936) was the last delegation or order issued by the Interior Department relative to authority of the Alaska Road Commission to purchase right-of-way.

It will be noted that this was issued on April 9, 1936, and that the Federal-Aid Highway Act of 1936, which transferred the Alaska Road Commission to the Department of Commerce was approved June 23, 1936.

Apparently, no authority existed in the Alaska Road Commission to purchase right-of-way, between April 9, 1936 and the time of transfer of its functions, etc., to the Department of Commerce, by the 1936 Federal-Aid Highway Act. Consequently, the memorandum of September 16, 1936, from the Commissioner of Public Roads continuing and applying, as applicable, under the Bureau of Public Roads' franchises and regulations, existing delegations of authority, from the Office of Territories to the Director of the Alaska Road Commission, could not have furnished authority to the Regional Engineer of the Bureau, to purchase right-of-way.

Telegram dated October 24, 1937, falling to Swick, extended delegations under A.S. 1-11.3 to Alaska, also included authority "to enter into agreements with others in carrying out functions of former Alaska Road Commission under 1071, 1936 Act". (Dr. Brewer believes it is questionable whether Commissioner's memorandum of September 16, 1936, A. S. 1-11.3, and this wire are sufficient to authorize Mr. Swick to acquire right-of-way by purchase. Since territory

is now acquiring right-of-way, matter is not too important. If any question develops, we can grant specific delegation.)

I have discussed, with Mr. Arlery Finkle, the A. S. series 1-10.1, 1-10.2, and 1-10.3 and supplements, and Mr. Martin advises me that he believes these contain all of the delegations of authority, from the Washington level to the region, affecting the Regional Engineer's authority in respect to right-of-way in Alaska except for a telegram dated December 17, 1956, from Deputy Commissioner Allen to Mr. F. E. Andrews, Portland, Oregon, containing identical language to that of the Commissioner's memorandum of September 16, 1956, above cited, a copy of which is attached hereto with the other documents.

Also attached below is a copy of memorandum from Mr. Turner to Files dated March 3, 1958, tracing history of Alaska Road Commission from its establishment in 1905 and explaining the basis for the Administrator's authorization to acquire right-of-way.

* Note: It is a familiar, general legal principle that "when the law gives to anyone a right, or imposes on anyone a duty, it implicitly gives everything, which is necessary to the enjoyment and exercise of that right or without which the duty cannot be performed."

Enclosed:
cc: Mr. G. J. Waddel
Lands
Alaska
Chron

BUREAU OF PUBLIC ROADS

Alaska Land 3
X Alaska Plan 2-6
Reg 1
Land 3-6

Mr. E. H. Swick
Regional Engineer, Juneau, Alaska

SEP 24 1958

26-11

Paul F. Royster, Assistant Commissioner for
Operations, Washington, D. C.

Paul F. Royster

Alaska Right-of-Way Encroachments

Your memorandum dated September 5, 1958, requests comments on the question as to whether Public Roads maintenance activity with Federal-aid highway funds makes the entire Federal-aid highway system in Alaska subject to paragraph 1.11(c) of the Federal-aid regulation. It is noted that your inquiry is prompted by the fact that advertising signs are located within highway rights-of-way in the Territory and that permits for such signs are issued by the Alaska Highway and Public Works Department pursuant to statutory authority.

The General Counsel has been consulted and has advised that, in his opinion, paragraph 1.11(c) does not provide a legal basis for requiring the removal of advertising signs from the rights-of-way of those portions of Alaska highways on which Federal-aid funds have been used solely for highway maintenance purposes.

In his support of this conclusion, the General Counsel has pointed out that, by its own limiting language, paragraph 1.11(c) of the regulations is applicable, not to all rights-of-way of Federal-aid highways, but only to rights-of-way which are "provided for Federal-aid highway projects." As the quoted language indicates, the paragraph contemplates Federal-aid highway projects, which necessitate that right-of-way be provided, as distinguished from maintenance activity. The General Counsel has, therefore, concluded that highway maintenance activity is not embraced by the term "project" as used in paragraph 1.11(c).

Hence, the General Counsel advises the provisions of paragraph 1.11(c) are not applicable to, and accordingly, do not bar advertising signs located within, the rights-of-way on those portions of Alaska highways on which Federal-aid funds have been used solely for highway maintenance purposes.

I am wholly in accord with your proposed procedure, and the General Counsel has approved it from a legal standpoint. We both think highly of your proposed letter to Mr. Metcalf of the Alaska Highway and Public Works Department.

In connection with the letter, the General Counsel has suggested that the Alaska statute governing outdoor advertising (Section 14A-12-1, et seq., Alaska Compiled Laws Annotated, 1949, Cumulative Supplement) may not necessarily be in conflict with the

Federal-aid regulations. The General Counsel has invited attention to section 14A-2-12 of the Alaska Compiled Laws Annotated, 1949, Cumulative Supplement, which gives assent to Federal aid, and also specifically authorizes the Alaska Highway and Public Works Board "to make all contracts and to do all things necessary to cooperate with the United States Government in the construction of highways...."

You may, therefore, wish to explore the possibility that the Alaska outdoor advertising statute could and would be administered in such a way as to avoid conflict with the requirements of paragraph 1.11(c). It is suggested, therefore, that the references to a conflict between Alaska laws and the Federal-aid regulations be modified accordingly in your proposed letter to the Alaska Highway and Public Works Department.

PJM
JW

JAWoolman/j2p

cc: Files (2)

Mr. Erhart

Gen Counsel

Opinions Branch

Prec

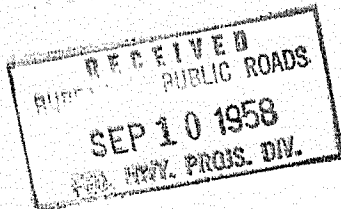
Chron

CWJ
Ch Lewis

9/24/49

Erhart ✓

I doubt the advisability of opening a losing argument on this matter now. Any agreements reached on basis our present law would almost certainly be upset by new legislation in the next year or two. I suggest we ask Legal if there is any valid grounds on which to take action now which we could positively enforce & which could be carried over into statehood.



~~724~~
9/10

FORM CD-14 U.S. DEPARTMENT OF COMMERCE (12-12-56)		DATE
TRANSMITTAL SLIP		September 9, 1958
TO:	F. C. Turner	REF. NO. OR ROOM, BLDG. Mat. 803C
FROM:	Eric E. Erhart <i>E.E.E.</i>	REF. NO. OR ROOM, BLDG. Mat. 816A
ACTION		
<input type="checkbox"/>	NOTE AND FILE	<input type="checkbox"/>
<input type="checkbox"/>	NOTE AND RETURN TO ME	<input type="checkbox"/>
<input type="checkbox"/>	RETURN WITH MORE DETAILS	<input type="checkbox"/>
<input type="checkbox"/>	NOTE AND SEE ME ABOUT THIS	<input type="checkbox"/>
<input type="checkbox"/>	PLEASE ANSWER	<input type="checkbox"/>
<input type="checkbox"/>	FOR YOUR APPROVAL	<input type="checkbox"/>
<input type="checkbox"/>	PER OUR CONVERSATION	<input type="checkbox"/>
<input type="checkbox"/>	PREPARE REPLY FOR MY SIGNATURE	<input type="checkbox"/>
<input type="checkbox"/>	TAKE APPROPRIATE ACTION	<input type="checkbox"/>
<input type="checkbox"/>	PER YOUR REQUEST	<input type="checkbox"/>
<input type="checkbox"/>	SIGNATURE	<input type="checkbox"/>
<input type="checkbox"/>	FOR YOUR INFORMATION	<input type="checkbox"/>
<input type="checkbox"/>	INVESTIGATE AND REPORT	<input type="checkbox"/>
COMMENTS:		
<p>It appears to me that Swick's proposal is about the minimum that should be required of the Territory. Can we continue to ignore violations of Federal-aid regulations until a State highway department is established?</p>		

USCOMM-DC 969

RG 30, Bur. of Public Roads
E. G. D., Gen. Corr + Related Recs, 1955-57
Box 1131

Office Memorandum • UNITED STATES GOVERNMENT

W. W. Erhart
 10/9/58

TO : Mr. P. F. Royster, Assistant Commissioner for Operations, Washington, D. C. DATE: September 5, 1958

FROM : E. H. Swick, Regional Engineer Juneau, Alaska 10 Ref: Land 3-6

SUBJECT: Alaska Right-of-Way Encroachments

During your visit to Alaska last year and in conversations on other occasions with Messrs. Christensen and Erhart we have discussed the problem of advertising signs located within highway rights-of-way in Alaska. The Territory has a statute (copy attached) which permits advertising signs on highway rights-of-way, subject to permits which are issued by the Alaska Highway and Public Works Department. While many places of business do apply for permits and erect signs in conformance with the regulations of the Department, there is little or no enforcement of the statute and many signs are indiscriminately placed, particularly in the immediate vicinity of towns and of villages. While there is still a large mileage of rural highways in Alaska along which advertising signs for isolated roadhouses and filling stations provide a welcome indication to the traveler that he can secure services, advertising signs are a nuisance and a hazard.

We are considering the application of the Federal-aid regulations along the Federal-aid highway systems to the extent that we will require removal of advertising signs and the maintenance of the right-of-way without such signs, within the limits of projects constructed with Federal-aid funds. Actually there is a question as to whether or not the Public Roads maintenance activity with Federal-aid highway funds makes the entire Federal-aid highway system subject to paragraph 1.11(c) of the Federal-aid regulations. This would be a drastic requirement and we hesitate to recommend it at the present time. Your comments on this particular feature of the problem will be most helpful.

The Alaska Highway and Public Works Department is not sympathetic to our desire to enforce the Federal-aid regulations and we can expect little assistance from them beyond that which we require as a prerequisite to the construction of a Federal-aid project. It is necessary that we make the requirement a prerequisite to the beginning of construction rather than to the acceptance of a project. The Territory would have no incentive to take an action leading to project acceptance where the funds all are under Public Roads control.

In connection with this problem the Civil Aeronautics Administration recently protested to the Territory its granting of permits to advertisers within the limits of an easement given by CAA across one of its air navigation withdrawals. The Territory in this case

Mr. P. F. Royster

- 2 -

September 5, 1958

simply advised the CAA to take the matter up with its Attorney General, and offered no assistance to the Governmental agency. Actually, this case is further clouded by the fact that the free easement given by the CAA was to the Alaska Road Commission rather than to the then Territorial Highway Engineer. Formerly highway rights-of-way in Alaska were taken in the name of the Alaska Road Commission where there was a definite title or an easement or withdrawal of public lands. We have taken the position, however, that policing of the highways is not a Federal function but one for the Territory.

There are enclosed for your information a proposed letter to the Territorial Highway Department and copies of the Territorial statute and of the regulations and application forms used by the Territory. Also enclosed is a copy of the CAA letter and our reply. If at all possible we should like to have your comments on this situation prior to September 20 in order that we may give the Territory a letter well in advance of a meeting of the Board scheduled for October 7. It is certain that any move on our part to regulate the use of highway right-of-way for advertising purposes will be a very unpopular one for which we shall receive much public censure. It is possible that action in the matter should be deferred until such time as the new State has taken over the highway function and when the Federal-aid regulations can be interpreted and enforced in the normal manner.

Attachments:

- Draft of letter to Highway Department
- cc Chapter 12, GLA
- cc Ltr from CAA to Mr. Metcalf, 8/4/58
- cc Ltr to CAA from E. H. Swick, 9/5/58
- cc Highway Department regulation and forms

RG 30, Bur. of Public Roads
E. 6 D, Gen Corr + Related Recs, 1955-59
Box 1131

DRAFT

Date

Mr. Frank A. Metcalf, Commissioner
Alaska Highway and Public Works Department
P. O. Box 1361
Juneau, Alaska

Dear Mr. Metcalf:

There have been several conversations with Mr. Baxter and yourself concerning the applicability in Alaska of that portion of the Federal-aid regulations having to do with keeping the rights-of-way free of encroachments. The applicable section is Paragraph 1.11(c), and under it rights-of-way for Federal-aid Highway projects must be held inviolate for public highway purposes. This requirement places the Federal-aid regulations (which have the effect of law insofar as administration of Federal-aid highway funds is concerned) in conflict with that section of the Territorial laws which permits regulated advertising signs to be maintained within the highway right-of-way (Title 14A-12-4, Rural Signs).

In preparation for a discussion of this subject at the October meeting of the Highway and Public Works Board will you please bring the Federal-aid regulations to the attention of the Board members and advise them that this office will propose at the time of the meeting that the Federal-aid regulations will be put into effect on construction projects undertaken with Federal-aid funds in the future? This will mean that before authorization of a construction project we shall ask the Territorial Highway and Public Works Department to certify to Public Roads that all advertising signs have been removed from within the project limits and to agree that the Territory will enforce the preservation of

RG 30, Bur. of Public Roads
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the highway right-of-way within the project limits free of advertising signs after the project has been completed. The burden for keeping the sections free from advertising material then will rest with the Territory, and Public Roads reports on maintenance of the highway sections will include a report on the advertising sign situation.

This office feels that the proposal outlined herein is a minimum method by which we can function under the terms of the Federal-aid regulations. It is realized that the enforcement of the advertising sign removal by segments of highway such as between Federal-aid Highway project limits will involve apparent discrimination against those particular advertisers whose places of business are located within or adjacent to the Federal-aid projects. In view of this discrimination the Territory may elect to abolish highway advertising signs completely from the public rights-of-way. This might require legislation changing the existing statutes on the subject or the relocation of existing permits for such signs. In this connection it may be desirable to secure from the Attorney General his opinion as to the applicability of the Territorial laws when they are in conflict with the Federal regulations which cover the expenditure of the Federal-aid Highway funds. Past opinions in the matter generally have been that while Federal regulations in no way supersede State statutes the state or territory must comply with the Federal regulations or stand to lose the grants-in-aid which are involved.

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We shall appreciate your assistance in making this problem known to the Board and in placing the subject on the agenda for the October meeting.

Very truly yours,

E. H. Swick
Regional Engineer