

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SECRETARY
DIVISION OF TERRITORIES AND ISLAND POSSESSIONS
WASHINGTON

December 17, 1938.

MEMORANDUM to the Commissioner,
General Land Office:

May I invite your attention to the attached letter from Mr. Ike P. Taylor dated December 1 and its enclosures regarding the difficulties experienced by the Alaska Road Commission in securing rights of way for the construction of roads, bridges and trails in the Territory of Alaska.

Inasmuch as this concerns the administration of the public domain in Alaska and the suggestions made by Mr. Taylor further concern rights and titles involved in mining claims, homesteading and other forms of entry, it would appear that the matter should be considered jointly by the General Land Office and this Division.

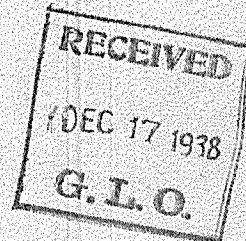
Could I have an expression of your views on the questions which Mr. Taylor has raised, especially the desirability of reserving either by Executive order or by legislation rights of way for roads, the possibility of doing this by Executive order and in case an Executive order is not possible, the type of legislation your office considers necessary.

You may be assured I shall be glad to confer with you or with any of your representatives at any time on this subject.

Please return the enclosures which are attached to Mr. Taylor's letter.

Ernest Gruening
ERNEST GRUENING
Director.

Attachments.



FILE COPY
Surname:

ADDRESS ONLY THE COMMISSIONER OF THE GENERAL LAND OFFICE

UNITED STATES
DEPARTMENT OF THE INTERIOR
GENERAL LAND OFFICE
WASHINGTON

JAN 20 1939

IN REPLY PLEASE REFER TO

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Carlin
Harshen
Hawell
Wright

The Director,

Division of Territories and Island Possessions.

My dear Dr. Gruening:

Referring to your memorandum under date of December 17, 1938, relative to proposed reservations for the construction of roads, bridges, and trails in the Territory of Alaska, I will be glad to confer with you or your representatives at any time you may so desire.

There is apparently no authority for the issuance of an Executive order for the purpose of imposing a road reservation upon any land in the Territory which may hereafter pass into private ownership, and I am not certain that it would be necessary or advisable to recommend the enactment of legislation for such purpose.

Section 2477, U. S. R. S., provides: "The right-of-way for the construction of highways over public lands, not reserved for public uses, is hereby granted." No action on the part of the Government is deemed necessary to the operation of this statute. This grant becomes effective upon the construction or establishing of the highway in accordance with the State or Territorial laws. No reservation for rights-of-way so acquired is included in the patent when issued for the lands affected. (26 L. D. 446).

The acts of January 27, 1905 (33 Stat. 616), and May 14, 1906 (34 Stat. 192), incorporated in sections 321 to 337 inclusive, of Title 48 U. S. C., provides for the construction and maintenance of roads, trails, and bridges, by the board of road commissioners. A reservation for rights-of-way for roads constructed in pursuance of the provisions of these statutes, may be inserted in patents for the

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lands affected, upon the filing of profile maps showing the location of the road in accordance with instructions of the Department of July 8, 1930.

Section 17 of the act of November 9, 1921 (42 Stat. 212), provides for the granting of public lands or reserved lands of the United States for Federal Aid Highways. Grants under this statute may be acquired by the filing of maps in accordance with the regulation thereunder and the approval of such maps by the Secretary of the Interior. A reservation for rights-of-way acquired under this statute is incorporated in the patent issued for the lands affected.

The width of the rights-of-way which may be acquired under the above-mentioned statutes is not specified. The width of rights-of-way established under section 2477 is governed by the laws of the States or Territories (22 L. D. 145). The width of rights-of-way for roads or highways established or constructed under the provisions of the acts of January 27, 1905, and May 14, 1906, or acquired under section 17 of the Federal Aid Highway Act of November 9, 1921, would seem to be a matter of discretion as to what is deemed reasonably necessary for the construction and proper maintenance of the particular road or highway and governed by the width as surveyed and shown on the profile maps, the maps being evidence of the right-of-way and the basis for insertion of the reservation in any subsequent patent for the lands affected.

With respect to the illustrations given in the correspondence accompanying your letter, it appears quite certain that neither an Executive order nor legislation could afford any relief. In other words, a right-of-way over an area which is embraced in an entry, legally initiated and maintained according to law, is either by agreement with the party having the entry or through condemnation proceedings.

The correspondence accompanying your letter indicates that you are familiar with the instructions issued by the Department on July 8, 1930, in regard to the inclusion of reservations for roads constructed by the Government in all cases where rights of persons seeking to acquire title to any of such lands were initiated subsequent to the construction of the road. In order to put into effect those regulations, this Office must be furnished with maps and field notes of all constructed roads as well as those hereafter completed, so prepared as to make it possible to have proper notes placed on the tract books and adequate reservations inserted in patents. As is

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also indicated by your correspondence, this matter was called to the attention of the Secretary of War by the Department on September 3, 1930, but up to this time no maps or field notes pertaining to constructed roads or roads hereafter to be constructed have been received in this office.

We shall be glad to go into these matters more fully in the conference that you have proposed.

The enclosure accompanying your letter is returned herewith.

Very truly yours,

Thed W. Johnson
Commissioner.

Enclosure.

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ERNEST GRUENING
Director.

Attachments.

ADDRESS REPLY TO
ALASKA ROAD COMMISSION

UNITED STATES
DEPARTMENT OF THE INTERIOR
ALASKA ROAD COMMISSION
JUNEAU, ALASKA

December 1, 1938

Mrs. Ruth Hampton, Assistant Director
Division of Territories & Island Possessions
Department of the Interior
Washington, D. C.

Dear Mrs. Hampton:

In answering your telegram of November 26 concerning new legislation required in connection with our activities, we replied in the negative but, nevertheless, had in mind a situation with respect to roadway limits--one that has become considerably aggravated during the past few years. This matter was not mentioned in our wire reply as it appeared much more explanation would be necessary than could be given by telegraph. Moreover, it seems possible that the trouble may be cured by Executive or Departmental orders, and no legislation required.

Most road construction in the Territory is over unpatented and unreserved public lands. In the years following, however, homestead or mineral land patents are applied for and obtained in the area traversed by the roadway. The road is generally at first constructed to a very narrow width, usually not more than 18 to 20 feet of area being used between the extreme side ditches. In later years, however, the natural development of the locality requires an improved and widened roadway, slight alterations in alignment, more extensive ditches, and, not infrequently, there arises the necessity of obtaining soil near the roadside for making fills, surfacing, and such like.

It generally follows, of course, that the existence of a roadway or thoroughfare across lands later patented gives to the Government and the public the necessary rights of way for the existing route, but at present there exists no practicable definition of what constitutes "necessary rights of way".

There are at present two cases at hand, one of which in particular is causing considerable vexation. It may be outlined as follows: There exists a single track roadway which, in a certain section, extends across unpatented mining claims. The road was constructed about 1922. The present roadway, measured between drainage ditches, is only about 18 feet. In replacing a decayed wooden bridge structure with one of steel it appeared desirable, in order to provide better road curvature at the site of the bridge, to slightly change the location by placing the new structure immediately to the

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side of the old structure and thus at the same time avoid the necessity of otherwise closing the road during construction. Acting upon an assumption that our undefined rights gave us a limit of 60 feet (50 feet to either side of the center line), we began construction of the new bridge and completed it with the exception of the approaches. The owner of the unpatented mining claims adjoining the roadway thereupon obtained an injunction in the District Court for the Fourth Judicial Division, preventing our completing the structure. Since both the old and new structures are only 14 feet in width, the outer edge of the new structure is still well within the assumed 60-foot limit and the District Attorney sought to have the injunction denied upon the grounds that we had the privilege of using a maximum of 60 feet of right of way, under the provisions of Sec. 1731, Compiled Laws of Alaska, 1933. The plea was denied and an injunction granted prohibiting the Commission's employees from having access to any area beyond 9 feet from either side of the existing road. This has thus far even prevented us from dismantling and moving the steel structure to the location of the existing one, if indeed this finally develops as the only practicable solution. It would prevent our raising the elevation of the road, as the natural toe of the slopes of a fill would extend much beyond this limit. It might interfere seriously with normal maintenance.

Condemnation proceedings have proved equally unsatisfactory. Approximately two tenths of an acre of area is involved. It is in one of the most remote areas of the Territory and is entirely removed from any town or village. The area does have some questionable mineral value for placer gold mining. It is our opinion that \$500 per acre would really be more than could be realized on a sale of the property. Yet, we are informed that the three appraisers appointed by the Court to determine the value of the area, while unable to definitely agree, used in their deliberations such figures as \$10,000 and \$20,000 (\$100,000 to \$200,000 per acre). While, of course, it is not believed that any such award would have been accepted by the Court, it is mentioned as illustrative of the unconscionable attitude that is some times displayed when the Government attempts improvement work in thinly populated areas where a jury of appraisers selected from local inhabitants are not unlikely to permit personal and ulterior motives to entirely govern their awards.

The second case referred to is that of a roadway constructed many years ago and along which a homesteader has recently settled. His period of occupancy will not yet permit him to apply for patent and we presume that upon final consideration and before issuance of patent, we may apply for and secure a reserve for our roadway, 60 feet in width. But in the meantime the question of our rights is indefinite and we are being obstructed. And, it is presumed that this situation will continue during the years that patent is pending.

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It is, therefore, recommended that Executive Orders be issued if found practicable; otherwise that legislation be sought, creating a reserve of 30 feet from either side of the center line of all existing roads or trails in the Territory wherever traversing unpatented or unreserved lands, whether mineral or agricultural, and that the same provision be made to automatically apply to any future roadways that may be constructed over unpatented and unreserved areas, following but not preceding location and construction. Such orders should, if possible, include not only all unoccupied lands but lands occupied but to which the Government still holds title.

Some years ago the Alaska Road Commission sought similar relief and copies of correspondence taking place at that time between the Commission (then operating under the War Department) and the Interior are enclosed. It seems that the request of the Commission was denied for the reason that a reserve was sought in advance of actual location and construction of the roadway—obviously undesirable. What is now contemplated, however, is a reserve to cover roads in existence, applying not only to those at present constructed but to those hereafter constructed but taking effect only after the route has been definitely located and construction work in process. Without the actual construction of a road no reserve is created. This would not prevent occupied but unpatented land holders resisting the location of a road encroaching upon their rights provided they acted before the road is constructed.

In the Alaska laws referred to, and of which a copy is enclosed, it will be observed that the Territorial Legislature has endeavored to correct this matter to some extent, but it is doubtful if the Legislature has jurisdiction.

It would be particularly appreciated if this matter could be given immediate consideration by the Department.

Very truly yours,

Ike P. Taylor,
Chief Engineer.