

BRIEF

Statutes and orders under which rights-of-way for roads and highways may be established over lands in Alaska by the Alaska Road Commission.

JUL 22 1952

AUTHORITIES

Rights-of-way for the construction of public roads and highways in Alaska may be established by the Alaska Road Commission under the authority of R.S. 2477 (43U.S.C. 932); Act of June 30, 1932 (47 Stat. 446; 48 U.S.C. 321a), as amended by the Act of July 24, 1947 (61 Stat. 418; 48 U.S.C. 321a); Public Land Order No. 601 of August 10, 1949, as amended by Public Land Order No. 757 of October 16, 1951; Departmental Order No. 2665 of October 16, 1951.

APPLICATION OF AUTHORITY

1. R.S. 2477, grants rights-of-way for the construction of highways over public lands not reserved for public uses. The grant becomes effective upon the establishment of the highway in accordance with State or other applicable laws. The statute does not specify any width for rights-of-way so established and unless maps of definite location showing the width of the right-of-way appropriated are filed and recorded in the proper recording district, the width would be limited, as against subsequent valid claims, to that recognized by the courts, which I understand is 66 feet or 33 feet on each side of the center line in the Territory of Alaska.
2. The Act of June 30, 1932, authorizes the construction of roads and highways over the vacant and unappropriated public lands under the jurisdiction of the Department of the Interior. This statute, like R.S. 2477, does not specify the width of the rights-of-way which may be established thereunder. Therefore, unless maps were filed in the proper land offices, as contemplated by the 1932 Act, showing the width of the right-of-way appropriated, the right-of-way would also be limited to 66 feet or 33 feet on each side of the center line of the road or highway, as against valid claims or entry subsequently initiated prior to Public Land Order No. 601 of August 10, 1949.
3. The Act of July 24, 1947, added section 5 to the Act of June 30, 1932, which provided that "In all patents for lands taken up, entered, or located in the Territory of Alaska, and in all deeds by the United States hereafter conveying lands to which it may have reacquired

title in said Territory . . . there shall be expressed that there is reserved from the land described in said patent or deed, a right-of-way thereon for roads, roadways, highways, . . . constructed or to be constructed by or under the authority of the United States or of any State created out of the Territory of Alaska". Again, this statute did not specify the width of the rights-of-way reserved, so that any valid claim or entry initiated after the Act and prior to Public Land Order No. 601 of August 10, 1949, as amended by Public Land Order No. 757 of October 16, 1951, would be subject to the reservation of 66 feet for road right-of-way purpose, or 33 feet on each side of the center line of the road only. If an additional width were required, in such cases, it would be necessary to obtain it by easements from the claimant or entryman or by condemnation proceedings.

4. Public Land Order No. 601 of August 10, 1949, established right-of-way for all roads and highways in Alaska, by withdrawal, and specified the width as follows:

300 feet on each side of the center line
of the Alaska Highway

150 feet on each side of the center line
of all other through roads

100 feet on each side of the center line
of all feeder roads.

50 feet on each side of the center line
of all local roads.

The order was made "Subject to valid existing rights and to existing surveys and withdrawals for other than highway purposes". The withdrawal, therefore, did not affect any valid existing claims or entry initiated prior to the date of the order or have the effect of increasing the width of rights-of-way over such claims to that specified in the order for roads previously constructed or may hereafter be constructed. Valid claims or entries initiated prior to the order and subsequent to the 1947 Act are subject to the reservation provided by said Act, only (commonly recognized as 66 feet).

5. Public Land Order No. 757 of October 16, 1951, amended Public Land Order 601 by specifying the through roads for which the rights-of-way would remain under withdrawal, that is, the Alaska Highway, Richardson Highway, Glenn Highway, Haines Highway, Seward-Anchorage Highway, (exclusive of part in Chugach National Forest), Anchorage-Lake Spenard Highway, and the Fairbanks-College Highway. The rights-of-way for all other roads (feeder and local roads), to be established as easements. The effect of the amendment permitted claims to be initiated to or entry made for lands crossed by rights-of-way or to straddle the roads

which were established as easements and released from the withdrawal.

6. Departmental Order No. 2665 of October 16, 1951, Sec. 2, definitely fixed the width of all rights-of-way for road and highway purposes in Alaska; Alaska Highway, 600 feet; through roads, 300 feet; feeder roads, 200 feet; local roads, 100 feet. Sec. 3(a) of the Order points out that a reservation for highway purposes covering lands embraced in the rights-of-way for through roads was made by P.L.O. 601, as amended by P.L.O. 575, and operates as a complete segregation of the lands from all forms of appropriation under the public land laws, including the mining and mineral leasing laws. Sec. 3(b) definitely established easement for feeder and local roads over and across public lands to the extent of the width specified in Sec. 2 of the Order.

From the foregoing it necessarily follows that:

(a) The ARC has no right to establish a road right-of-way over land to which a valid claim or entry was initiated prior to the Act of 1947, without the consent of the claimant or entryman, and the patent subsequently issued for such claim or entry would not contain the reservation provided by that Act.

(b) The ARC is entitled to the establishment of road rights-of-way over patented lands for any claim or entry initiated after the 1947 Act. Yes
M-act
305

(c) The width of rights-of-way to which the ARC is entitled to over patented lands based on claims or entries initiated after the 1947 Act and prior to P.L.O. 601, as amended by P.L.O. 757, October 16, 1951, would be limited to that recognized as the prevailing standard in the particular area (normally 66 feet). It should be noted that none of the land reserved under P.L.O. 601 was subject to disposal prior to the amendment Order No. 757 of October 16, 1951. //

(d) The width of rights-of-way over lands patented to claims or entries initiated after P.L.O. 757 of October 16, 1951, is that fixed by Departmental Order No. 2665 of October 16, 1951, depending on the class or road established.

Abe Barber
Abe Barber
Member of Alaska Field
Staff Sub-Committee

