



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

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RIGHT OF WAY SECTION
ANCHORAGE DISTRICT

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TO: A. F. Chiglione, Commissioner of Roads for Alaska
✓ Wm. J. Niemi, Chief Engineer

FROM: Wm. B. Adams, Chief, Real Estate Branch

The attached brief was prepared as a result of a study of all applicable Land Laws, Land Orders and Secretarial Orders as they pertain to rights-of-way under the jurisdiction of the Department of the Interior, the Alaska Road Commission.

The resultant analysis, reduced to logical sequence, will serve as a reference guide to the essence of the various laws and orders, and in some measure will take the confusion out of the mass data as reflected by numerous files of pre-dated correspondence.

If conclusions, which are normally not a part or purpose of a sequential brief, are permitted, it can be said that too great an area of confusion still exists regarding Public Law 229, Land Order 601 and Secretarial Order 2665. And this being so, and because our future activities in terms of cadastral inquiry are to be closely identified with these laws and orders, it would seem to be the logical course of action to perhaps make a test of Public Law, Land Order or Secretarial Order, to determine just what can or cannot be done.

A ruling or decision by the Solicitor of the Department will not be sufficient to, for example, decide on a course of encroachment action following predetermined cadastral inquiry.

It would seem therefore that a panel discussion of Public Laws, Land Orders and Secretarial Orders, could logically be a function of sub-committees of the Alaska Field Committee, which committees would study all pertinent laws and orders as have direct effect upon the activities of any of the participating Department of Interior Bureaus or Agencies.

Facts concerning Alaska lands in Public Domain and lands covered by Patent as they both pertain to rights-of-way under the jurisdiction of the Alaska Road Commission.

1.

The greater part of the land area on which the operations of the Alaska Road Commission are conducted is public domain land outside of natural forests and the location of rights-of-way on such land presents no serious problem.

However, for the proper location of roads and in the interest of public service, it is necessary in some instances to cross lands to which title has passed from the United States.

These instances are becoming more numerous as the population of the Territory increases, and obtaining rights-of-way over such lands will, in a number of cases, present difficulties requiring court action and the expenditure of Federal funds.

2.

Just prior to January 9, 1946, a draft of a proposed bill to amend the act 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 to the Department of the Interior and for Other Purposes; approved June 30, 1932" was presented to the Speaker of the House of Representatives, Washington, D. C.

The purpose of the draft was to provide for the reservation by the United States in patents or deeds to land in Alaska, of rights-of-way for trails, roads, highways, tramways, bridges and appurtenant structures constructed or to be constructed by the authority of the United States or of any future state created in Alaska.

The proponent of the draft, the Secretary of the Interior, stated that such legislation was desirable to facilitate the work of the Alaska Road Commission.

3.

The legislation proposed by that draft was similar to the provisions of the Act of August 30, 1890 (26 Stat. 391, 43 U.S.C. Sec. 945), which reserves rights-of-way for ditches and canals constructed by the authority of the United States west of the 100th Meridian.

A similar provision is also found in the Act of March 12, 1914 (38 Stat. 305, 48 U.S.C. Sec. 305), by which rights-of-way for railroads were reserved to the United States in all patents for lands thereafter taken up in the Territory of Alaska.

The proposed legislation was applicable to both public domain and acquired lands of the United States. Moreover, it would authorize the head of the agency utilizing such reserved right-of-way to make payment for the full value of the crops and improvements thereon.

4.

A bill, incorporating all of the points mentioned, was submitted to Congress on January 14, 1947. It was approved by Congress in July 24, 1947, and is known as Public Law 229.

The language of Public Law 229 is as follows:

"In all patents for lands hereafter taken up, entered, or located in the Territory of Alaska, and in all deeds by the United States hereafter conveying any lands to which it may have reacquired title in said Territory not included within the limits of any organized municipality, there shall be expressed that there is reserved from the lands described in said patent or deed, a right-of-way thereon for roads, roadways, highways, tramways, trails, bridges, and appurtenant structures 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. When a right-of-way reserved under the provisions of this Act is utilized by the U. S. or under its authority, the head of the agency in charge of such utilization is authorized to determine and make payment for the value of the crops thereon if not harvested by the owner, and for the value of any improvements, or for the cost of removing them to another site, if less than their value."

The wording of Public Law 229 would seem to indicate that it is applicable only to lands since filed upon (meaning since July 24, 1947) and would have no application to lands previously filed upon (previous to July 24, 1947) although patent had not yet been issued.

Accordingly, on December 1, 1948, the Division of Territories and Island Possessions, Washington, D. C. was requested to obtain clarification on this point either from the Solicitor or the Bureau of Land Management.

On January 27, 1949, Chief Counsel of Bureau of Land Management, Washington, D. C. replied as follows:

"While I shall not attempt to discuss every type of land disposal made in Alaska, it is my opinion that requirements of Public Law 229 do not apply ^{where} either a valid settlement or a valid filing leading to patent has been made, prior to the date of the Act, on lands open to settlement or to such filing. Thus the deciding factor will not necessarily be the date of the filing. This Bureau, of course, will decide at the time a patent is issued, in each case, whether or not the reservation should be inserted."

So much for the opinion of Chief Counsel, Bureau of Land Management, by his letter of January 27, 1949. Now let us read what Regional Administrator, Bureau of Land Management, Anchorage, says by his letter of April 3, 1952:

"The Act of July 24, 1947, 61 Stat. 418, 48 U.S.C. Sec 321d (meaning, of course, Public Law 229) provided for the reservation of right-of-way for roads in patents and deeds on lands, the rights-to which were inaugurated after the effective date of the Act. This Act did not, however, specify the widths of the rights-of-way."

Note that Mr. Puckett did not use the qualifying terms "valid filing" or "valid settlement", neither does he say, as did Chief Counsel, that the deciding factor will not necessarily be the date of filing, and that the Bureau will decide at the time a patent is issued, in each case, whether or not the reservation should be inserted.

Two things should be remembered at this point in the sequence of events as they pertain to Alaska Road Commission rights-of-way problems, the first that there is an area of disagreement between the opinion of Chief Counsel of Bureau of Land Management, Washington, D. C. and Regional Administrator, Bureau of Land Management, Anchorage, as to just what Public Law 229 means, the second that Public Law 229 did not specify the widths of rights-of-way to be reserved in the patents.

Subsequent to the date of Public Law 229 (July 24, 1947) and for 25 months thereafter, considerable undefined confusion existed until August 10, 1949, when Public Land Order 601 was issued. This important but nevertheless controversial order provided firstly, for the establishment of a reservation for highway purposes by the following language:

"Subject to valid existing rights and to existing surveys and withdrawals for other than highway purposes, the public lands in Alaska lying within 300 feet on each side of the centerline of the Alaska Highway, 150 feet on each side of the centerline of all other through roads, 100 feet on each side of the centerline of all feeder roads and 50 feet on each side of the centerline of all local roads, ****are hereby withdrawn from all forms of appropriation under the public land laws, including the mining and mineral-leasing laws, and reserved for highway purposes."

Through Roads - Alaska Highway, Richardson Highway, Glenn Highway, Haines Highway, Tok Cutoff.

Feeder Roads - Steese Highway, Elliott Highway, McKinley Park Road, Anchorage-Potter, Indian Road, Edgerton Cutoff, Tok-Eagle Road, Ruby-Long-Poorman Road, Nome-Solomon Road, Kenai Lake-Homer Road, Fairbanks-College Road, Anchorage-Lake Spenard Road, Circle Hot Springs Road.

Local Roads - All roads not classified above as through roads or feeder roads, established or maintained under the jurisdiction of the Secretary of the Interior.

7.

The establishment of the reservation for highway purposes by 601 had the effect of operating as a complete segregation of the land from all forms of appropriations under the public land laws, including the mining and the mineral leasing laws.

Unless under the law or regulation such right or claim could embrace non-contiguous land, a right or claim to public land in the Territory fronting on a withdrawal made by Land Order 601 and initiated on or after August 10, 1949, was restricted to land on one side of the withdrawn area, except that a homestead settlement or entry could be made for land crossed by the strip withdrawn in connection with a local road exclusive of such strip.

Every applicant for public lands in Alaska, whose right for claim did not antedate the withdrawal (August 10, 1949) was required to state in his application, or in a written statement furnished with the application, whether or not the land applied for was crossed by a public road. If it was, such road had to be identified by name or otherwise.

Public lands on either side of the area reserved for highways, both surveyed and unsurveyed, if available, could be included in claims extending up to but not including a part of the reserve.

Where the land had been surveyed under the rectangular system and the surveys had not been closed on the reserved area, applications could be filed and entries allowed for portions of the legal subdivisions outside of the reserved area without creating additional surveys.

Where the surveys had been closed on the reserved area, the land had to be identified in terms of such surveys.

Every application made for public land abutting on the reserved area, not described in the terms of an official plat of survey closing on that area, was subject to adjustment, both as to description and area, after such an official survey had been made.

8.

Two orders followed 601, both issued and effective on the same day, October 16, 1951.

The first was Public Land Order No. 757 which amended Land Order 601 so as to eliminate provisions affecting feeder roads and local roads.

The second was Secretarial Order 2665, the most important of the two, which fixed the width of all public highways in Alaska established or maintained under the jurisdiction of the Secretary of the Interior and, in addition, prescribed a uniform procedure for the establishment of rights-of-way or easements over and across the public lands for such highways (47 Stat. 446, 48 U.S.C. 321a).

Order 2665 fixed the width of public highways in Alaska as follows:

For the Alaska Highway, 300 feet on each side of the centerline.

For the Richardson, Glenn, Haines, Seward-Anchorage, Anchorage-Lake Spenard and Fairbanks-College Highways 150 feet on each side of the centerline.

For Feeder Roads: Abbert Road (Kodiak Island), Edgerton Cutoff, Elliott Highway, Seward Peninsula Tram Road, Steese Highway, Sterling Highway, Taylor Highway, Northway Junction to Airport Road, Palmer to Matanuska to Wasilla Junction Road, Palmer to Finger Lake to Wasilla Road, Glenn Highway Junction to Fishhook Junction to Wasilla to Knik Road, Slana to Nabesna Road, Kenai Junction to Kenai Road, University to Ester Road, Central to Circle Hot Springs to Portage, Creek Road, Manley Hot Springs to Eureka Road, North Park

Boundary to Kantishna Road, Paxson-McKinley Park Road, Sterling Landing-Ophir Road, Iditarod-Flat Road, Dillingham-Wood River Road, Ruby-Long-Poorman Road, Nome-Council Road shall each extend 100 feet on each side of the centerline thereof.

For Local Roads: All public roads not classified as through roads or feeder roads shall extend 50 feet on each side of the centerline thereof.

Order 2665 established a right-of-way or easement for highway purposes covering the lands embraced in the feeder roads and local roads equal in extent to the width of such roads as established by 2665 (200 feet for feeder roads and 100 feet for local roads).

Order No. 2665 further provides that the reservation (supra) covering the lands embraced in the through roads and the rights-of-way or easements covering the lands embraced in the feeder roads and the local roads, will attach as to all new construction involving public roads in Alaska when the survey stakes have been set on the ground and notices have been posted at appropriate points along the route of the new construction, specifying the type and width of the roads.

And finally, Order 2665 provides that maps of all public roads in Alaska heretofore or hereafter constructed showing the location of the roads, together with appropriate plans and specifications will be filed by the Alaska Road Commission in the proper Land Office at the earliest possible dates for the information of the Public.

The History of Land Order No. 601 of August 10, 1949, and how it relates to Section 4 of Order No. 2665 of October 16, 1951.

1.

On September 7, 1949, Mr. Puckett wrote to Alaska Road Commission in part: "The Bureau of Land Management feels that the changing economy of Alaska must be reflected by changes in the Bureau's policies and procedures of managing, protecting, and disposing of the Public Domain lands and their resources. As you know, there has been a large increase in population in central Alaska with the result that community areas are developing and much land along the highway system is being entered for residential, agricultural or business purposes.

"The Alaska Road Commission has embarked on a program of highway construction, as opposed to access road construction only. It is therefore felt that mutual policies should be established and our individual goals explained, so as to avoid unnecessary technical or procedural difficulties. The following points are brought specifically to your attention:

" 'Rights-of-Ways: The recent Public Land Order No. 601 dated August 10, 1949, has sharpened the need for the early filing of your road location maps in the Anchorage and Fairbanks District Land Offices. My specific comments will be the subject of a separate letter' ."

2.

It should be stated at this point of sequence that Mr. Puckett is undoubtedly basing his contention for road location maps upon the Act of June 30, 1932, (47 Stat. 446, 48 U.S.C. Sec. 321a) under which the Alaska Road Commission is authorized to construct roads and highways over public lands in Alaska. This Act contemplates that maps of definite locations of roads so constructed shall be filed with the Bureau of Land Management.

3.

In commenting upon maps submitted by Alaska Road Commission covering the Fairbanks-Chena Hot Springs, Paxson-McKinley Park and the Fortymile roads, Mr. Puckett says: "These maps are excellent for general information, but they do not show the width of the lateral limits of the right-of-way with relation to the legal subdivisions of the public lands where surveyed ***** unless the lateral limits are shown, where the lands are surveyed, it cannot be definitely determined for the purpose of posting, what subdivisions are affected".

4.

On December 1, 1949, Headquarters office in a letter to the Director of Division of Territories and Island Possessions said in part: "The immediate problem is our deficiency in accurate maps of old roads which are required by the District Land Offices in connection with locating entrymen and in issuance of patents.*****By the time entrymen apply for patents in the future it is planned to have available in the District and Land Offices accurate maps of our roads.

"We believe the best solution of this problem would be a revision of Public Land Order 601.*****It is our contention that this law was intended to avoid the difficulty of determining for each entry or patent the exact location of the road.*****It will be noted that the act provides for a blanket reservation for rights-of-way for roads constructed or to be constructed.*****It is recommended favorable consideration be given to a revision of Public Land Order 601 to permit the Alaska Road Commission full latitude of operation under Public Law 229."

So much for Alaska Road Commission confusion in 1949 concerning the intent and purpose of Land Order 601. Now lets record the confusion of Mr. Puckett in relation to the same Land Order.

5.

Mr. Puckett in October 1950 stated "It has not been possible for the Alaska Road Commission to survey all of their roads and tie them in exactly with the existing corners of the rectangular net of survey.*****There is accumulating in the Land Offices, files of applications by veterans who have complied with the regulations and who now want to obtain patents.*****But these papers cannot be processed because withdrawal strips run through the land. The veteran must await a survey, which must be forthcoming this field season and may be forthcoming next field season.

"After the survey has been made on the ground it is necessary for the field notes to be processed, the plats to be produced from the drafting boards, the completed plat to be sent to Washington, the plat to be approved in the Washington office, and then returned to the proper Land Office for official filing. It is optimistic to assume that the plat will be finally filed in the proper Land Office within one year of survey on the ground. During all this time the veteran has been unable to publish his final proof because his land cannot be adequately described in the notice of publication.*****

"We do not know how many roads are located within the rectangular surveys at present, nor do we know how many roads are to be built by the Alaska Road Commission in the future".

8

As a result of a meeting held in Assistant Secretary Warner's office with associate Director Bureau of Land Management and Commissioner of Roads for Alaska on December 14, 1949, the following procedure was adopted:

- a. The areas reserved for roads will continue to be administered as withdrawn areas in accordance with the provisions of Public Land Order 601, dated August 10, 1949.
- b. The Bureau of Land Management will determine the centerlines of the constructed roads in those areas which have been previously surveyed under the rectangular system of surveys and where title is still in the Government, in order that supplemental plats may be prepared to show areas and designations for the public lands bordering on the rights-of-way.
- c. The Bureau of Land Management in executing new cadastral surveys will, where necessary, determine the centerlines of the constructed roads as the proper basis for platting them through the sections. The plats representing the cadastral surveys will give the areas and designations of the lands abutting on the withdrawn area.
- d. The Alaska Road Commission will reimburse the Bureau of Land Management for the cost of the field work in those cases where it is necessary to determine the centerlines of the constructed highways as the basis for computing the areas of the public lands adjacent to the reserved areas for highway purposes.
- e. The Alaska Road Commission will proceed as rapidly as possible to prepare maps of definite locations for all constructed roads in Alaska and file copies of these maps with the Regional Administrator, Bureau of Land Management, at Anchorage.

On May 10, 1950, Chief Engineer of Alaska Road Commission in letter to Regional Chief, Bureau of Land Management, Juneau, reduced the Washington agreement to the field level and stated as follows:

"Reference is made to our recent conversation concerning the survey work and map preparation in connection with the definite location of constructed roads in Alaska for use by the Bureau of Land Management in administering adjacent to highways.

"By letter of December 14, Mr. Roscoe E. Bell, Associate Director of the Bureau of Land Management and Colonel John R. Noyes Commissioner of Roads for Alaska, agreed to a procedure for accomplishing this work in which the Bureau of Land Management would determine centerline of constructed road where necessary in executing cadastral surveys on a reimbursable basis with the Alaska Road Commission paying for that portion of the work involved in the highway resurveys. It was also agreed that the Alaska Road Commission would proceed as rapidly as possible to prepare maps of definitive locations for all constructed roads in Alaska and file copies of these maps with the Bureau of Land Management.

"As we discussed, this latter procedure would not be of sufficient value to the Bureau of Land Management in the cases where the roads were through lands already sectionalized by rectangular surveys since our methods of survey would not be of sufficient accuracy for land description purposes. Such work would, in effect, be a duplication of surveys that would have to be handled by the Bureau of Land Management and, therefore, we propose that the work be undertaken entirely by your office with the costs reimbursed by the Alaska Road Commission. We will continue to prepare and file copies of location maps for new roads being surveyed through unsectionalized public domain.

"Since the Alaska Road Commission had previously agreed in conference with Mr. Puckett, Regional Administrator, Bureau of Land Management, that we would place one party in the field this season for the specific purpose of obtaining centerline descriptions of existing roads through previously surveyed lands, it is still the desire of the Alaska Road Commission to finance the accomplishment of a similar amount of work by your organization. If this procedure meets with your approval, it is requested that you so advise and also submit an estimate of the costs that would be chargeable to the Alaska Road Commission."

SUMMARY

1.

It would appear that the Alaska Road Commission possesses no legal right to any right-of-way in any patent issued in Alaska previous to July 24, 1947.

2.

It would appear that the Alaska Road Commission possesses no legal right to any right-of-way in any patent issued after July 24, 1947 providing the entry was a valid entry and the filing was a valid filing and such entry and filing was made previous to July 24, 1947.

3.

It would likewise appear that Alaska Road Commission does possess a legal right to right-of-way in any patent issued after July 24, 1947 if the entry was not a valid entry and the filing was not a valid filing and such entry and filing was made previous to July 24, 1947.

4.

Alaska Road Commission is undoubtedly legally entitled to a right-of-way in all patents issued after July 24, 1947 where entry and filing were made after July 24, 1947.

5.

The width of right-of-way to which the Alaska Road Commission is entitled in patents issued between the period July 24, 1947 and August 10, 1949, is a width no greater than necessary to permit the construction and maintenance of a roadway to the prevailing standard in the area concerned.

6.

The width of right-of-way to which the Alaska Road Commission is entitled in patents issued after August 10, 1949, is a width determined by the classification of the class of road crossing the land area in question.

7.

There is no law, except perhaps Territorial law, which established legal road and highway widths previous to August 10, 1949.

SUMMARY (Continued)

Chap. 19, Session Laws of Alaska, 1923, Section 1721, reserved a strip between sections 4 rods wide for public highways with the section line being the center of such highway. However, the 1923 law is listed as invalid in the new Alaska Code and the Attorney General considers this act invalid. No action was ever brought to test the validity of the law.

8.

The origin of the adoption of 60 or 66 feet for the standard width of roads and highways in Alaska prior to August 10, 1949 is obscure. No law sustains either width.

9.

And finally, the acquiring of road rights-of-way and their respective widths previous to July 24, 1947 was by agreement, purchase or condemnation.