Alaska – What is a right-of-way?
The Alaska Supreme Court Definition
3.12.18/jfb

SOP, Inc. v. State DNR & Div Parks - October 11, 2013 - 310 P.3d 962

*It is well established that "[a] right-of-way **is** an easement to pass or cross the lands of another."[29] "Rights-of-way are easements of a certain type, or legally recognized property interests, of which the owner likewise is entitled to reasonable use."[30]*

*[29] 28 C.J.S. Easements § 10; Cowan v. Yeisley, 255 P.3d 966, 972 (Alaska 2011) (noting that "[t]he general rule is that the term '**right** of **way**' **is** synonymous with 'easement' " (quoting Dillingham Commercial Co., Inc. v. City of Dillingham, 705 P.2d 410, 415 (Alaska 1985))).*
[30] 25 AM.JUR. 2d Easements and Licenses § 1 (2004).

Cowan v. Yeisley – May 27, 2011 – 255 P.3d 966

As the superior court noted, we have held that "[t]he general rule is that the term 'right of way' is synonymous with 'easement.' "[12] We have described a right of way as "primarily a privilege to pass over another's land,"[13] and we have consistently used the phrase "right of way" to refer to strips of land used for passage of people or things.[14] Other courts have also held that unless the parties make it clear that a fee interest is intended, a grant of a "right of way" conveys an easement interest.[15]

[12] Dillingham Commercial Co., Inc. v. City of Dillingham, 705 P.2d 410, 415 (Alaska 1985); see also N. Alaska Envtl. Ctr. v. State, Dep't of Natural Res., 2 P.3d 629, 637 n. 38 (Alaska 2000).
[13] Gerstein v. Axtell, 960 P.2d 599, 600 n. 2 (Alaska 1998) (internal quotation marks omitted).
[14] See, e.g., N. Alaska Envtl. Ctr., 2 P.3d at 629 (right of way for electric transmission line); Gerstein, 960 P.2d at 600 (right of way for electric distribution lines); Wessells v. State Dep't of Highways, 562 P.2d 1042, 1049–51 (Alaska 1977) (implying that rights of way are for road construction by stating that one could not "reasonably expect a right-of-way" to be triangular in shape and that a "right-of-way may follow such route as is reasonably necessary for the [owner's] purposes").

In contrast, we referred to a right to use a material site as a "material site right-of-way" in Foster v. State, Dep't of Transp., 34 P.3d 1288, 1289 (Alaska 2001). However, we made other references to simply a "right-of-way" that was used for highway construction. Id. at 1289. This difference in terms suggests that "right of way," with no descriptive modifier, refers to the privilege to pass over land.
[15] See JON W. BRUCE & JAMES W. ELY, JR., THE LAW OF EASEMENTS AND LICENSES IN LAND § 1:22 (2010).

Dias v. State, Department of Transportation – September 17, 2010 – 240 P.3d 272

We have stated that "[a] 'right-of-way' is generally considered to be a class of easement."[10] We have described a right of way as "primarily a privilege to pass over another's land,"[11] and we have consistently used the phrase "right of way" to refer to strips of land used for passage of people or things.[12] Black's Law Dictionary also defines ****275*** *"right of way" as a right of passage.[13] Given the definition of right of way and our past interpretation of the term, the instrument unambiguously gives the State the right to use the land for passage.*

[10] Wessells v. State Dep't of Highways, 562 P.2d 1042, 1046 n. 5 (Alaska 1977) (internal citation omitted). See also Andersen v. Edwards, 625 P.2d 282, 284 n. 1 (Alaska 1981).
[11] Gerstein v. Axtell, 960 P.2d 599, 600 n. 2 (Alaska 1998) (internal quotations omitted).
[12] See, e.g., N. Alaska Envtl. Ctr. v. State, Dep't of Natural Res., 2 P.3d 629, 632 (Alaska 2000) (right of way for electric transmission line); Gerstein, 960 P.2d at 600 (right of way for electric distribution lines); Wessells, 562 P.2d at 1049, 1051 (implying that rights of way are for road construction by stating that one could not "reasonably expect a right-of-way" to be triangular in shape and that a "right-of-way may follow such route as is reasonably necessary for the [owner's] purposes").
In contrast, we referred to a right to use a material site as a "material site right-of-way" in Foster v. State, Department of Transportation, 34 P.3d 1288, 1289 (Alaska 2001). However, we made other references to simply a "right-of-way" that was used for highway construction. Id. at 1289. This difference in terms suggests that "right of way," with no descriptive modifier, refers to the privilege to pass over land.
[13] BLACK'S LAW DICTIONARY 1440 (9th ed.2009) provides the following applicable definitions for right of way: "1. The right to pass through property owned by another.... 2. The right to build and operate a railway line or a highway on land belonging to another, or the land so used.... 4. The strip of land subject to a nonowner's right to pass through."

Northern Environmental Center v. SOA DNR – June 2, 2000 – 2 P.3d 629

First, DNR maintains that a revocable right-of-way permit is not an "interest in land."[22] Indeed, both the permit itself and the decision on remand state that the permit does not convey an interest in land. But focusing on substance rather than form, we note that licenses, such as revocable land use permits,[23] are generally considered interests in land.[24] Courts have generally denied licenses the status of interests in land for the limited purposes of constitutional protections[25] and compliance with the Statute of Frauds.[26] Given the broad constitutional mandate to protect the public interest in dispositions of state land,[27] we construe "interests in land" to include interests such as licenses.

[22] See 1983 Informal Op. Att'y Gen. 4412, 4414 (Dec. 15, 1983) (stating that revocable use permit "did not convey an interest in land"); see also Cissna v. Stout, 931 P.2d 363, 368 (Alaska

1996) ("While opinions of the attorney general are entitled to some deference, they are not controlling on matters of statutory interpretation.").

[23] *A permit to use land revocable at the will of the grantor is generally considered a license. See Restatement of Property §§ 514, 519 (1966); Jon W. Bruce & James W. Ely, Jr., The Law of Easements & Licenses in Land ¶¶ 9.02[4], 10.06[1] (1988); 4 Powell on Real Property § 34.25 (1997); 8 Thompson on Real Property § 64.02(a) (1994); 3 Tiffany, Real Property § 833 (1939).*
[24] *See Restatement of Property § 512 cmt. c (1944) ("A privilege to use certain land constitutes an interest in that land."); Thompson on Real Property § 64.02(b); see also Hubbard v. Brown, 50 Cal.3d 189, 266 Cal.Rptr. 491, 785 P.2d 1183, 1186–87 (1990) (recognizing that license may be an interest in land for some purposes, such as taxation and statutory tort immunity, but not for other purposes, such as eminent domain).*
[25] *See Hubbard 266 Cal.Rptr. 491, 785 P.2d at 1186 (use permit not an interest in land for eminent domain purposes); 8 Thompson on Real Property § 64.02(b).*
[26] *See Forge v. Smith, 458 Mich. 198, 580 N.W.2d 876, 883 (1998) (licenses need not comply with Statute of Frauds); 8 Thompson on Real Property § 64.02(b).*
[27] *See Alaska Const. art. VIII, §§ 1, 10; see also Preamble of Alaska Land Act, ch. 169, SLA 1959; Alyeska Ski Corp. v. Holdsworth, 426 P.2d 1006, 1011 (Alaska 1967) (Article VIII, § 10 "reflects the framers' recognition of the importance of our land resources and of the concomitant necessity for observance of legal safeguards in the disposal or leasing of state lands.").*

Gerstein v. Axtell – June 19, 1988 – 960 P.2d 599

GVEA holds a blanket "right-of-way easement" across the Axtells' property to "construct, operate and maintain ... an electric transmission or distribution line or system."[2]

[2] *"A right of way is primarily a privilege to pass over another's land.... A right of way may be either public or private, that is, it may be a right of passage of which every individual may avail himself, or it may exist for the benefit of one individual or class of individuals." 3 Herbert Thorndike Tiffany, The Law of Real Property § 772, at 232 (Basil Jones, ed., 3d ed. 1939 & Supp.1997).*

An easement involves primarily the privilege of doing a certain class of act on, or to the detriment of, another's land, or a right against another that he refrain from doing a certain class of act on or in connection with his own land, the holder of the easement having, as an integral part thereof, rights against the members of the community generally that they shall not interfere with the exercise or enjoyment of the easement.
Id. § 756, at 200–01.

The United States Court of Appeals for the Eighth Circuit has described one blanket easement as failing to "define or specify either the location, width, length, or other dimensions of the actual strip(s) of property to be (or actually) utilized by the [holder of the easement]." TCI of North Dakota, Inc. v. Schriock Holding Co., 11 F.3d 812, 816 (8th Cir.1993).

Dillingham Commercial Co. v. City of Dillingham – Autust 16, 1985 – 705 – P.2d 410

The general rule is that the term "right of way" is synonymous with "easement." Thus, a right of way creates only a right of use. See Wessells v. State Dept. of Highways, *562 P.2d 1042, 1046 n. 5 (Alaska 1977).* Cf. Brice v. State, Div. of Forest, Land & Water Management, *669 P.2d 1311, 1315 (Alaska 1983) (rights of way created by § 932 referred to as "easements"). If this was not the case, and the City did receive fee simple title to the road, then the City could use the land for any purpose, such as a park. We think that this result would be contrary to the intent and scope of § 932, which contemplates rights of ways "*for the construction of highways *over public lands."*

<u>Wessells v. State Dept. of Highways</u> – April 6, 1977 – 562 P.2d 1042

Second, we must view the use of the word 'easement' or 'right-of-way.'[5]

[5] *A 'right-of-way' is generally considered to be a class of easement. Kurz v. Blume, 407 Ill. 383, 95 N.E.2d 338, 339 (1950); Black's Law Dictionary, pp. 599, 1489 (4th ed. 1961).*