


#11.4

UNITED STATES
DEPARTMENT OF COMMERCE
BUREAU OF PUBLIC ROADS
REGION 10

April 14, 1958

MEMORANDUM

TO: District Engineers, Anchorage
Fairbanks
Juneau
Valdez 
Nome

FROM: E. H. Swick, Regional Engineer

SUBJECT: Legal Problems Relating to Right-of-Way Acquisition in Alaska

Reference (a). Memorandum dated August 21, 1957 from E. H. Swick Regional Engineer to C. W. Enfield, General Counsel, subject "Questions on Laws Dealing with Right-of-Way Acquisition for submitting to Controller General .

Reference (b). Memorandum dated April 1, 1958 from C. W. Enfield, General Counsel to E. H. Swick, Regional Engineer, subject "Legal Problems Relating to Right-of-Way Acquisition in Alaska".

1. Copies of references (a) and (b) listed above are forwarded herewith for purposes of information only. Reference (b) is in reply to the questions raised in reference (a).

2. All action for right-of-way acquisition in this regard will be initiated by the Regional Right-of-Way Unit and coordinated with the cognizant district.

Attachments: 2
References (a) & (b)

COPY

General Counsel
Washington, D. C.

August 21, 1957

E. H. Swick, Regional Engineer
Juneau, Alaska

Questions on laws dealing with right-of-way acquisition for
submitting to Comptroller General

Enclosed is the manual on Real Estate Procedures and Practice, in part, prepared by Mr. Wm. B. Adams, now retired, for guidance in right-of-way matters under the Alaska Road Commission. Would you please evaluate it as summarized in Section "g", Paragraph 1 to 4 inclusive.

So many conflicting interpretations are made of the land laws that we are no longer sure of even the basic intent of them in many cases, submitted as follows:

Case 1 - R.S. 2477 as derived from Act, July 26, 1866, clearly provides for rights-of-way, by prescription, across public lands not reserved for public use. It is also established that subsequent settlers take subject to a public easement for roads established under this prescriptive right. The limits of this kind of right-of-way are not established but are presumed to be 66' in width or 33' on either side of the center line. Can we legally claim this width?

Case 2 - The Bureau has many sections of roads established prior to the 1947 Act across private lands filed on prior to construction of the road. No formal easement has ever been obtained for the right-of-way. Our right-of-way has never been contested. Can we now assume that an easement for the right-of-way is cure by dedication? If so, are we entitled to 66' width or what width? Would we have any right to pay for this right-of-way?

Case 3 - In the process of improving a road with a right-of-way established by the foregoing methods (prescription or dedication) a relocation is made within the unit. Does the right-of-way shift with the road or do we have to negotiate for a new easement?

Case 4- R.S. 2477 as derived from Act, July 26, 1866, U.S. CA Title 43-932, Paragraph 13 under Notes of Decisions:

"A settler who has entered on Public Land has an inchoate title to the land or a vested right which can only be defeated by failure to comply with the requirements for patent."

Does this right apply as against the United States as well as against a private individual?

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More specifically, does an entryman have the same rights in regard to highway rights-of-way that a patentee has? Can he sell gravel from his land without patent and if so, are the royalty monies to be placed in escrow conditional to patent?

Case 5 - A right-of-way is established for an existing road under authority granted by the Act of July 29, 1907. Subsequent to a valid entry by a homesteader, it is desired to shift the road in the interest of better alignment. Must we negotiate for the new right-of-way or can we hold that the existing right-of-way can be shifted with the road or that the provision for rights-of-way under the Act of 1907 allows rights-of-way in any number needed?

Case 6 - A right-of-way has been established for a primary highway through a unit. A road develops for a secondary road or another primary road through the same unit. Do we have the same rights under law for the second road that we had for the first road?

Case 7 - At the time of a valid entry by a homesteader, a road was designated as a local road by Departmental Order No. 2665 of October 16, 1931. Amendment No. 2, dated September 15, 1936, of this Order named the subject road a through highway. Does the right-of-way through this particular unit automatically become that allowed, by Order No. 2665, for a through road or is the entryman to be considered a prior claimant with our rights only those in effect at the date of entry?

Case 8 - A road ends within a unit. At the time of entry by the homesteader the road was designated as a local road. Since that time the road was reclassified as a through road by Departmental Order 2665. Now we wish to extend the road through the subject homestead. Are our rights for additional right-of-way only for that width set forth by Order No. 2665 for a local road or can we claim 300' right-of-way for the new construction?

Case 9 - A need frequently arises in the execution of our functions as a road building agency for road building materials or installation sites from lands reserved for the Territory of Alaska as school sections. The Territorial Land Commissioner has steadfastly refused to grant free-use permits for the gravel to be used outside of the school section it is taken from, but charges a nominal royalty or severance fee. He has refused to sanction withdrawals from the reserved lands in favor of the Bureau, but will lease us the sites we need for installation of facilities. This seems to be contrary to the intent of a memorandum from the Office of the Solicitor for the Department of the Interior to Director, Office of Territories, dated February 4, 1937. Are we authorized to pay these claims by the Territory?