

February 13, 1962

Richard A. Downing, Commissioner
Department of Public Works
Box 1361
Juneau, Alaska

Dear Commissioner Downing:

The question has been asked whether the State has to pay for a taking of right-of-way over land covered by the 1947 Reservation Act (48 U.S.C. 321[d]).

In our opinion, under said act, the State has a right to an original taking for rights-of-way over such land. This "first taking" may be made without compensation to the owner except for payment for improvements thereon. However, the State must pay for any subsequent takings, whether for change of road location or widening of the original right-of-way width.

This question was litigated by the State of Alaska in Hillstrand v. State of Alaska, 181 F. Supp. 219, rev. den. 352 F.2d 833 and Zak v. State of Alaska, A-16247 which were consolidated for trial in U. S. District Court, Third Division. In an opinion written on February 19, 1960, Judge McGarrey ruled that the second taking must be compensated for, he stated that:

"While I agree that the original reservation and election provided for in 48 U.S.C. 321 [d] is without limitation as to initial choice on the part of either the Federal Government or the State of Alaska, I find that, once the right-of-way has been selected and defined, later improvements, necessitating the utilization of land upon which the road is not already located, can only be accomplished pursuant to the condemnation and compensation provisions of Sections 57-7-1, et seq. ACILA 1949." Hillstrand v. State of Alaska, 181 F. Supp. 219, 223, (1960).

This is the present law of the State of Alaska and should

Richard A. Downing, Commissioner
Department of Public Works

February 13, 1962
-2-

be followed in acquiring rights-of-way over land acquired under
the 1947 Act.

Yours very truly,

RALPH E. HOODY
ATTORNEY GENERAL

By
Norman L. Schwalb
Assistant Attorney General

HES:jw

cc: Mr. Shepard
Mr. Baca
Mr. Hunt