

STATE OF ALASKA
DEPARTMENT OF HIGHWAYS
P. O. Box 1841
Juneau, Alaska

PRE-CONSTRUCTION MEMO NO. 62-11

SUBJECT: Right of Way by Determination

TO Commissioner
Deputy Commissioner
Division Heads
District Highway Engineers
Section Heads, Pre-Construction Division

FROM B. A. Campbell
Pre-Construction Engineer 

In a recent State Superior Court decision (State v. Stroecker) Fairbanks Judge Rabinowitz held that the State of Alaska is not entitled to a 66 foot right of way solely by the fact that a highway was established over the public domain; in such a case the State is only entitled to claim the amount of land actually used for highway purposes.

The following policy is adopted by the Department of Highways for guidance on all future projects where determination of existing right of way by usage is necessary. The Right of Way Section in each district will determine when right by usage applies. The Design Section in each district shall then, by the aid of cross-sections and field inspection, determine a reasonable line denoting the limit of usage across the front of each property involved. On small property frontages it will usually be sufficient to have one course denoting this limit. On larger property frontages it may be necessary to have two or three courses or perhaps even more to denote the approximate limit. This limit will generally be the limit of grading and/or channel control or other drainage control adjacent to the highway. It will not necessarily be the limit of clearing. After this determination has been made by the Design Section, the alignment map shall be corrected showing this limit. These maps shall then be transmitted to the Right of Way Section in the district and will become the basis for writing descriptions and computations of the areas of takes and remainders.

Larry Wood
Assistant Attorney General
Department of Law
Fairbanks

August 29, 1979

1111-3109

45201911, ext. 266

Paul J. Wild
Interior Regional R/W Agent
Fairbanks

Request for Legal Opinion
Vacation of Old Farmers Loop

We have received from your office a memo relative to J.B. Inc.'s request for vacation of a portion of the Old Farmers Loop Road. A right of way plan was attached showing a portion of an area acquired by easement (copy attached) as that area to be vacated. The other portion, covered by the same lease, is not shaded, this portion fronts property owned by Clyde Andrew Shover. The intent apparently being to vacate the portion in front of Shover to Shover, the remainder to J.B. Inc. Comes the first question: to whom does the vacated land attach?

Please note that the easement has a clause which reverts the disused/abandoned right of way to the "owner of the fee." The owner of the fee has since changed hands. One of the subsequent owners sold Shover his property which borders on the easement - the ownership of the underlying fee of the easement area is ostensibly totally J.B. Inc.'s. Before any moves to vacate this area are made, I want an opinion as to who gets what.

The second question involves the section of Old Farmers Loop which joins the above described easement area to the present alignment of Farmers Loop. A plat is attached showing this area. The plat shows a 66 ft. existing right of way. During the 60's the State was challenged as to the validity of a 66 ft. right of way for Farmers Loop, and lost (State of Alaska vs. Fowler). Thereafter we claimed the portion shown in red on the attached plat by prescriptive right (ditch to ditch). The question - what rights, if any, has the State to land, claimed by prescriptive rights, which has not been used due to realignment of the roadway - and, how does the State divest itself of such rights, if any.

Attachments: as stated

PJW/ACT/DOB/dme