

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT  
Anchorage District & Land Office  
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ROAD RIGHTS-OF-WAY

Roads may be considered as of two classes, 1) private access roads, and (2) public roads.

1. Private access roads - There is no Federal law providing for rights-of-way for private roads as a means of ingress or egress from one's property. Such roads, which are considered roads of necessity, are usually constructed over vacant unreserved public lands without any action on the part of the Government.

Such private roads may be constructed along section lines or otherwise, if the land affected is vacant, unappropriated and unreserved. If reserved, permission should be obtained before construction from the Federal agency having jurisdiction and control over the land. In the absence of any specific Federal law, it is impossible to say what width one may claim for the right-of-way for private roads, but it would probably be held to be of such width as is reasonably necessary for the construction and maintenance of the road. Moreover, the rights of a person in and to roads so constructed, if questioned by a subsequent entryman, must be settled between the parties in controversy by an amicable agreement or by the local courts. Such roads under the common law are considered as "easements by necessity".

2. Public roads - Public roads and highways in Alaska are generally established and constructed by the Bureau of Public Roads (formerly the Alaska Road Commission) under authority of the Act of June 30, 1932 (47 Stat. 446, 48 U.S.C. Sec. 321a, seq.). These roads may or may not follow along section lines.

Public roads may also be established under Section 2477 of the Revised Statute (43 U.S.C. Sec. 932) which provides: "The right-of-way for the construction of highways over public lands, not reserved for public uses, is granted." This act constitutes a standing offer of a free right-of-way over the public lands not reserved for public uses, and becomes effective upon the construction or establishment of the road or highway, in accordance with the State of Territorial laws. Chapter 19, Session Laws of Alaska (1923), and incorporated in the Compiled Laws of Alaska, reads as follows:

"Sec. 1721 Strip between sections reserved. A tract of four rods (66 feet) wide between each section of land in the Territory is hereby dedicated for use as public highways, the section line being the center of such highway. If such highway shall be vacated by any competent authority, the title to the respective strip shall inure to the owner of the tract of which it forms a part of the original survey (1-19-23)."

The Territorial Act of 1923 was an acceptance of the right-of-way grant made by R.S. 2477, supra.. However, the 1923 act is listed as invalid in the New Alaska Code of 1949.

The Territorial Act of March 21, 1953, was designed to reinstate and broaden the aforementioned Section 1721 which had been left out of the Alaska Code of 1949, and may be considered as the effective law as of March 21, 1953, since it appears to be enacted pursuant to Section 2477 of the Revised Statutes (43 U.S.C. 932) mentioned above.

The new act reads as follows:

"Section 1. A tract one hundred feet wide between each section of land owned by the Territory of Alaska, or acquired from the Territory, and a tract four rods wide between all other sections in the Territory, is hereby dedicated for use as public highways, the section line being the center of said right-of-way. But if such highway shall be vacated by any competent authority the title to the respective strips shall inure to the owner of the tract of which it formed a part by the original survey."

In connection herewith, attention is called to the Federal act of July 24, 1947 (61 Stat. 418, 48 USC sec. 321d), providing for a reservation of rights-of-way in patents to land thereafter taken up, for roads, highways, etc., constructed or to be constructed by or under authority of the United States or of any State created out of the Territory of Alaska.

It will be noted that the reservation of rights-of-way for the construction of private access roads is not contemplated by the 1947 act. Rights-of-way for such roads over land subsequently entered or in private ownership must therefore be acquired through amicable agreement or as provided by the Territorial law (Chapter 35 - Session Laws of Alaska 1953).

The width of public highways in Alaska was fixed by Order No. 2665 of October 16, 1951 by the Secretary of the Interior.

A road or trail which has been used by the public over public land for a period of time would no doubt be held by the legal authorities to be a public highway, and to be fully protected by R.S. 2477, supra.

For further information concerning this question, see Section 932 of Title 43 of United States Code Annotated.

(Source of Information: Memo of 5/25/54 to  
Manager, Anchorage District & Land Office,  
from Area Adjudicator)