

Donald A. Burr
Attorney General
Department of Law
Juneau

May 9, 1957

69-2500

Request for Attorney
General Opinion

Warren C. Comasca
Commissioner
Department of Highways
Juneau

A considerable amount of Alaska's highways are constructed on land reserved by various Public Land Orders and Executive Orders for highway purposes. These orders cover a strip of right of way varying between 100 and 300 feet in total width depending on the particular highway involved. The Department of Highways is charged with the responsibility of maintaining the right of way on the Federal Aid Highway System free and clear of all encroachments including advertising signs. We respectfully request your opinion as to the authority this Department has in accomplishing the removal of these encroachments and prohibit their replacement within P.L.O. or Executive Order right of way.

Under present design standards for primary and secondary highways the widths reserved are justifiable on the basis of safety and convenience to the traveling public. As far as we are concerned the entire right of way reserved is being used for highway purposes, and we should have jurisdiction over the entire area.

We have attached copies of the various Public Land Orders and Executive Orders for your review and would appreciate your early reply.

Attachments: As stated

DC/rf

cc: All District Highway Engineers
John Becker, Pre-Construction Engineer
Cosby Stein

STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K, STATE CAPITOL — JUNEAU 99801

October 31, 1967

MEMORANDUM

TO: Warren C. Gonnason
 Commissioner
 Department of Highways

FROM: Edgar Paul Boyko
 Attorney General

By: Robert E. Price *RBP*
 Assistant Attorney General

RE: Highway Encroachments

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This is in response to your requests of May 9, June 14, September 6, and October 6 for an opinion of this office on the following question: Does the Department of Highways have authority to accomplish the removal of advertising signs from the right-of-way of a highway constructed on land reserved by various Public Land Orders and Executive Orders for highway purposes?

The answer is that the Department of Highways has such authority.

First, AS 19.25 prohibits all outdoor advertising along the highways and provides for its removal. Also see Alaska Administrative Code Title 14, Sec. 391 (Title 17, Sec. 301 of the proposed regulations). See 19.05.130(11) for the definition of "outdoor advertising" (note that it does not include "advertising located within an incorporated town or advertising on private property in a rural area which relates exclusively to the business conducted on the property or the sale or rental of the property"). When there is "outdoor advertising" within the definition of AS 19.05.130(11), AS 19.25.110 provides that the Department of Public Safety (N.B.) shall order its removal.

Second, the Department of Highways has the authority to order the removal of encroachments. An outdoor advertising sign, as that term is commonly used and not in the restricted sense of AS 19.05.130(11), constitutes an encroachment and a nuisance upon

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Right of Way Section

Warren C. Gonnason
Commissioner
Department of Highways

October 31, 1967

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the public highway. State v. Kelly, 403 P.2d 566 (Idaho, 1965); People v. Henderson, 194 P.2d 91 (Ct. App. Cal., 1948); State ex rel. Department of Highways v. Bailey, 389 P.2d 98 (Okla., 1963). The Alaska Administrative Code, Title 14, Sec. 360 (Title 17, Sec. 201 of the proposed regulations) states that encroachments may only be installed on State rights of way when there has been previously secured written authorization. AS 19.05.130(8) defines "highway" to include "right of way". Alaska Administrative Code, Title 14, Sec. 300(18) (Title 17, Sec. 100(16) of the proposed regulations) states that the term "highway" includes "the entire width of the strip of land on right of way." AS 19.05.010 states that the Department of Highways is responsible for the "maintenance" of the state highway system. See AS 19.05.130(9) for the definition of "maintenance". The Department of Highways, therefore, pursuant to the above-cited Alaska Statutes and Regulations has authority to order the removal of advertising signs on highway right of way. If there is a refusal to obey this order, the Department of Highways may abate the nuisance by removal of the sign or secure a court order for its removal.

This opinion does establish the authority of the Department of Highways to order the removal of encroachments. As a practical matter of enforcement, however, the Department of Highways should only exercise its authority where it is necessary for the receipt of Federal highway funds. The Department of Public Safety, in cooperation with this department, should exercise the general authority on removal of encroachments from highway right-of-ways in all other cases. Otherwise a conflict in policy on enforcement could arise.

EPB/REP/er