

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 P.2d 633 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 McCarrey 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. ACLA 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

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

Yours very truly,

RALPH E. MOODY  
ATTORNEY GENERAL

By  
Norman L. Schwalb  
Assistant Attorney General

NLS:jw

cc: Mr. Sherard  
Mr. Baca  
Mr. Niemi

April 19, 1962

Mr. Lawrence W. Straley  
Star Route A, Box 1732  
Spenard, Alaska

Re: 48 USC 321(d).

Dear Mr. Straley:

This is in response to the letter you wrote to Stewart Udall, Secretary of the Interior, regarding 48 USC 321(d).

You raise the question of compensation for second and subsequent takings under this statute.

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 P.2d 633 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 McCarrey 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. ACLA 1949." Hillstrand v. State of Alaska, 181 F. Supp. 219, 223, (1960).

Mr. Lawrence W. Straley  
Spenard, Alaska

April 19, 1962  
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This is the present law of the State of Alaska and it will be followed in acquiring rights-of-way over land acquired under 48 USC 321(d).

Very truly yours,

RALPH E. WOODY  
ATTORNEY GENERAL

By  
Leroy J. Barker  
Assistant Attorney General

LJB:ls

cc: Stewart Udall  
Secretary of the Interior  
Washington 25, D. C.

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

Ernest Gruening  
United States Senator

E. L. Bartlett  
United States Senator

Ralph J. Rivers  
United States Representative