

**From:** John Bennett  
**To:** "[Khachadorian, Rebekah V \(DOT\)](#)"  
**Cc:** [Quigley, Ryan L \(DOT\)](#); [Fuglestad, Eric P \(DOT\)](#); "[Karen Tilton \(ktilton@rmconsult.com\)](mailto:Karen.Tilton@rmconsult.com)"  
**Subject:** RE: "47 Act"  
**Date:** Wednesday, June 07, 2017 8:22:00 AM

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Becky, I've attached what might be the 1962 AGO memo that you referenced. The reference to the May 17, 1962 Decision No. 246 drives me nuts. There is a decision No. 246 dated August 16, 1962 but it doesn't appear to have anything to do with the '47 Act or ROW. See attached Starr v. Hagglund. I wonder if it was a typo or what but I can't seem to find anything close to it.

The April 1965 "A Summary of '47 Act Opinions" that cites Decision No. 246, on page 4 says "Agents issuing patents had no authority to omit the '47 Act reservation from patents to which it applied. The terms of the statute are controlling. Therefore, lands entered and patented during the life of the '47 Act are subject to the reservation even if it is not expressed in the patent." So if a patent was issued after the effective date of the '47 Act but they accidentally left the '47 Act reservation out of the patent, they are saying that it is still effective. Makes sense as it is a prior existing right just like PLOs and SLEs that aren't mentioned in a patent.

So looking at the text of the '47 Act: "In all patents for lands hereafter taken up, entered, or located in the Territory of Alaska...there shall be expressed that there is reserved..." It seems that there are two actions taking place, one by the entryman and one by the federal employee. The entryman is taking up, entering or locating the lands which if occurring during the period of time that the '47 Act was effective, would impress the ROW across the land and require the federal employee to place the reservation on the patent before it is issued. But as already said, if the reservation is erroneously left off, it should still be effective. Which action creates the ROW, the insertion of the reservation into the patent or the establishment of a valid entry? I'm leaning toward the entry.

I've attached another 1968 AGO memo regarding a Gerold King. This is interesting in that it says that if the entry was accomplished prior to the '47 Act, it would not be subject to the reservation. This makes sense in that if a homesteader has made a valid entry, his rights are established and should not be subject to a law passed after his entry. But the way the '47 Act was written I suspect that it was applied to most patents issued after the '47 Act was in place without regard to entry date. (That would be interesting to look at.)

I've just re-read the November 10, 1994 memo to Jim Sharp and it appears that I have restated above a couple of items in that memo. I concluded that a NOU filed prior to patent should still have been valid unless the entry preceded the effective date of the '47 Act. I may have been overly aggressive in that conclusion. I'm now thinking it should be more like what the AGO said in 1969 regarding protracted section line easements. He said they existed but they couldn't be used until confirmed by survey. In that same sense, I thinking the right to impose a '47 Act ROW may exist prior to patent but it just can't be used until the patent is issued.

In your case I'm thinking back to where I mentioned the two separate actions of the entryman and the federal employee. The right to impose the '47 Act reservation was met as the land was entered upon during the effective dates of the '47 Act. But with the repeal at statehood, the federal

employee was prevented from inserting a '47 Act reservation into the patent. But then the fact that the reservation did not get inserted into the patent should not affect the valid existing rights of the public. So what created the public's rights under the '47 Act? The insertion of the reservation in the patent or the act of entry onto the lands? I can't help but think that there is an IBLA decision out there that might shed some light on this. But until then I'm leaning toward the following:

- If a valid entry occurs prior to the '47 Act (July 24, 1947), and that entry goes to patent, there can be no '47 act reservation.
- A NOU cannot be imposed prior to patent, only after patent is issued.
- If an entry is subject to the '47 Act, but the patent is issued without the '47 Act reservation, the '47 act reservation is still valid.
- If an entry is subject to the '47 Act, but patent is not issued until after '47 Act repeal (July 1, 1959), the '47 Act reservation is still valid.

I've probably got this issue totally wrapped around the axle now. I feel the need to quote Ryan in his 10/6/15 email to me..."Stupid '47 Act!"

JohnB

**John F. Bennett, PLS, SR/WA** *Senior Land Surveyor – Right of Way Services*

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**From:** Khachadorian, Rebekah V (DOT) [<mailto:rebekah.khachadorian@alaska.gov>]  
**Sent:** Tuesday, June 06, 2017 1:51 PM  
**To:** John Bennett  
**Cc:** Quigley, Ryan L (DOT); Fuglestad, Eric P (DOT)  
**Subject:** '47 Act

Hi John,

This is Becky down in Central Region DOT RWE. I have been researching the applicability of the '47 Act on a specific property that was entered prior to statehood (9/29/1958) and patented afterwards (4/12/1961). There has been quite the discussion in our office about this and Ryan and Eric suggested I ask you.

Based on everything I have read and seen; it seems to me that the '47 Act does not apply in this situation. The Dept. of Law in May of 1962 apparently sent a memo stating this opinion, though I can't find a copy of that memo. The 1965 DOL Summary of '47 Act Opinions supports this view and calls out "(May 17, 1962) See, Decision No. 246, Alaska Supreme Ct." which I also can't find. To muddy the waters a bit, Ryan found a memo from you to Jim Sharp in 1994 that potentially disagrees

with the above. It appears to be only one piece of communication in a chain which I don't have.

There definitely seems to be two sides of this issue. The entryman could be subject to the '47 Act because he entered before it was repealed and therefore subject to the rules and regulations in place on the date of his entry or the entryman could not be subject because he was patented after repeal and the language of the '47 Act says entered and patented which the entryman only satisfies one of those conditions.

That is the background information, now for the questions. First, do you happen to have the above mentioned documents that I couldn't find? And mostly what is your take on when the '47 Act does or does not apply?

I really appreciate any insight you can give!

*Enjoy your day!*

*Becky Khachadorian, PLS*  
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