

MEMORANDUM

State of Alaska

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TO: Dick Chitty
Right of Way Director
Department of Highways

DATE : July 18, 1968

FROM: G. Kent Edwards
Attorney General

SUBJECT: 1947 Act
Gerold W. King
F-062-4(11) Par. 7
Our File 469

By: Robert E. Price *[Signature]*
Assistant Attorney General

This is in response to your memo of June 3 in which you asked for an opinion of this office on the applicability of the 1947 Act (43 U.S.C. 321d) to the homestead of Mr. King.

Mr. King's entry date was October 17, 1947 and the effective date of the 1947 Act is July 24, 1947. The '47 Act reservation was inserted in the patent of Mr. King.

ANSWER

48 U.S.C. 321d provides for the insertion of the right-of-way reservation "In all patents for lands hereafter taken up, entered or located in the Territory of Alaska. . ." Hillstrand v. State, 395 P.2d 74 (Alaska, 1964), with respect to entry under the 1947 Act, stated, at p. 76: "In homestead law the term "entry" is usually used to designate the initiatory proceedings taken for the acquisition of a portion of public lands." The court further stated that this does not mean strict technical compliance with the requirements of the regulation, but that a homesteader "is to be dealt with leniently and not subjected to the loss of his toil and efforts through any mistake or neglect of the government." The actual occupancy of land itself is insufficient to qualify as an "entry", and, therefore, Mr. King cannot exempt the property from the '47 Act on that basis. However, if he had initiated proceedings for his homestead application prior to July 24, 1947, the property is exempted from the '47 Act. The file does not indicate any such initiation of proceedings, but, if after further investigation into the matter you determine that there has been such action, then the '47 Act will not apply to the subject property.

GKE/REP/er

Att. Patent & Maps

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Division