

INTRA-DEPARTMENTAL CORRESPONDENCE

SUBJECT: Right of Way Widths on existing roads

DATE: November 28, 1961

TO: Robert V. Barnes, R/W Research Analyst III (HPS)
Division of Highways

FILE REFERENCE: 2-23-00
D. Legislation and
ATTENTION OF: Legal

FROM: Thomas E. Fenton, R/W Agent I
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QUESTION: What width may the HPS program claim on roads which are not covered by deed or recorded plat?

ANSWER: I. Roads Built prior to July 24, 1947.

The Department of Law in Attorney General's Opinion No. 29 of November 4, 1960, declared that the width of Alaskan highways constructed under 43 U.S.C. 932 is 66 feet. Forty-three U.S.C. 932 provides: "The right of way for the construction of highways over public lands, not reserved for public use, is hereby granted."

An office memorandum of the BPR, dated April 1, 1958, casts some doubt as to whether roads in Alaska built over public domain were constructed under 43 U.S.C. 932. In that opinion, however, the General Counsel for the BPR believed that a 66 foot right of way could be supported.

It would appear therefore that we can claim 66 feet for all right of way when the highway was built prior to 1947 or thereafter. This 66 feet width applies even though the land was entered prior to construction because 66 feet should be easily supported on the theory of prescriptive easement.

II. Roads Built after July 24, 1947.

In a letter dated November 17, 1960, the Department of Law stated that the width of right of way utilized under the Act of 1947 was unlimited. Therefore, you may claim any amount in addition to the basic 66 feet by use of the Notice of Utilization if the land is subject to said Act of July 24, 1947. It must be remembered however, that we are required to pay for improvement if we claim under the authority of this act. 14 Alaska Admin. Code 382.

To claim more than 66 feet without paying for improvements we must turn to other authority. United States Department of the Interior, Order 2665, October 16, 1951, as amended on July 17, 1952 and September 15, 1956, and P.L.O. 1613, April 7, 1958, provided for easements for highway purposes along certain existing roads. You may claim right of way widths consistent with these regulations.