

# STATE OF ALASKA

WILLIAM A. EGAN, GOVERNOR

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

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ALASKA  
COURT SYSTEMS

The Honorable D. A. McKinnon  
Commissioner  
Department of Highways  
P. O. Box 1841  
Juneau, Alaska

1965 Opinions of the  
Attorney General No. 2

April 29, 1965

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Office of Administrative Director  
Alaska Court System

Re: Establishment of Right of Way on Roads  
Maintained by the Department of the  
Interior - Public Land Order 601

Dear Mr. McKinnon:

By your letter of March 11, 1965, you have inquired as to the application of Public Land Order 601 to that portion of the North Douglas Highway which passes over U.S. Survey 2960.

Public Land Order 601, issued by the Bureau of Land Management, Department of the Interior, on August 10, 1949, provided for a right of way width of 100 feet for all local roads.

Public Land Order 601 does not apply to the lands adjacent to every road in Alaska. The order contains certain limitations upon its operation. First, it was issued "subject to valid existing rights and to existing surveys and withdrawals for other than highway purposes." This limitation does not appear to affect the application of PLO 601 to U.S. Survey 2960 because the area appears to have been free from other withdrawals, etc., at the time. Second, the order applied only to public lands.

A third limitation upon the operation of PLO 601 is that it was made applicable only to those public lands adjacent to certain named or defined classifications of roads. Of these classifications, the Through Roads and Feeder Roads were expressly named. The third classification,

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Local Roads, was defined by PLO 601 as ". . .all roads not classified above as Through Roads or Feeder Roads established or maintained under the jurisdiction of the Secretary of the Interior." If the road here in question was subject to PLO 601, it would have come within the classification of "Local Roads." The issue is whether the portion of the North Douglas Highway here in issue was a "Local Road" as defined by PLO 601.

There is no doubt that the Department of Interior had wide authority over the road program in Alaska at the time PLO 601 was issued, particularly through the Alaska Road Commission. The jurisdiction of the Department of the Interior, however, was not exclusive and, for the purpose of the issue which you have raised, we must determine whether that Department's jurisdiction included the road in question at the time PLO 601 was issued.

Unfortunately, documentation of some of the pertinent facts involved is difficult at this late date. Many files which might have yielded helpful data have apparently been removed from the State in accordance with the accepted practice of federal agencies involved. Some relevant information, however, has been obtained.

From all information available, it appears that jurisdiction over the North Douglas Highway as it crosses U.S. Survey 2960 was vested in the Bureau of Public Roads from the time of construction until transfer to the State of Alaska. Oral communication with the Bureau of Public Roads in Juneau disclosed that this road was constructed and maintained by the BPR until Statehood.

Support for this view is provided by the Special Instructions for the performance of U.S. Survey 2960. These instructions, issued by the Department of the Interior, Bureau of Land Management, dated October 17, 1949, contained the following "Special instructions" to the Cadastral Engineer: "The right of way is monumented with standard markers by the Bureau of Public Roads. Prior to making the survey you will obtain the necessary highway data from the District Engineer, Bureau of Public Roads, Juneau, Alaska."

This extract from the BLM Special Instructions for U.S. Survey 2960 is a further indication of the fact that the

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road in question was under the jurisdiction of the Bureau of Public Roads at the time PLO 601 was issued, and that this fact was recognized by the Department of the Interior.

In 1957 or 1958 the Bureau of Public Roads undertook certain improvements of the North Douglas Highway. In conjunction with this project, the BPR acquired by purchase certain property which lay between the 66 foot right of way provided by the survey and the 100 foot right of way which would have been created if PLO 601 had applied.

As of this date, I have been unable to find any evidence of the subject road having been established or maintained by any agency of the Department of the Interior.

In view of the above information, it is our opinion that the North Douglas Highway, as it crosses U.S. Survey 2960, was not subject to the jurisdiction of the Secretary of the Interior and that PLO 601 is not applicable to it.

Very truly yours,

WARREN C. COLVER  
ATTORNEY GENERAL

By:

*Douglas B. Baily*  
Douglas B. Baily  
Assistant Attorney General

DBB/grg

cc: The Honorable William A. Egan  
Governor of Alaska

The Honorable Floyd Guertin  
Commissioner of Administration