

UNITED STATES GOVERNMENT

*Memorandum*DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION

DATE: July 1, 1980

SUBJECT: Alaska Title Companies
Versus State of AlaskaIn reply
refer to: HRW-AK
410.6File #061FROM : Division Administrator
Juneau, AlaskaTO : Mr. M. Eldon Green, Regional Administrator
Region 10
Portland, Oregon

HRC-010

Attached is a copy of the judgement and the memorandum of decision in a case where the various title companies of Alaska brought suit against the State of Alaska to establish the State's right to free utilization of Public Land Order (PLO) right-of-way.

Historically the Bureau of Land Management (BLM) has failed to mention PLO right-of-way in patents they have issued and therefore, this right-of-way does not show up in the recorded document. Since the PLO's themselves were not recorded in the recording offices, title searches, unless they included the Federal Register, would not disclose this right-of-way. The title companies have issued policies that didn't consider this right-of-way and when the State later utilized the right-of-way, property owners brought suit against the title companies. It was estimated that if these suits were successful, all the title companies operating in Alaska could be ruined.

The present case was appealed to the State Supreme Court on June 23, 1980. If the Supreme Court upholds the Superior Court decision all the property owners of the PLO right-of-way utilized since 1966 would have to be compensated. The Attorney General's office feels that they would not be able to claim any right-of-way beyond ditch to ditch width. It is estimated that the total value of all the State owned right-of-way in the state of Alaska is 1.8 billion dollars. While the cost of the PLO right-of-way that would have to be acquired would not approach this figure, it could exceed 1/2 billion dollars.

Our question is, if the State is required to purchase this PLO right-of-way could federal-aid funds participate in the cost? It appears to be a similar situation to the controversy on the 1947 act (48 U.S.C. 321d) right-of-way. In that situation the federal government had reserved an unspecified right-of-way through all land that was patented between 1947 and 1959, when Congress repealed the 1947 act (PL 86-70 Section 21(7)). The State was relieved from the general reservation

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under the 1947 act by the State's legislature enactment of the Right-of-Way Act of 1966. However, this did not affect federal funding. Our Interim General Counsel in a memo dated May 24, 1967, stated:

"We conclude that there can be no Federal reimbursement for funds expened by the State of Alaska for the acquisition of right-of-way from lands subject to the reservations contained in the 1947 Act. The rulings of the Alaska Supreme Court in the Crosby Case and the provisions of the Alaska Right-of-Way Act of 1966 are of no effect as far as Federal reimbursement is concerned, and Federal participation will not be granted under these circumstances."

This opinion was reaffirmed by the September 29, 1971, memorandum from the Assistant Chief Counsel for Right-of-Way and Environmental Law, which was addressed to your office and stated:

"It is our conclusion that nothing short of amending Federal legislation could provide a legal basis for Federal participation in Alaska Right-of-Way acquisition costs in-lands reserved under the 1947 Act between April 14, 1966, and the enactment of the Federal-aid Highway Act of 1970."

The 1970 Federal-aid Highway Act vacated and relinquished reserved right-of-way not utilized and provided that the reservation merge with the fee and was forever extinguished.

Although this present case won't be settled until the Supreme Court rules on the State's appeal, we would like to be able to advise the State on whether or not Federal-aid funds will be able to participate-- should the Supreme Cout uphold the Superior Court's ruling. If any further information is needed, please advise.

By: Gary E. Wilson
Division Right-of-Way Officer

Attachment