

**RS 2477 RIGHTS OF WAY
HISTORY AND DEVELOPMENT**

III. "And be it further enacted, That the right-of-way for the construction of highways over public lands, not reserved for public uses, is hereby granted."

- A. A Grant.
- B. A Grant for construction.
- C. A Grant for construction of highways.
- D. A Grant for construction of highways across public lands.
- E. A Grant for construction of highways across public lands not reserved for public purposes.

IV. Judicial and Legislative interpretation.

- A. Jennison v. Kirk, 90 U.S. 241, an 1878 case, Justice Field. The U.S. government, by its conduct and encouragement, was bound to protect the miners' rights and the rights of settlers in the western territories (i.e. legalize the adverse possession and use of public domain lands).
- B. The offer and acceptance.
 - 1. By official act.
 - 2. By expenditure of public funds.
 - 3. By user.
 - 4. Central Pacific Railway v. Alameda County, 284 U.S. 463 (1932).
Small v. Burleigh County, 225 NW 2d 295 (1974 North Dakota).
Hammerly v. Denton, 359 P. 2d 121 (1961).

VII. Introduction of the Federal Position.

In the 1993 Appropriations Act for the Department of the Interior, Congress requested that the Department prepare a report concerning the history and management of RS 2477. The draft of this report was published in March 1993, and the final report was published in June 1993. Prior to the compilation of this report, but in line with its conclusions, is the Federal position on RS 2477. That position is as follows:

- A. That the Grant offered by Congress could not come into existence until there was acceptance of the offer and thereby a contract, and that the scope of the congressional offer is defined by Federal law, and acceptance by a State or an instrumentality of the State is defined by State law only to the degree that the acceptance is within the scope of the Federal offer.
- B. Most of the judicial opinions have been from the State courts where the Federal government was not a party, and such decisions are not binding on the Federal government.
- C. RS 2477 rights-of-way can only be created on unreserved public lands, and withdrawn, appropriated or reserved lands are not available.
- D. RS 2477 rights-of-way will not be recognized by a Federal agency until the requirements of Hammerly have been satisfied, and the party claiming the public highway has proven that the highway was located over unreserved public lands, and the character of the use was such as to constitute acceptance by the public of the statutory grant.

VIII. Introduction of the State's position.

The State's position is that dedication of section lines as provided in the Session Laws and Alaska Statutes is sufficient to enable an RS 2477 Grant. In fact, there are some indications from some authorities in the State that the filing of protractors on unsurveyed section lines may be sufficient dedication. It is also the State's position that the RS 2477 issues be resolved in accordance with State, and not Federal, statutes. In 1992, the State promulgated statutes and regulations for the nomination, identification and management of RS 2477 rights-of-way. There are 5 basic differences between the State and the Federal positions concerning RS 2477:

1. Does the State or the Federal court have jurisdiction?
2. Does the passage of the State law constitute acceptance?
3. Can auxiliary uses be allowed within a right-of-way?
4. What is the width of the right-of-way?
5. Who manages the RS 2477 right-of-way?

IX. A Discussion of Shultz v. United States Army.