

MEMORANDUM

To: Right of Way Section
From: Robert M. Redding, Right of Way Agent
Subject: Right of Way Easements in Alaska Lands
Date: September 30, 1958

Opinion
8/22/58

On July 26, 1866 the Congress of the United States passed an Act pertaining to the rights of way for highways. This Act, now known as Revised Statute Sec. 2477 (43 U.S.C. 932) states:

"The right of way for the construction of highways over public lands, not reserved for public uses, is hereby granted."

This grant by the Federal Government constituted a dedication to the several States and Territories and did not become effective until it was accepted and implemented by them.

Several principles should be considered in order to have a comprehensive understanding of the effect of dedication statutes:

(1) No patent will be issued (43 USC 1151), nor can an entry be made on land which has not been surveyed, although such land may be lawfully occupied (43 USC 161, n. 34). Such a settler, neither patentee nor entryman, acquires no vested rights in the land until survey and subsequent entry;

(2) As against everyone but the United States, the date on which a homesteaders rights become fixed, or vested, is the date of entry not the date of patent, the title given in the patent relating back to the date of entry (43 USC 161, n. 30);

(3) A dedication by Act of Congress cannot be accepted until the land dedicated is surveyed and section lines established;

(4) A dedication which has once been accepted by an act of a State or Territorial Legislature is not lost on lands so dedicated.

On January 19, 1923, the Territorial Legislature of Alaska enacted Ch. 19, SLA 1923 (subsequently codified as Sec. 1721, CLA 1933), wherein the dedication made by Congress in R.S. Sec. 2477 was accepted and an easement in a strip of land 66 feet wide on the section line in all public lands lying within the Territory was created. All surveyed public lands lying within the territorial limits of Alaska which were acquired (patented or entered) prior to this enactment are held free and unencumbered by any Federal or Territorial right of way easement.

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Persons who acquired land from either the United States or the Territory on or after January 19, 1923, took the land subject to the easement so created.

On January 18, 1949, a special session of the Legislature enacted Ch. 1, ESLA 1949, which purported to adopt the Alaska Compiled Laws Annotated 1949. The 1923 law was not included in the compilation and so was repealed by implication. In 1950 a decision was handed down by the District Court for the District of Alaska in the case of Ashley v. City of Anchorage, 13 A 168, 95 F Supp 189, which cast some doubt on whether or not ACLA 1949 was in effect. A reading of this case indicates that ACLA 1949 was adopted in 1949, but should there be any discrepancy between it and the session law it embodies, the session law will control. The repeal of any prior session law would be effective as of January 18, 1949. The effect of ACLA 1949 was to allow all lands surveyed after its adoption and acquired prior to March 21, 1953, to be held unencumbered by any Territorial right of way easement.

The status of lands acquired from the Federal Government on or after July 24, 1947, was further determined by 61 Stat. 418 (48 U.S.C. Sec. 321d) which made all lands acquired from the Federal Government subject to a right of way easement in the United States and the yet to be formed State of Alaska. The widths of these rights of way were established by Public Land Order 601 of August 10, 1949, as amended by Public Land Order 757 of October 16, 1951, and by Secretary of the Interior Order 2665 of October 16, 1951, at 600 feet for the Alaska Highway, 300 feet for through roads, 200 feet for feeder roads and 100 feet for local roads.

On March 26, 1951, the Territorial Legislature in Ch. 123, SLA 1951, dedicated an easement for a right of way 100 feet wide along section lines in all property owned by the Territory or acquired from the Territory. This law had the effect of giving the Territory an easement in all lands acquired from it after March 26, 1951, but did not provide for a right of way easement on lands acquired from the United States, the Act of 1947 (61 Stat. 418) being inapplicable to the Territory of Alaska.

On March 21, 1953, Ch. 123, SLA 1951, was amended by Ch. 35, SLA 1953, to include an additional 66 foot right of way easement in lands acquired from the Federal Government. This act constituted a re-acceptance of the dedication provided for by R.S. 2477 and which had lapsed with the adoption of ACLA 1949. Lands acquired after this date were subject to a Territorial easement of 100 feet along the section line if acquired from the Territory and to a Territorial easement of 66 feet along the section line if acquired from the Federal Government.

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Lands which were surveyed between January 18, 1949, and March 20, 1953, and had not been acquired would be treated similarly with lands surveyed after March 20, 1953.

SUMMARY

(1) Land (meaning surveyed land) lying within the Territorial limits of Alaska acquired (patented or entered) either from the Federal Government or the Territory of Alaska prior to January 19, 1923, is unencumbered by any right of way easement of either the United States or the Territory.

(2) Land acquired either from the Federal Government or the Territory between January 19, 1923, and July 23, 1947, is subject to a Territorial 66 foot right of way easement along the section line.

(3) Land acquired from the Federal Government between July 24, 1947, and January 17, 1949, is subject to a Territorial 66 foot right of way easement along the section line and also a 100 to 600 foot right of way easement reserved to the United States and the State of Alaska.

Land acquired from the Territory during this period is subject to a 66 foot right of way easement along the section line.

(4) Land acquired from the Federal Government between January 18, 1949, and March 25, 1951, is subject to a 100 to 600 foot right of way easement of the United States and the State of Alaska. Such land is not burdened by any Territorial easement if the survey also took place between these dates.

Land acquired from the Territory during this period is subject to no right of way easement if surveyed between these dates.

(5) Land acquired from the Federal Government between March 26, 1951, and March 20, 1953, is subject to a 100 to 600 foot right of way easement of the United States and the State of Alaska. There is no Territorial easement on the land if it was surveyed during this period.

Land acquired from the Territory between these dates is subject to a 100 foot Territorial right of way easement along the section line.

(6) Land acquired from the Federal Government between March 21, 1953, and the day preceding that on which the Territory of Alaska is proclaimed a State is subject to a 100 to 600 foot right of way easement

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of the United States and the State of Alaska as well as a 66 foot Territorial right of way easement along the section line.

Land acquired from the Territory during this period is subject to a 100 foot Territorial right of way easement along the section line.

(7) Land acquired after the Territory becomes a State will be in the same status as that in paragraph 6.

Remember:

- (1) Land must be surveyed.
- (2) Date of entry controls.

These rules should be used in determining whether or not the Territory has any presently existing rights in property which may be under consideration for acquisition for highway right of way purposes.

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<u>Dates (Inclusive)</u>	<u>Land Acquired from U.S.</u>	<u>Land Acquired from Alaska</u>
Prior to	Fed: No easement	Fed: No easement
Jan. 19, 1923	Terr: None	Terr: None
Jan. 19, 1923 to July 23, 1947	Fed: None Terr: 66 foot section line	Fed: None Terr: 66 foot section line
July 24, 1947 to Jan. 17, 1949	Fed: & State: 100-600 foot Terr: 66 foot section line	Fed: None Terr: 66 foot section line
Jan. 18, 1949 to Mar. 25, 1951	Fed. & State: 100-600 foot Terr: None - if surveyed	Fed: None Terr: None
Mar. 26, 1951 to Mar. 20, 1953	Fed. & State: 100-600 foot Terr: None - if surveyed	Fed: None Terr: 100 foot section line
Mar. 21, 1953 until Statehood	Fed. & State: 100-600 foot Terr: 66 foot section line	Fed: None Terr: 100 foot section line
After	Fed: 100-600 foot	Fed: None
Statehood	State: 100-600 foot	State: 100 foot section line