

April 6, 1971

Answer by letter-Wood

OPINION LETTER NO. 130

Honorable Vernon Bruckerhoff
Representative, District 154
Room 203A, Capitol Building
Jefferson City, Missouri 65101



Dear Representative Bruckerhoff:

You have requested my opinion on who has the legal right to claim and maintain "Tower Rock," a small island of approximately one-half acre in the Mississippi River near Wittenberg, Perry County, Missouri.

Tower Rock is situated in Township 34 North, Range 14 East, Perry County, which was originally surveyed by the government during the years 1817 through 1819. The plat of this original survey designates "Grand Tower" as lying just off-shore from the section line dividing Sections 20 and 29, Township 34 North, Range 14 East. Therefore, we conclude that "Tower Rock" or "Grand Tower," one and the same, existed prior to Missouri's statehood as an island in the Mississippi River and necessarily below the low water mark of the river.

We understand the general rule of law to be that title to the beds of navigable streams and islands below the low water mark of such streams passed from the United States to the State of Missouri upon its admission into the Union (Conran v. Girvin, 341 S.W.2d 75, 80 (Mo. banc 1960); Hecker v. Bleish, 3 S.W.2d 1008, 1016 (Mo. 1927)). An exception to this rule is where the United States has prior to statehood surveyed or patented the island as government land (Stoner v. Royar, 98 S.W. 601, 603 (Mo. 1906)).

The recorder of Perry County advises us that, to the best of his knowledge, there is no record of a government land patent or survey of "Tower Rock" in his office.

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Accordingly, we are of the opinion that "Tower Rock" is subject to the general rule and not the exception.

". . . The only other question is whether the United States has title to the islands, . . . notwithstanding the incorporation of Michigan as a state. The bill admits and alleges that the bed of the river, or strait, surrounding the islands, passed to Michigan when Michigan became a state . . . subject to the same public trusts and limitations as lands under tide waters on the borders of the sea . . . But it sets up that the islands remained the property of the United States, and it argues that, in such circumstances, the islands did not pass by the patent of the neighboring land.

"The act offering Michigan admission to the Union provided that no right was conferred upon the state 'to interfere with the sale by the United States, and under their authority, of the vacant and unsold lands within the limits of the said state.' . . . And again, by a condition, that the state should 'never interfere with the primary disposal of the soil within the same by the United States.' . . . The islands are little more than rocks, rising very slightly above the level of the water, and contain respectively a small fraction of an acre and a little more than an acre. They were unsurveyed and of no apparent value. We cannot think that these provisions excepted such islands from the admitted transfer to the state of the bed of the streams surrounding them.

. . .

"The bed of the river could not be conveyed by the patent of the United States alone, but, if such is the law of the state, the bed will pass to the patentee by the help of that law, . . ." (United States v. Chandler-Dunbar Water Power Co., 209 U.S. 447, 451-452, 52 L.Ed. 881, 887 (1908))

Section 5 of Missouri's Act of Admission (Volume 5, RSMo 1969, p. 4174) has similar provisions as that of Michigan's, but unlike the law of Michigan, the law in Missouri is that riparian ownership of lands on a navigable stream carries title only to the low

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water mark, not to the center thread of the stream (Conran v. Grivin, supra). Therefore, it is our opinion that "Tower Rock" belonged to the State of Missouri and was not subject to government patents of the neighboring uplands.

We are aware that President Ulysses S. Grant may have issued an executive order in 1871 purporting to "withdraw" Grand Tower Rock for "public purposes," or even for a "national preserve" or a "national park" (The Missouri Historical Review, Vol. 27, No. 3 (April 1933); pp. 262-264). Although we doubt that such an order was intended to do any more than prevent the destruction of the island by federal agencies, we think it was without efficacy to confer ownership of the island upon the federal government.

". . . The government also refers to proceedings since Utah became a state, with respect to governmental investigations, operations under placer claims, and withdrawals for power and reservoir sites. It is not necessary to review these transactions in detail, as nothing that has been done alters the essential facts with respect to the navigability of the streams, and the United States could not, without the consent of Utah, divest that state of title to the beds of the rivers which the state had acquired. Nor has Utah taken any action which could be deemed to estop the state from asserting title." (United States v. Utah, 283 U.S. 64, 88-89, 75 L.Ed. 844, 856 (1931))

In 1895, the legislature of Missouri enacted the following law, now appearing as Section 241.290, RSMo.

"All lands belonging to the state, not otherwise appropriated under the laws thereof, which have been formed by the recession and abandonment of their waters of the old beds of lakes and rivers in this state, or by the formation of islands in the navigable waters of the state, are hereby granted and transferred to the respective counties in which such lands are located, to be held by such counties for school purposes."

By virtue of this law, we believe the title to "Tower Rock" passed to Perry County, to be thereafter held or disposed of as provided by these statutes (Sections 241.290-241.340, RSMo).

Yours very truly,

JOHN C. DANFORTH
Attorney General