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OPINION LETTER NO. 113-88

Richard Rice, Director
Department of Public Safety
Post Office Box 749
Jefferson City, Missouri 65102

Dear Mr. Rice:

This opinion letter is in response to your questions regarding the construction of Section 304.013.2, as enacted by Conference Committee Substitute #2 for House Committee Substitute for House Bill No. 990, 84th General Assembly, Second Regular Session. This bill was signed by the Governor on April 19, 1988. Section 304.013.2 provides:

2. No person shall operate an off-road vehicle within any stream or river in this state, except that off-road vehicles may be operated within waterways which flow within the boundaries of land which an off-road vehicle operator owns or has permission to be upon.

As stated in your request, there are two common scenarios which require the application of Section 304.013.2. "First is the situation where a landowner owns property on both sides of the waterway and two of his four property lines cross the waterway. This factual situation is illustrated as follows: (See attached illustration #1)." Your first question asks:

May a person with the landowner's permission operate an off-road vehicle in the waterway other than that portion of the waterway contained within the boundaries of land owned by the landowner?

"The second factual circumstance arises where the landowner owns property on only one side of the waterway. This may be illustrated as follows: (See attached illustration #2)." Your second question asks:

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May a person with the landowner's permission operate an off-road vehicle in the waterway? If so, may a person with the landowner's permission operate an off-road vehicle across the entire waterway, or is the person with the landowner's permission limited to only a portion of the waterway?

In order to answer the questions posed, it must be determined who owns the bed of the watercourse. However, before the bed title can be determined one must classify a river, stream or lake as "navigable" or "non-navigable". Title to the beds of rivers and lakes which were "navigable" at the time of statehood passed to the state of Missouri. Bed title to rivers, streams and lakes which were "non-navigable" at the date Missouri was admitted to the Union remained in the federal government or in the grantee of a federal land patent. United States v. Utah, 283 U.S. 64, 75; 51 S.Ct. 438, 440; 75 L.Ed. 844, 849 (1931).

Rivers, streams or lakes are navigable under the federal definition if they are "susceptible of being used, in their ordinary condition, as highways for commerce, . . . when they form in their ordinary condition by themselves, or by uniting with other waters, a continued highway over which commerce is or may be carried . . ." The Daniel Ball, 77 U.S. (10 Wall.) 557, 563, 19 L.Ed. 999, 1001 (1871). For the purpose of bed title, a watercourse is not federally navigable if it can only be made navigable by "reasonable improvements." See Davis, State Ownership of Beds of Inland Waters - A Summary and Reexamination, 57 Neb. L. Rev. 665, 670 (1978).

When Missouri courts have been asked to classify a river as navigable or non-navigable, courts have consistently applied the federal definition. See Slovensky v. O'Reilly, 233 S.W. 478, 481 (Mo. 1921). Missouri has narrowly interpreted navigable waters to be those rivers which are susceptible to use by larger vessels and not those rivers or streams which may only be navigated by canoes, rowboats, and other small floating craft. Elder v. Delcour, 269 S.W.2d 17, 23 (Mo. banc 1954). The Mississippi River and Missouri River have been found to be navigable and therefore, bed title is vested in the State of Missouri. For a list of Missouri's rivers and streams which have been judicially classified as navigable or non-navigable, see Missouri Attorney General Opinion Letter No. 264, Reid, 1971, a copy of which is enclosed.

It is well settled that "where a government patent conveyed land adjacent to a non-navigable river . . . , the patent conveyed all the land between the meander line on shore and the middle thread of the river . . . in the absence of an express

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reservation or the existence of a previous patent or survey" which conveyed the bed title to a third party. Elder, 269 S.W.2d at 23. On the other hand, if a riparian landowner owns the land on both sides of the river, such landowner owns the bed of the non-navigable river. Id. Therefore, in reference to illustration #1, the landowner owns the entire bed of the waterway within the boundary lines of his property. The landowner in illustration #2 owns only to the middle thread of the waterway adjacent to his property. We assume the waterway shown in each illustration is one which would be classified as non-navigable.

Section 304.013.2 limits the operation of off-road vehicles to areas "within waterways which flow within the boundaries of land which an off-road vehicle operator owns or has permission to be upon." Hence, an off-road vehicle operator who is the landowner or has the permission of the landowner depicted in illustration #1 may operate the vehicle over the bed of the entire waterway within the boundary lines of the property. An off-road vehicle operator who is the landowner or has the permission of the landowner depicted in illustration #2 may only operate the vehicle to the center line of the waterway adjacent to the property. Under neither illustration may an off-road vehicle be operated up or down stream beyond the imaginary property lines shown on the illustration.

Very truly yours,



WILLIAM L. WEBSTER
Attorney General

Enclosure

Opinion Letter No. 264, Reid, 1971

ILLUSTRATION #1

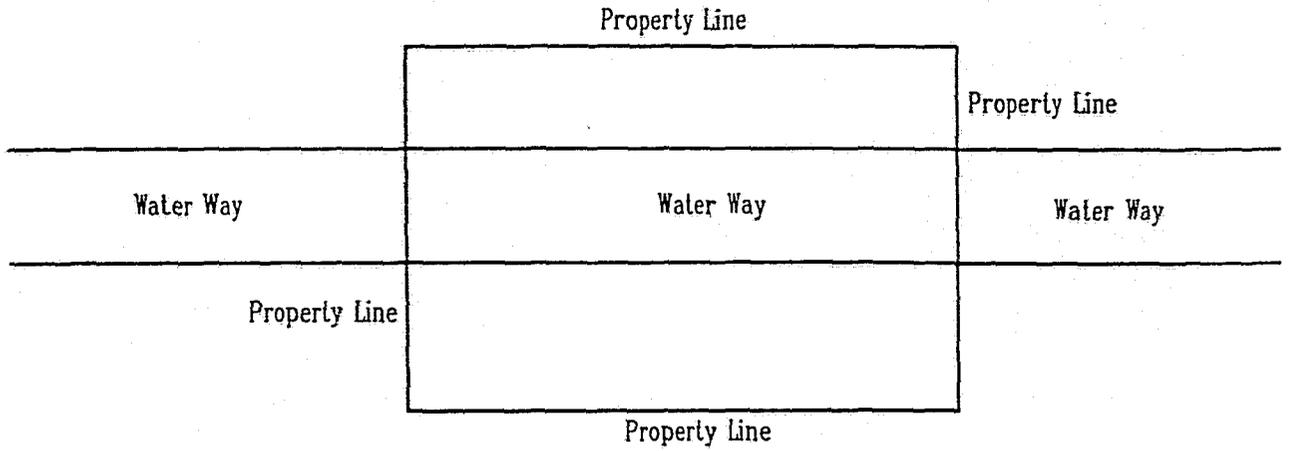


ILLUSTRATION #2

