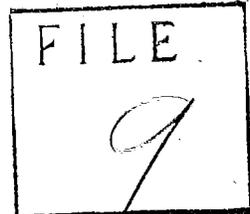


BOUNDARIES: BANK OF RIVER: Tax meaning of the term "by west bank of Mississippi River" in description of special road district boundary.

December 10, 1941

Mr. David E. Blanton
Prosecuting Attorney of Scott County
Sikeston, Missouri



Dear Mr. Blanton:

This is in reply to your request of recent date, wherein you desire an opinion from this department on the following statement of facts:

"The Scott County Court would appreciate your forwarding us your opinion on the following question at your very earliest convenience, inasmuch as the proposition involved is most pressing.

"On or about June 16th, 1941, there was organized in the north end of Scott County, the Illmo Special Road District, which takes in the town of Illmo, and according to the description set out in the petition filed for the organization of the Road District, the eastern part of the District or that part of Scott County within the District which fronts on the River, is bounded as follows:

"'By the west bank of the Mississippi River'

"The point in question is as to how far out into the River the west bank of the Mississippi River runs; that is, does it go out, and is it coextensive with the boundaries of Scott County to the middle of the current of the Mississippi River, or does it merely run to the west bank or to a point that would be referred to in the popular mind, as the place where the water's edge is ordinarily found.

"There is located in a part of the Illmo Special Road District, and crossing the River at that point, the railroad bridge owned by

the Southern Illinois & Missouri Bridge Company, which has a valuation of over \$1,000,000.00 as far as Missouri is concerned. And, the question before the Court is, who is entitled to the road and bridge tax for the bridge property that extends from the west bank of the Mississippi River out to the east boundary line of Scott County.

"The Tax Commission in its Certificate and Order to the County Clerk did not show any of the property of the Bridge Company in the Illmo Special Road District. The County Clerk has the duty to forward to the Company paying the tax, a statement showing in what District or Districts, the property lies, and until he is favored with an opinion from you, he will be unable to perform his duty which is an essential step towards the collection of the tax."

Since this question involves the right of the taxing authority to levy and collect taxes on property, we think the following rule announced in *State ex rel. Halferty v. Kansas City Power and Light Company*, 143 S. W. (2d) 116, 120 would be applicable:

"It is conceded that under our system of taxation there can be no lawful collection of a tax until there is a lawful assessment and there can be no lawful assessment except in the manner prescribed by law and of property designated by law for that purpose. (Citing cases)"

With this rule in mind, the rules which would apply in determining the west bank of the Mississippi River might be different than the rules which would apply in determining this line in case of a riparian owner. In *Words and Phrases*, Vol. 5, Perm. Ed., page 104, the term "bank of a river" has been defined variously as follows:

"The 'bank' of a river or stream extends to the margin of the stream--to that point where the bank comes in contact with the stream. *Morrison v. First Nat. Bank*, 33 A. 782, 784, 88 Me. 155.

"A call in a deed for the west bank of a river, thence with the meanderings of the

bank of the river to stake, is unambiguous and conveys the land to the water's edge, since the bank means the land adjacent to the water. *Graham v. Knight, Tex.*, 240 S. W. 981, 983.

"In *Jones v. Soulard*, 65 U. S. (24 How.) 41 16 L. Ed. 604, a boundary of the city of St. Louis, described as on the bank of the Mississippi, was construed to carry the boundary of the city to the center line of the river. *State v. City of Columbia*, 5 S. E. 55, 59, 27 S. C. 137."

In the *Soulard* case, *supra*, it would seem that if that rule were followed, the bank of the Mississippi River, as mentioned in your request, it would carry the boundary line to the center line of the river or to the middle channel thereof. However, referring to that case, we note that the description which was under consideration there altered the general rule as to the definition of the bank of the river. We quote from that case as follows (U. S. Sup., 16 L. Ed. p. 604, 1. c. 608):

"The town of St. Louis was incorporated in 1809 by the common pleas court of St. Louis county, in conformity to an act of the territorial legislature passed in 1808, and the only contested question in the cause is, whether the eastern line of the corporation extends to the middle thread of the Mississippi River, or is limited to the bank of the channel. The calls for boundary in the charter are, 'beginning at Atoine Roy's mill on the bank of the Mississippi; then running sixty arpents west, thence south on said line of sixty arpents in the rear, until the same comes to the Barrieu Donoyer; thence due south until it comes to the Sugarloaf; then due east to the Mississippi; from thence by the Mississippi, to place first mentioned."

"The expression used in the designating boundary on the closing line in the charter is an apt to confer riparian rights on the proprietor of the tract of seventy-nine acres as the call could well be, unless the last call had been for the middle of the river."

In this description there was a monument on the bank of the Mississippi River but the last course was "by the Mississippi." It was on account of this course that the court held that the line called for there was the middle of the river. Otherwise, from a reading of this opinion, it would seem that the court would have held the bank of the river to have been the east boundary of the State of Missouri. In the case of *People ex rel. v. Board of Supervisors*, 125 Ill. Rep., p. 1, l. c. 24, this question is discussed as follows:

"In *Howard v. Ingersoll*, 13 How. 381, one of the boundary lines between the State of Georgia and the State of Alabama is described as 'running thence up the said River Chattahoochee, and along the western bank thereof, to the great bend thereof,' etc. The court, in speaking of this language said: "If the language of the article had been, "beginning on the western bank of the Chattahoochee, and running thence up the river," and no more had been said, the middle of the thread of the river ordinarily, and without any reference to the fact that Georgia was the proprietor of the river, it would have been said to be the dividing line between the two States. But there is added, "running up the said river Chattahoochee, and along the western bank thereof." This last controls any uncertainty there may be, for if the first caller object to locate the line is the bank of the river, it is plain that the western limit of Georgia, on and along the bank of the river, must be where the bank and water meet in its bed, within the natural channel or passage of the river.'
* * * * *

In Vol. 8, Am. Jur., p. 764, par. 27, the rule is announced as follows:

"The courts in many states have recognized a distinction between monuments called for as locating boundaries on land and boundaries along watercourses, in that it is not always practicable to locate monuments in the channels of rivers. Accordingly, the rule

has been established that there is no presumption that monuments mentioned in a deed as occupying the bank of a river are intended by the parties as being exactly located and as standing at the water's edge. Instead the monuments may be referred to as merely indicating the location of lines which intersect the stream and which should be continued beyond the monument to the water's edge. Therefore, the bounding of the land by lines running to a stake on the bank, and thence up or down or by the river, or along the stream 'as it winds and turns,' to another monument on the bank has been held to carry the line to the center of the stream, as being a description made, according to the intent of the parties of the grant, solely for the purpose of convenience and certainty. The running of a boundary line by courses and distances along the bank of a river will not prevent the water from being the boundary in accordance with the normal rules regulating boundary lines on navigable and non-navigable rivers. Indeed, it may be considered a canon in American jurisprudence that where the calls in a conveyance of land are for two corners at, in, or on a stream or its banks and there is an intermediate line extending from one such corner to the other, the stream is the boundary, unless there is something which excludes the operation of this rule by showing that the intention of the parties was otherwise. On the other hand, it has been held that where the lines are run from object to object along the bank of a stream, so as to inclose a given quantity of land, the grantee's title will not extend to the center of the stream, although the words 'down the creek' are used in describing the direction of the lines."

Section 13664, R. S. No. 1939, is as follows:

"Whenever a county is bounded by a water-course, it shall be construed to be the middle of the main channel thereof; and range, township and sectional lines shall be construed as conforming to the established surveys."

This section would be some authority for holding that the boundary of the district is the middle of the main channel of the river if the description read "bounded on the east by the Mississippi River." But, since the description reads "bounded by the west bank of the Mississippi River" and in view of the rule announced in the Kansas City Power and Light case, we think that the boundary line of the district would be limited to the bank of the river.

CONCLUSION

From the foregoing, we are of the opinion that the boundary line of the Illmo Special Road District on the eastern part thereof, which is described as the "west bank of the Mississippi River" would run to a point that would be referred to in the popular mind as the place where the water's edge is ordinarily found.

Respectfully submitted,

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APPROVED:

VANE C. THURLO
(Acting) Attorney General

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