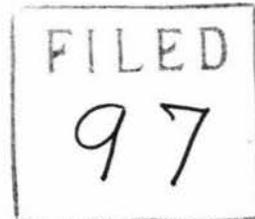


ROADS AND BRIDGES:  
BOUNDARY:  
COUNTY:

Authority of County Court of Platte County  
to build and maintain roads on land formerly  
in Kansas and now in Missouri.

October 17, 1950



Honorable Robert P. C. Wilson, III  
Prosecuting Attorney  
Platte County  
Platte City, Missouri

Dear Sir:

This will acknowledge receipt of your request for an official opinion. In view of the fact that there has been considerable correspondence relative to this request, for the sake of brevity we shall restate your request.

You inquire specifically if the County Court of Platte County, Missouri, may in its discretion build and maintain roads in an area which is now located in Platte County but which area was formerly located in the State of Kansas prior to recent litigation in the Supreme Court of the United States wherein the two states participated in a dispute as to the boundary line between said states, and subsequent action of the respective legislatures of said states agreeing as to a boundary line between said states, and action of Congress ratifying said legislation.

We will herein attempt to state as briefly as possible some of the facts relevant to your request. In *State of Kansas v. State of Missouri*, reported in 88 L. Ed. 1234, the Supreme Court of the United States heard a dispute between the states of Kansas and Missouri as to the true boundary line between said states. Both states were claiming jurisdiction and sovereignty over certain land near said boundary line. In deciding this dispute the Supreme Court said, 88 L. Ed. 1.c. 1238:

"From the recital thus far it is clear that in 1900 the land which then lay where the disputed tract now lies was Missouri land. This is undisputed. Likewise, the tract now is attached to Missouri on the easterly bank of the river. This is because the Missouri channel dried up during some five to eight years beginning around 1927 or earlier. But, before that process began, for many years the land in question lay between the two

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channels. And it is from conflicting views concerning whether, how and when these major changes took place the parties derive their respective claims to sovereignty over this soil."

The court further said at l.c. 1244 and 1245:

"Kansas' evidence concerning the division of flow and formation of the island, together with that concerning the drying up of the Missouri channel, also proves not that the river suddenly cut a new channel through accreted soil in 1927, but that it merely shifted the volume of flow from one channel to another preexisting one. In other words it goes to disprove both accretion and avulsion. Missouri and Kansas witnesses are agreed that the main flow was in the Kansas channel from 1927 on and there is substantial agreement that by 1933 or 1935 the Missouri channel had dried up, except for the flow of Mill Creek Ditch, and largely had filled up by deposits from that stream and other forces. Missouri witnesses say this drying up began before 1927, some as early as 1922 or 1923, and therefore continued for ten or twelve years. Kansas witnesses generally say it began in 1927 and continued for from three to seven or eight years. Only a few of them say the ice jam that year cut a new channel. More testify that the main flow then shifted from one channel to the other, and some join the witnesses for Missouri in saying that this shift began earlier. Except for the few witnesses who testify to the sudden cutting of a new channel, the great weight of the testimony is that whatever change occurred in reduction of the flow in the Missouri channel required several years to complete. It was a gradual process, and therefore not the sudden shift necessary to show avulsion. We need not decide what the effect would be if the evidence had shown this was a gradual cutting of a new channel. It was at most a gradual shifting from one to another. Kansas clearly has failed to prove that there was a single channel of the river which gradually moved over to the farthest erosion point, meanwhile accreting this

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land to her soil, then suddenly moved back, either in 1917 or in 1927, to a new channel cut through the accreted soil. Only by accepting the evidence given by the few witnesses who supported this theory, which was contradicted both by the weight of her own evidence concerning island formation and by substantially all that was offered for Missouri, could a finding in Kansas' favor be made under the theory of accretion and avulsion.

\* \* \* \* \*

" \* \* \* His judgment accords with the conclusions we make from our own independent examination of the record. It is not necessary for us to decide more than that Kansas has failed to show that the main channel of the river shifted at any time in question from a course such as the river now follows, or one slightly closer to the Kansas bluffs, to one following the course of the Missouri channel when the flow was divided.

"It follows the land in dispute must be awarded to Missouri and the boundary will be fixed as the master has recommended in his report. A decree will be entered accordingly."

Thereafter, the United States Supreme Court entered its decree upon the above finding, which decree is reported in 64 S. Ct. 1202 and sets forth the dividing line between the two states by metes and bounds in some five or six pages, and concludes as follows:

"Both States having requested postponement of entry of an order directing the placing of suitable monuments or markers on the above designated boundary until they have had opportunity to consider exchanging certain lands and to make such exchanges, jurisdiction of this cause is retained for the purpose of entering such order at an appropriate time.

"The costs of this suit are equally divided between the two States, Complainant and Defendant, and this case is retained on the docket for further orders in fulfillment and enforcement of the provisions of this decree."

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Thereafter, in 1949, the respective legislatures of both the State of Kansas and the State of Missouri passed legislation providing that, upon the ratification by the Congress of the United States of said legislation, the center of the channel of the Missouri River as its flow extends from its intersection with the Fortieth parallel, north latitude, southward to the middle of the mouth of Kaw or Kansas River, shall be the true permanent boundary line between the states of Missouri and Kansas, and that the State of Missouri shall assume jurisdiction and sovereignty over all land on the Missouri side of the middle of the channel of the Missouri River and, likewise, Kansas shall assume the same authority on its side.

Thereafter, the Congress of the United States enacted what is known as Public Law No. 637, approved August 3, 1950, giving its consent and approval to the foregoing action of the respective legislatures fixing the boundary between the State of Kansas and the State of Missouri. It was necessary that Congress consent to this boundary, as the Constitution of the United States so provides in Article I, Section 10, as follows:

"No State shall enter into any treaty, alliance or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility.

"No State shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts laid by any State on imports or exports shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the Congress.

"No State shall, without the consent of Congress, lay any duty of tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another State, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay."

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Section 13581, R.S. Mo. 1939, describes the boundary of the County of Platte as fixed by the Legislature, and reads:

"Beginning in the middle of the main channel of the Missouri river, at a point where a prolongation south of the old boundary line of the state would intersect the same; thence north with said boundary line to the line run and marked by Matthew M. Hughes, under an act of the general assembly of 1838 and 1839; thence west with said line to the middle of the main channel of the Missouri river; thence down said river, in the middle of the main channel thereof, to the place of beginning."

Furthermore, under Section 13664, R.S. Mo. 1939, it is provided that whenever a county is bounded by a watercourse it shall be construed to be the main channel thereof. Said section reads:

"Whenever a county is bounded by a watercourse, 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."

The act of the Legislature referred to in Section 13581, supra, can be found on page 23, Laws of 1838 and 1839, which was an act to organize the counties of Platte and Buchanan and define the boundaries thereof. Section 1 of said act reads:

"The territory west of Clay and Clinton counties, included in the following boundaries shall compose a new county, to be called Pattle: Beginning at the southwest corner of Clay county, and running north, with the western boundary of said counties a sufficient distance to a corner hereafter to be established by survey; and thence due west to the Missouri river; thence down the middle of the main channel of said river to the beginning, so as to include in said county of Platte four hundred square miles."

Section 10 of said act reads:

"Immediately after the passage of this act, the Governor (is) authorized and required to appoint some suitable person, as surveyor, to ascertain, survey and establish the boundaries of said counties of Platte and

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Buchanan, agreeably to the provisions of this act."

(The foregoing sections were approved December 31, 1838.)

From the foregoing statutes fixing the boundary of the county of Platte it can easily be seen that the Legislature fixed the western boundary of said county as the middle of the main channel of the Missouri River.

From the above judgment and decree there can be little doubt as to how the Missouri River at this particular point and time changed its course. It was not caused by avulsion, but was a gradual change over a period of many years and was almost imperceptible to the eye.

Therefore, under the well-established rule announced in the foregoing decision that when changes in the course of a navigable river, the thread of which is the boundary between states, take place by a slow, gradual process and not a sudden change by avulsion, the boundary moves with a shifting in the main channel's course, but if the change of the channel is brought about by a sudden or avulsion change, the boundary remains as it was prior to the shifting of the channel of the river (see *Kansas vs. Missouri*, 88 L. Ed. 1.c. 1237).

Under the facts shown in the above decision the commissioner appointed by the court, and also the Supreme Court, found that the change in the channel of the Missouri River along the western side of Platte County, Missouri, was caused by a slow and gradual change, and not by avulsion.

Therefore, since the boundary between the State of Missouri and State of Kansas along Platte County was formerly the middle of the channel of the Missouri River, and likewise it was the western boundary of Platte County, Missouri, then the present boundary between the states of Kansas and Missouri still remains the middle of the channel of the Missouri River, and likewise the middle channel of the said river remains the western boundary of Platte County, Missouri. So all that area formed by the change in said channel along Platte County, Missouri, automatically comprises a part of said County of Platte. Also, under the foregoing acts of the respective state legislatures, and with the consent of the Congress of the United States, which was necessary, the boundary line along Platte County, Missouri, between said states remains as the middle of the present channel.

Therefore, in view of the foregoing, it is the opinion of this department that the County Court of Platte County has the

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same authority and duty to build and maintain roads on said new area, now a part of Platte County, caused by a change in the course of the Missouri River, as said court does over any other part of said county.

Respectfully submitted,

AUBREY R. HAMMETT, JR.  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
Attorney General