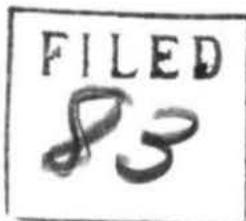


RIVERS: Change in channel of Missouri river by avulsion
does not change former boundary line which was
BOUNDARIES: the center of old channel.



June 10, 1952

6-11-52

Mr. Francis Smith, Chairman
Citizens' Flood Committee
Room No. 309, City Hall
St. Joseph, Missouri

Dear Mr. Smith:

This opinion is given in answer to your recent request
reading as follows:

"The present 1952 Missouri River flood
has drastically altered the course of
the Missouri River just adjacent to the
City of St. Joseph.

Prior to this flood, for many years the
Missouri River made a large horseshoe
bend to the west, and at the end of the
bend returned to its channel adjacent
to the city. This situation is, as
rather crudely portrayed in the sketch
which I have attached to this letter to
illustrate the situation. As a result
of the flood the river broke through
its banks and has carved out a new chan-
nel, isolating the area of land generally
known as the French Bottoms and so in-
dicated on my accompanying map.

Although we lack official confirmation
at the present time, the corps of engi-
neers of the United States Army advise
us that they intend to make the new chan-
nel official as the channel of the Mis-
souri River, and the river will cut
through directly south as illustrated
on my map, for a length of $1\frac{1}{2}$ miles in-

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stead of going around the eight miles of bend as it formerly did. If this new cut-through is adopted as the permanent channel of the river, it of course will cause the French Bottoms area on which is located a \$6,000,000 municipal airport to be separated from St. Joseph by the river channel.

In the consideration of this matter, Colonel L. J. Lincoln, District Engineer of the United States Corps of Engineers raised a question as to whether or not the cut-off through French Bottoms, if it were officially adopted as the channel of the Missouri River, would alter the Missouri-Kansas state line at this point, or would in effect transfer the land in French Bottoms upon which our municipal airport is located, to the State of Kansas. It was our view here in St. Joseph that no such question would arise, because the sudden severing of this Missouri land by the breaking through of this new channel was such an "avulsion" as would not cause either the title or the jurisdiction of the land to change.

Colonel Lincoln, however, has requested that we procure an opinion from the Attorney General of Missouri on this question and that we be authorized to furnish a copy of such opinion to the United States Corps of Engineers in connection with their proposed plan for the new channel.

I hope I sufficiently describe the factual situation in order to place this question clearly before you. I ask your opinion in behalf of the Citizens' Flood Committee of St. Joseph, Missouri, which is working with the County of Buchanan and the City of St. Joseph to represent the interests of this community on the many problems growing out of this recent flood."

For the purpose of this opinion we assume that the manner in which the Missouri river has cut a new channel was by avulsion and not by a gradual process known as erosion and accretion.

Section 46.060 RSMo 1949, describes the boundaries of Buchanan County in the following language:

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Section 46.060 RSMo 1949, describes the boundaries of Buchanan County in the following language:

"Beginning at a point in the middle of the main channel of the Missouri river, where the prolongation west of the line run and marked by M. M. Hughes, under the act of the general assembly of 1838 and 1839; thence east with said line to the old boundary line of the state; thence north with said line to the point where it is intersected by the subdivisional line between sections twenty-one and twenty-eight of township fifty-eight, range thirty-three, west; thence west with the sub-divisional lines 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."

Where a county in Missouri is bounded by a watercourse, its extent is declared in the following language found in Section 46.010 RSMo 1949:

"Whenever a county is bounded by a watercourse, it shall be construed to be the middle of the main channel thereof; * * * * *

In *Cooley v. Golden*, 52 Mo. App. 229, l.c. 232, we find a history reference to disclose the western boundary of Missouri, in the following language:

"By the act of congress, approved June 7, 1836, United States Statutes at Large, 34, entitled 'An act to extend the western boundary of the state of Missouri to the Missouri river,' it was provided that, when the Indian title to all the lands lying between the state of Missouri and the Missouri river should be extinguished, the jurisdiction over said lands should be thereby ceded to the state of Missouri. It is to be observed that the act ceded the land between the old state line and the river, and the extension of the boundary was to the river, not to the bank thus making

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the natural watercourse the boundary; and the general rules, construing such words of cession as shown by the adjudged cases, carry that boundary to the center of the channel. *Benson v. Morrow*, 61 Mo. 345; *Jones v. Soulard*, 24 How. 41; *Howard v. Ingersoll*, 13 How. 381; *Railroad v. Deve-reux*, 41 Fed. Rep. 14; *Missouri v. Iowa*, 7 How. 660."

The Supreme Court of Missouri, in the case of *State ex inf. Mansur v. Hoffman*, 2 S.W. (2d) 582, 318 Mo. 991, decided in 1927, quoted approvingly the following language used by Mr. Justice Brewer, in the case of *Nebraska v. Iowa*, 143 U. S. 359. We adopt the language of Mr. Justice Brewer as found at 318 Mo. 1.c. 995:

"It is settled law, that when grants of land border on running water, and the banks are changed by that gradual process known as accretion, the riparian owner's boundary line still remains the stream, although during the years by this accretion, the actual area of his possessions may vary. In *New Orleans v. United States*, 10 Pet. 662, 717, this court said: 'The question is well settled at common law, that the person whose land is bounded by a stream of water which changes its course gradually by alluvial formations, shall still hold by the same boundary, including accumulated soil. No other rule can be applied on just principles. Every proprietor whose land is thus bounded is subject to loss by the same means which may add to his territory; and, as he is without remedy for his loss in this way, he cannot be held accountable for his gain.'

It is equally well settled, that where a stream, which is a boundary, from any cause suddenly abandons its old and seeks a new bed, such change of channel works no change of boundary; and that the boundary remains as it was, in the centre of the old channel, although no water may be flowing

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therein. This sudden and rapid change of channel is termed, in the law, avulsion. In Gould on Waters, sec. 159, it is said: 'But if the change is violent and visible, and arises from a known cause, such as a freshet, or a cut through which a new channel is formed, the original thread of the stream continues to mark the limits of the two estates.'

These propositions, which are universally recognized as correct where the boundaries of private property touch on streams are in like manner recognized where the boundaries between states or nations are, by prescription or treaty, found in running water. Accretion, no matter to which side it adds ground, leaves the boundary still the centre of the channel. Avulsion has no effect on boundary, but leaves it in the centre of the old channel."

The rule found in State ex inf. Mansur v. Hoffman, supra, is stated in the following language in the case of State of Arkansas v. State of Tennessee, 38 S. Ct. 301: 246 U.S. 158; 62 L. Ed. 638. The following language is found at 38 S. Ct. 301, l.c. 304:

" * * * * It is settled beyond the possibility of dispute that where running streams are the boundaries between States, the same rule applies as between private proprietors, namely, that when the bed and channel are changed by the natural and gradual processes known as erosion and accretion, the boundary follows the varying course of the stream; while if the stream from any cause, natural or artificial, suddenly leaves its old bed and forms a new one, by the process known as an avulsion, the resulting change of channel works no change of boundary, which remains in the middle of the old channel, although no water may be flowing in it, and irrespective of subsequent changes in the new channel."

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CONCLUSION:

Assuming that the recent change in the channel of the Missouri river, forming the western boundary of Missouri, was caused by an avulsion, such change does not alter the former boundary of Missouri, but leaves it in the center of the old channel.

Respectfully submitted,

JULIAN L. O'MALLEY
Assistant Attorney General

APPROVED:



J. E. TAYLOR
Attorney General

JLO'M:lw