

Opinion No. 296 Ans. by Letter  
(McFadden)

September 8, 1964



Honorable James E. Conway  
Prosecuting Attorney  
Cooper County  
Boonville, Missouri

Dear Mr. Conway:

By letter of August 20, 1964, you request an opinion as to whether a small island in the Missouri River should be deemed a part of Howard County or of Cooper County. The Missouri River forms the boundary between those counties at the location of the island in question. You state that the island was formerly a cape or peninsular extension of Cooper County around which the Missouri River flowed forming the boundary between the two counties.

Some time ago a man-made channel was cut across the neck of the peninsula and dikes were constructed so as to force the river through the newly made channel. The old riverbed has dried up and the island is now physically attached to Howard County.

Notwithstanding the fact that the island has been separated from Cooper county by the new channel, it is still a part of that county. In support of this conclusion, we enclose herewith a copy of an opinion rendered by this office in 1937 addressed to Senator William M. Quinn.

In pertinent part, the enclosed opinion demonstrates that the law relating to this subject is established beyond peradventure of a doubt, i.e.

"A running stream, forming the boundary line between contiguous lands, continues to be such boundary line, although the channel may change, provided the change is by the gradual erosion and cutting away of its banks and not by a sudden change leaving the old channel and forming an entirely new and different channel."  
McCormack v. Miller, 239 Mo. 463.

That is to say:

"\* \* \* if the stream changes its course suddenly and in such manner as not to destroy the integrity of the land in controversy and so that the land can be identified, it is not accretion and the boundary line remains the same as before the change of the channel."  
McCormack v. Miller, supra.

Elsewhere in the opinion, the principle is stated still another way:

"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 center of the old channel, although no water may be flowing therein." (Emphasis added.)  
Missouri v. Nebraska, 196 U.S. 23.

See also Randolph v. Moberly Hunting & Fishing Club, 15 SW2d 834; Nothstine v. Feldman, 8 SW2d 912; Jacobs v. Stoner, 7 SW2d 698.

Trusting that the foregoing is sufficient to meet your requirements, I am

Very truly yours,

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THOMAS F. EAGLETON  
Attorney General

Enclosure  
HLM:kd/lt