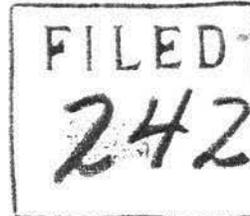


July 1, 1965



Honorable John A. Callow  
State Representative  
Holt County  
Oregon, Missouri

Dear Representative Callow:

This is in answer to your request for an opinion of this office as to the rightful and legal ownership of the real estate known as Big Lake, a body of water located in Holt County, Missouri.

Big Lake is an oxbow lake and originally was part of the Missouri River. The water forming the lake was cut off from the river because of a change in its course. A history of the lake given us by the Missouri Conservation Commission indicates it was formed prior to June 19, 1862, the date of the Federal land survey. We have no information as to whether the lake was formed prior to 1821, the year in which Missouri was admitted to the Union.

As a general rule, when additional states are admitted into the Union, title to land under all navigable waters within such states is reserved by the individual states. But if the waters are not navigable in fact, the title of the United States to the land underlying them remains unaffected by the formation of the new state. United States v. Oregon, 295 U.S. 1, 79 L. Ed. 1267, 55 S. Ct. 610; 56 Am. Jur., Waters, Section 450-456.

Missouri has not relinquished its ownership of the land under navigable waters within the State to the riparian land-owners, but has retained title in itself. Conran v. Girvin, 341 S.W.2d 75. As the Missouri River has been held to be a navigable stream, Peterson v. City of St. Joseph, 156 S.W.2d 691, if Big Lake was cut off from the river subsequent to 1821, the date Missouri was admitted into the Union, or although completely isolated if the lake was "navigable" at that time, title to the land underlying such lake vested in the State. If the lake was formed prior to 1821 and the waters of the lake were not

navigable at the time of the admission of Missouri, title remained in the United States. See United States v. Oregon, supra.

In the latter case, the question of title to the lake bed would turn upon whether title has passed from the United States to the riparian landowners through Federal land grants, or to the State by Congressional grant. The resolution of this question would involve an extensive examination of the title of each riparian landowner to determine the extent of his ownership, if any, of the lake bed.

Even if it were possible for this office to ascertain the necessary facts, valid title to the lake bed could not be established other than by a final decision made by a court of competent jurisdiction upon consideration of all the evidence. For these reasons, we feel this office is not qualified to provide an opinion as to the title of the lands in question.

Very truly yours,

NORMAN H. ANDERSON  
Attorney General