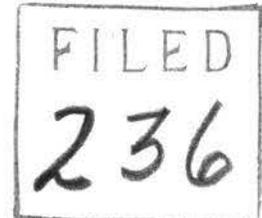


June 24, 1966



Mr. Lowell McCuskey
Prosecuting Attorney
Osage County
Linn, Missouri

Dear Mr. McCuskey:

This is in response to your request for an opinion involving the interpretation of Section 241.290, RSMo 1959, relative to abandoned riverbeds and islands. This section states as follows:

"All lands belonging to the state, not otherwise appropriated under the laws thereof, which have been formed by the recession and abandonment of their waters of the old beds of lakes and rivers in this state, or by the formation of islands in the navigable waters of the state, are hereby granted and transferred to the respective counties in which such lands are located, to be held by such counties for school purposes."

We note that Section 241.300 is of similar context and relates to future abandoned riverbeds and islands.

Specifically, you state that there is an increase in alluvion to the lands of certain riparian owners adjoining the Missouri River as a result of revetments constructed by the Corps of Engineers. The question is, whether the county court has acquired any interest that they can convey.

It is my understanding that the land involved literally adjoins the Missouri River.

Honorable Lowell McCuskey

Of course the legal boundaries of the private lands are of importance. In *Volkerding v. Brooks*, 359 S.W.2d 736 (1962), at l.c. 742, the court stated:

"It is fundamental in the law of accretions that the lands to which they attach must be bounded by the river or stream to entitle its owner to such increase. * * * In the very nature of things, then, accretions depend upon actual contiguity, without separation of the claimant's land from the accumulated alluvion by the lands of another, however narrow the intervening strip may be, or whatever the size of the claimant's tract behind it." * * *

It is clear that we must draw a distinction between the formation of land contemplated by Sections 241.290, 241.300 and accretions.

Both sections are based upon the fundamental proposition that the State holds title to the land beneath the navigable waters and therefore by statute may, as it did, pass title to islands formed in such waters or lands formed by recession and abandonment of the waters of old beds of lakes and rivers. These sections, however, relate to specific formations and do not refer to accretions. The right of the adjoining landowner to the alluvion is not affected by the statute. In the *Volkerding* case and in other opinions, the courts have recognized that in Missouri a riparian owner owns to the low watermark on navigable streams.

The courts have stated that insofar as navigable waters are concerned, accretions become the property of the riparian landowner. *Dumm v. Cole County*, 287 S.W. 445 (1926).

We think that it is clear that neither Section 241.290 nor Section 241.300 affects the right of the adjoining landowner to the alluvion. *Conran v. Girvin*, 341 S.W.2d 75 (1960), is a comprehensive and extensive authority on many of the problems involved.

Mr. Lowell McCuskey

The county has no right to the alluvion formed by accretion to the lands of riparian owners and it necessarily follows that the county court has no title to convey.

Yours very truly,

NORMAN H. ANDERSON
Attorney General

JCK:df