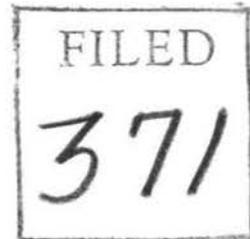


December 6, 1967



OPINION NO. 371
Answered by letter-Denman

Honorable John E. Downs
State Senator
34th District
304 Corby Building
St. Joseph, Missouri

Dear Senator Downs:

This is in answer for your request for an opinion of this office as to the ownership of Bean Lake. As we stated in Opinion Request No. 242 from the Honorable John A. Callow, Representative from Holt County, answered by letter July 1, 1965, this office is not able to determine the ownership of such lakes as such a determination is dependent upon the resolution of several factual questions including the time the particular lake was formed and whether or not it was navigable at the time of its formation. Even if it were possible for this office to ascertain those facts, any meaningful decision would have to be made by a court of competent jurisdiction upon consideration of all of the evidence.

The law governing the vesting of title to bodies of water is well settled. See *Conran v. Girvin*, Mo.Sup., 341 S.W.2d 75. Generally, 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.

In the case of *Schreve v. Boyle*, which was not appealed, the Circuit Court of Buchanan County found that although Lake Contary, also in Buchanan County, was formed prior to 1821 when Missouri was admitted into the Union, the lake was navigable at that time and title thereto passed to the state.

Honorable John E. Downs

We also have received other information that some of the Missouri River oxbow lakes were formed in the late 1890's during the great floods at that time.

If we assume that Bean Lake was formed after Missouri became a state, since the Missouri River is a navigable river, Peterson v. City of St. Joseph, 156 S.W.2d 691, title thereto vested in the state. If the lake was formed prior to the time of statehood, and, like Lake Contrary, the waters were navigable at the time of admittance, again Missouri would obtain title to the lake, unless it had previously been granted to private individuals by the Federal Government.

The question has been raised as to whether title to the lake bed, if vested in the state, has been transferred to Buchanan County by Sections 241.290 and 241.300, RSMo. These sections provide that lands of the state formed by recession and abandonment of their waters of old beds of lakes and rivers shall be transferred to the county in which they are located. It is our opinion that by these sections the state has conveyed only lands which have been formed by the recession and abandonment of their waters of the old beds of lakes and rivers. Since, Bean Lake still exists as a lake, no abandonment has taken place and title to the land under the waters of the lake still remains in the State of Missouri.

It is my understanding that the lake is being filled by silt, and the reason for your request is that persons living in the vicinity of Bean Lake have asked the State Park Board for aid in maintaining the recreational qualities of the lake by dredging or other appropriate means. If we assume that the waters of Bean Lake were navigable at the time Missouri became a state, in our opinion, title thereto vested and remains in the state; and we see no reason why the Park Board could not act to prevent the lake from becoming useless as a public recreational facility.

We also enclose herewith certain inter-office memoranda discussing the question of title to such lakes which might be of help.

Very truly yours,

NORMAN H. ANDERSON
Attorney General

JHD:maw

Enclosures - 2
Opinion No. 242
7-1-65 Callow