



OFFICES OF THE

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY

July 18, 1974

JOHN C. DANFORTH
ATTORNEY GENERAL

OPINION LETTER NO. 158

Mr. Carl Noren, Director
Department of Conservation
Post Office Box 180
Jefferson City, Missouri 65101

Dear Mr. Noren:

This is in reply to your request for an opinion of this office concerning the question whether in the state of Missouri water rights accompany ownership of land in fee under the riparian doctrine, unless specifically noted otherwise in the deed. We understand the question is prompted by a request for such opinion by the Bureau of Sport Fisheries and Wildlife of the United States Department of the Interior which shares the cost for some land acquisitions by the Conservation Commission.

Actually, it appears that the question is whether the riparian doctrine is followed in Missouri, for under the doctrine an owner in fee on a watercourse has riparian rights. In Armstrong v. Westroads Development Company, 380 S.W.2d 529, 537 (St.L.Ct.App. 1964), the court stated:

" . . . A riparian owner is an owner of land bounded by a watercourse or through which a stream flows, and generally only such an owner may claim or exercise riparian rights which are those rights pertinent only to lands which actually touch on the watercourse or through which the watercourse flows. . . . It is equally well settled that riparian rights are not available to those who do not own or control riparian land, and riparian land must be in actual contact with the waters, proximity without contact being insufficient. . . ."

And, in 93 C.J.S. Waters §216, it is stated:

Mr. Carl Noren

"An unrestricted conveyance of land will ordinarily pass as appurtenances all water rights and privileges which are incident to the situation of the land as riparian to a stream or other body of water, or which are at the time rightfully used in connection with the land and necessary to its beneficial enjoyment. . . ."

Thus, the riparian right, which is a right to the usufruct inherent in the land (93 C.J.S. Waters §5), accompany ownership of land in fee.

In Attorney General's Opinion No. 59, April 30, 1954, McMurry, this office said:

"We shall not here enter into any course of reasoning in an attempt to show that the riparian doctrine does prevail in Missouri. Our courts have always held that the riparian doctrine did prevail in Missouri, and we likewise so hold. . . ."

Accordingly, it is the opinion of this office that in the state of Missouri water rights accompany ownership of land in fee under the riparian doctrine, unless specifically noted otherwise in the deed.

Yours very truly,



JOHN C. DANFORTH
Attorney General