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September 11, 1980

OPINION LETTER NO. 162

The Honorable Gary E. Stevenson  
Prosecuting Attorney  
St. Francois County  
Courthouse, Third Floor  
Farmington, Missouri 63640

Dear Mr. Stevenson:

This official opinion is issued in response to your inquiry which asks whether Chapter 306, RSMo, may be enforced by a prosecuting attorney in regard to a privately owned lake development, whose association owns such development, adopts the regulations found in Chapter 306, and incorporates them in its bylaws.

Section 306.010 provides definitions for the terms used in Chapter 306. Section 306.010(7), RSMo Supp. 1979, defines "waters of the state" in the following manner:

[A]ny waters within the territorial limits of this state and lakes constructed or maintained by the United States Army Corps of Engineers except bodies of water owned by a person, corporation, association, partnership, municipality or other political subdivision, . . .

Chapter 306 therefore does not apply to a lake owned by a private development.

The question then becomes whether a prosecuting attorney can enforce Chapter 306 in relation to a privately owned body of water,

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if the provisions of Chapter 306 are incorporated in an associations' bylaws. A corporation's shareholders or board of directors is empowered by statute to adopt bylaws not inconsistent with law or the articles of incorporation. Section 351.290, RSMo 1978. A corporation's bylaws are not under the Revised Statutes of Missouri, given the force and effect of law, however.

Therefore, a prosecuting attorney cannot enforce Chapter 306 in regard to bodies of water owned by privately owned lake developments.

Very truly yours,

A handwritten signature in cursive script that reads "John Ashcroft". The signature is written in dark ink and is positioned above the typed name.

JOHN ASHCROFT  
Attorney General