A. Ferries: Grant of license by county court does not authorize in itself the use of landing.

B. Highways: Public has no right to use as landing places.

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Hon. Morgan M. Moulder
Prosecuting Attorney
Camdenton County
Camdenton, Missouri

Dear Sir:

This department is in receipt of your letter of July 17th, in which you request an opinion from this department on the following state of facts:

> "* * *Does such license grant to the owner of the license the exclusive use of the landings for the purpose of operating the ferry, or does the license merely grant such operator the right to charge a fee or toll.
>
> I have another question which has caused me considerable trouble. A number of people have been using the points where public roads meet the lake as boat landings or place of docking boats, taking the position that the land or road is public and belongs to the public and can be used for docking boats. Of course the public merely has an easement for highway purposes that is for use of vehicles such as cars, wagons, horses and motor vehicles; does such an easement grant the public the right to use same for parking, tying and landing boats thereon, or would such use be an additional burden or usage not granted in the grant of easement for road purposes?"

In order to answer your requests it is necessary to assume certain factual situations. First, ferries whose termini are private properties. Second, public ferries whose termini are public highways.

Section 14199 R. S. Mo. 1929, provides as follows:

> "Any person may petition the county court of the county for license to keep a ferry; and if the court believe such ferry necessary for the accommodation of the public, and that the petitioner is a suitable person to keep the same, it shall order the clerkto issue a license, upon the payment of the tax assessed in such order."

Under the hypothetical case as set out in number one supra, that is, where this license is granted to a public ferry at places other than public highways, the legislative grant of the franchise does not of itself confer upon the grantee the right of landing and embarking upon private property on the shores of the water over which the ferry is operated. In order to render his franchise effective the grantee of the franchise must acquire the right to use the landing on both sides of the water for the purpose of landing and embarking. 25 C. J. 1061.

Where these landings are acquired from owners of private property the right to use these landings is personal to the owner of the ferry and of course exclusive.

In the case of Bryant v. West, (Sup. Ct. Mo), 219 S. W. 355, the court held:

> "License from landowners to land a ferry on their premises was a mere personal license terminated by transfer of an interest in the firm operating the ferry."

In the case of Chapman v. Hood River County, (Sup. Ct. Oregon), 178 Pac. 379, the court held that the mere licensing of a ferry by the county court would not give to the owner of such ferry the right to make landing upon private property. The court said:

> "* * *Assuming that the plaintiff is the owner of the lands in question, any attempt of the county court to issue a license to Larson which would authorize him in the operation of a ferry to make a landing thereon would be null and void. The county court would not have jurisdiction to make such an order, and such

> license would not be a cloud upon the title to plaintiff's land. * * * "

Under hypothetical case number two supra, that is, where the termini of public ferries are public highways, the grant of the franchise carries with it whatever rights the public then has or may afterwards acquire to the use of the highways for this purpose. It is the opinion of this department that the public has an easement for passage over public highways and that the use of the highway for landing and embarking is not so much a public use as a use by the holder of the ferry franchise for his own gain and that it is an additional burden upon the land for which compensation must be made to the owner.

In the case of Pearsall v. Post, 20 Wendell (N.Y.), 111, the court said:

> "* * * The right in question was to a highway over Manown's farm on the Monongahela, which has been judicially pronounced within the local rule. 14 Serg. & Rawle, 79, per Tilghman, C.J. Still inasmuch as there the owner has a free-hold as against all except the state, down to low water mark, it was held that even a road to that point would not sanction the landing with ferry boats and passengers on his land. The amount of these cases is, that roads are made to be travelled on, and not to be occupied, much less blocked up by sloops and scows. If the contrary were allowed, the ferryman might derive a profit from his toll, which belongs to the owner, under pretense of a free passage. The intention of laying out a public highway, is to make a free passage, not a profit to the owners of water craft. The easement is for land, not for water carriage, and therefore is not to be touched by the latter, without the permission of the owner. * * * "

There is but one more question involved, and that is where a city, town or municipal corporation leases a wharf. The right to use this wharf cannot be made exclusive under Section 14221 R.S. Mo. 1929, which provides as follows:

> "Any city, town or other municipal corporation may, for a just compensation, in its discretion, lease to any owner or association of owners of any steamboat, or boats, or vessels, any portion of the wharf or landing of such city or town, for a term of years, for the purpose of maintaining wharf boats thereat for the accommodation of steamboats and merchants and others in the reception and discharge of freights: Provided, that no part of any wharf or landing shall be so leased for the use of any particular owner of any boat or boats, or association of owners of boats, if such lease shall give to such owner or association of owners a monopoly of said portion of such wharf or landing, or work a serious injury or inconvenience to other owners of boats landing at such wharf or landing."

As to your question as to whether or not the easement to the public to use the highways permits the public to use the highways for parking, tying and landing boats thereon, it is the opinion of this department that the easement doesnot include the landing of boats on public highways.

A public road is a way open to all the people without distinction for passage and repassage at their pleasure. Sumner County v. Interurban Company, 213 S. W. 412; 141 Tenn. 193.

What was said in the case of Pearsall v. Post supra, with reference to ferries applies with equal force to owners of private boats. The court held:

> "* * *The landing of wagons, horses and passengers on the shores of a river, a sea or an ocean, even though it be upon a dedicated or recorded highway on the land connecting with the watery way, and for the direct purpose of going onward, is still a trespass on the riparian owner, unless we could suppose such acts to be performed without any contact between the vessel and the shore." * *But ...

> in Chess v. Manown, 3 Watts, 219, the very point was decided that you cannot moor your boat, and land from the river on a road, though it be regularly laid out and connected with the boat highway on the river. The court said, 'the franchise of the public was to pass over the soil and no more.'" * * *The amount of these cases is, that roads are made to be travelled on, and not to be occupied, much less blocked up by sloops and scows." * * **

Therefore, it is the opinion of this department, first, that the grant of a license by the county court to the owner of a ferry does not in itself give to the owner of the license the exclusive use of the land for the purpose of operating the ferry. Second, that the easement of the public on public highways does not include the right to use the highways for parking, tying and landing boats thereon.

Yours very truly,

JOHN W. HOFFMAN, JR.,
Assistant Attorney General.

APPROVED:

ROY McKITTRICK,
Attorney General.

JWH:MM