

COUNTY COURT: Does not have jurisdiction over construction of dams to create lakes on private property.

April 10, 1940.

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Hon. B. F. Spratt, Presiding Judge
Platte County
Platte City, Missouri

Dear Judge Spratt:

We are in receipt of your letter of April 5th, wherein you state as follows:

"Does County Court have jurisdiction over construction of Dams to create lakes on private property when such lake might be a menace to other property owners?"

"We would appreciate an opinion on this matter at your earliest convenience."

67 C. J. 919 provides in part that:

"In the absence of statutory restrictions, a riparian owner may, for his own lawful purposes, as an incident to his ownership, lawfully erect a dam across a stream on his own land * * * "

An examination of the statutes of this state (9178 R. S. Mo. 1929) reveals that any person who builds any dam across any watercourse without first obtaining permission from the county court is liable for double damages if he works any injury to any person.

"Any person who shall build or heighten any dam, or any other stoppage or obstruction on or across any watercourse, without first obtaining permission from the court of the proper county, according to law, and shall thereby work any injury to any other person,

shall forfeit to the party injured double damages for such injury, to be recovered by civil action."

The above section applies to the construction of "any dam" and would therefore include the construction of a dam on private lands. The fact that permission must be obtained from the county court to build the dam does not give the county court jurisdiction over construction.

The water dammed up to form the lake would of course also have to be a "watercourse" to even require "permission" from the county court. The term "watercourse" has been defined in the case of Keener vs. Sharp 341 Mo. 1192, 111 S. W. (2d) 118 l. c. 120.

"In the case of Munkres v. Kansas City, St. Joseph & Council Bluffs Railroad Company, 72 Mo. 514, this court approved the following definition of a water course: 'A water course is a stream or brook having a definite channel for the conveyance of water. It may be made up, more or less, from surface water from rains and melting snow, but after it enters into a channel and commences to flow in its natural banks, it is no longer to be considered surface water and it is not essential that the water should continue to flow in such stream constantly the whole year around; it is sufficient if the water usually flows in such channel, though not continually. That is, to constitute a branch or stream there must be something more than a mere surface draining, swelled by freshets and melting snow, and running occasionally in hollows and ravines, which are generally dry. The water must usually run in a definite bed or channel, though it need not flow continually the year round. But although the water from high lands and hills may unite and form a stream with a definite channel, yet if it afterward ceases to remain a channel,

but spreads out over the surface of low lands, and runs in different directions in swags and flats without any definite channel, it ceases to be a stream or water course.'

"We again approved the above definition in the case of Sigler v. Inter-River Drainage District, 311 Mo. 175, 279 S. W. 50. Recently the St. Louis Court of Appeals, in the case of Dardenne Realty Co. v. Abeken et al., 106 S. W. (2d) 966, quoted this definition with approval."

You don't point out how the lake might become a menace to other property owners, however Section 9179 R. S. Mo. 1929, provides how circuit courts may under certain circumstances prevent the construction of a dam.

"The circuit court of the proper county shall have power, upon petition, to prevent the erection or raising of any dam, stoppage, or obstruction across any stream which shall operate as a nuisance and be injurious to any mill, electric power and light works, or other machinery erected, or which shall dam up and render impure or unwholesome or unhealthy the waters of said stream at any point where water is or may be taken from said stream to supply the inhabitants of any city or town or village in the state with water, or of any dam, the erection of which has been authorized by the order of any competent tribunal, of a date earlier than that permitting the erection and raising of such first mentioned dam, stoppage or obstruction; and such court may, upon a final hearing of such petition, order and adjudge that such dam, stoppage or obstruction be abated by the sheriff of the proper county."

Hon. B. F. Spratt.

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April 10, 1940.

From the foregoing we are of the opinion that the county court does not have jurisdiction over the construction and building of a dam to create a lake on private property even though the lake might become a menace to other property owners.

Respectfully submitted,

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APPROVED BY:

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