

**Island, Definition of. Island, Ownership of.**

An island must be of a permanent character, and not merely surrounded by water when the river is high, and where it is not of such permanent character the title in it belongs to the owner of the adjoining land.

Helena, Montana, January 6, 1910.

Hon. F. H. Ray,

Secretary, State Board of Land Commissioners,  
Helena, Montana.

Dear Sir:—

I am in receipt of your letter of January 5, requesting an opinion upon the following proposition:

Lots 8 and 9, in section 2, township 15 north, range 3 west, borders on the Missouri river. In high water part of the water from the Missouri river flows through a slough, making a temporary island, and at times completely overflows the land lying between the main river and the slough. At all times of the year, except during high water, a person can pass from lots 8 and 9 across this slough without getting wet, the question submitted being as follows: Whether or not the land cut off as an island during high water belongs to the state or to the owners of said lots 8 and 9.

29 Cyc., at page 354 defines an island as follows:

“To constitute an island in the river, it must be of a permanent character, not merely surrounded by water when the river is high, but permanently surrounded by a channel of the river, and not a sand-bar subject to overflow by a rise in the river and connected with the land when the water is low.”

See also: 5 Cyc., 889, as to effect of meander line.

Sections 4572 to 4577, revised codes, also deals with the question and ownership of islands.

Under the facts stated in the letter submitted with your communication, I am of the opinion that such land is not an island, within the definition thereof quoted above, and therefore, the title to such land is in the owners of the adjoining land.

Yours very truly,

ALBERT J. GALEN,

Attorney General.