

Islands—Navigable Streams—State Lands—Title.

Where an island is formed in a navigable stream after a public survey the title is in the state.

I. M. Brandjord, Esq.,
Register of State Lands,
Helena, Montana.

January 18, 1926.

My dear Mr. Brandjord:

You have submitted to this office the question of title to an island formed in the Missouri river near the section corners common to sections 1 and 2, township 20 north range 3 east. The island is inside or adjoining the city of Great Falls.

Accompanying your letter are letters from the acting assistant commissioner of the general land office; also an answer to an inquiry from your office and reply from the district cadastral engineer; also a letter from the register of the Great Falls land office.

All of these letters are to the effect that the plats and surveys of the U. S. government do not show the location of this island at the time the surveys were made. You wish to be advised whether the island is the property of the state.

Section 6822, R. C. M. 1921, provides:

“Islands and accumulations of land, formed in the beds of streams which are navigable, belong to the state, if there is no title or prescription to the contrary.”

Section 6823, R. C. M. 1921, provides:

“An island, or accumulation of land, formed in a stream which is not navigable, belongs to the owner of the shore on that side where the island or accumulation is formed; or if not formed on one side only, to the owners of the shore on the two sides, divided by an imaginary line drawn through the middle of the river.”

Section 6824, R. C. M. 1921, provides:

"If a stream, navigable or not navigable, in forming itself a new arm, divides itself and surrounds land belonging to the owner of the shore, and thereby forms an island, the island belongs to such owner."

In answering your question I assume that the Missouri river at the point where this island formed is a navigable stream, and if so, then the title to the bed of the stream is in the state. Any island formed on the stream bed independent of the accretions to shore land belong to the state and not to the riparian owner. It has been held that an island formed in the channel of a navigable river is not the property of the riparian owner on either shore where such riparian ownership extends only to the water's edge. (*Perkins vs. Adams*, 132 Mo. 131, 33 S. W. 778.)

In the case of *Bode vs. Rollwitz*, 60 Mont. 481, the court said:

"We recognize and subscribe to the doctrine that, where in the survey of the public domain a body of water or lake is found to exist and is meandered, the result of such meander is to exclude the area from the survey, and to cause it as thus separated to become subject to riparian rights of the respective owners abutting on the meandered line in accordance with the laws of the several states." (Citing cases.)

From your statement of facts there is no connection between this island and the riparian owner of either shore line at this time, and the island not having been designated in any of the public surveys the presumption is that it did not exist at the time the public survey was made and is, therefore, the property of the state of Montana and not the property of any particular institution under the control of the state.

Very truly yours,

L. A. FOOT,
Attorney General.