

FILE

Subject

State Bonds
Salvage

Copy to _____



STATE OF KANSAS

Office of the Attorney General

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Attorney General

September 26, 1974

Opinion No. 74- 327

The Honorable Jack Steineger
Minority Leader
Senator Sixth District
New Brotherhood Building
Kansas City, Kansas 66101

Dear Senator Steineger:

In your letter of September 16, you inquire concerning the applicability of K.S.A. 70-101 et seq., to a riverboat which is stated to have sunk on the Missouri River during the 1850's, and which, as a result of shifts of the course of the Missouri River, is now lodged in the earth on land owned by a private citizen. You inquire whether the Kansas salvage statutes, K.S.A. 70-101 et seq., impose the duties of a salvor, as defined therein, upon the owner of the property respecting the riverboat.

You enclose a copy of an opinion furnished this citizen by private counsel, which discusses the possible claims of ownership of said.

The enactment in question sets forth the rights and responsibilities of persons salvaging certain property. K.S.A. 70-101 states thus:

"When any boat, raft, lumber, staves, shingles, logs, rails, posts, cordwood or other valuable timber shall be lost or wrecked upon any river or creek any person may take up and secure the same."

If he does so, he must, under K.S.A. 70-103,

"Within two days after the taking up and securing of any such wrecked property, the salvor shall make oath before a justice of the peace of the township in which such property was lost or wrecked, and in a perishable condition, and that he was not directly or indirectly instrumental in causing the property to be so wrecked or lost, and also the quantity, quality and estimated value of such property, and the time and place of taking up, and that he has not disposed of or secreted any part of the same."

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Property subject to the act enumerated in K.S.A. 70-101, which is "lost or wrecked upon any river or creek," and which is sworn by the salvor to have been "lost or wrecked, and in a perishable condition" when taken up or secured. The kinds of wooden or timber artifacts enumerated in K.S.A. 70-101 are not, in and of themselves, ordinarily thought to be of a fragile or perishable nature. The term "perishable" refers, in our view, to the condition of the property in the fact of a hazard or danger of loss or destruction of property cast adrift upon a river or creek through either wreckage or other incident. In *Simmons v. Steamership Jefferson*, 215 U.S. 130, 54 L. Ed. 125, 30 S.Ct. 54 (1909), the Court stated thus:

"In the nature of things it is manifest, and indeed it is settled, that, because of the broad scope of the admiralty jurisdiction in this country, the perils out of which salvage service may arise are all of such perils as may encompass a vessel when upon waters which are within the admiralty jurisdiction of the United States; from which it follows that the right to recover for salvage services is not limited to services concerning a peril occurring on the high seas or within the ebb and flow of the tide. And although, in defining salvage, the expression 'peril of the sea' has sometimes been used as equivalent to 'peril on the sea,' it is settled that the distress or danger from which a vessel has been saved need not, in order to justify a recovery of salvage compensation, have arisen solely by reason of a peril of the sea in the strict legal acceptance of those words. The varied character of services upon which a claim to salvage may be based was pointed out in the definition of salvage given in the opinion of *The Blackwall*, 10 Wall. 1, 19 L. ed. 870, where it was said (p. 12): 'Salvage is the compensation allowed to persons by whose assistance a ship or her cargo has been saved, in whole or in part, from impending peril on the sea, or in recovering such property from actual loss, as in cases of shipwreck, derelict, or recapture.'"

Under K.S.A. 70-102, upon restoration of the salvaged property to its owner, the salvor is entitled to a "premium for salvage equal to ten percentum of the valuation of such property."

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The statutory scheme set out at K.S.A. 70-101 et seq., may fairly be regarded as an importation to this landlocked jurisdiction of the general law of salvage applicable in admiralty jurisdiction. The boat in question, at the time of its wreckage or loss, would quite properly have been a subject of salvage under the statute, had it been in force and effect at that time. However, with the passage of time, the lodging of the boat in the earth, and the shifting of the river to a different course, it is no longer subject to being taken up and secured from a "perishable condition" resulting from its wreckage or other loss upon the waters of any river or creek of the state.

Thus, it is our opinion that K.S.A. 70-101 et seq., has no application to the boat in question, and that the landowner has no obligations of a salvor under the enactment.

Yours truly,


VERN MILLER
Attorney General

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