



STATE OF KANSAS

Office of the Attorney General

1st Floor, State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

Curt T. Schneider
Attorney General

October 25, 1977

ATTORNEY GENERAL OPINION NO. 77- 347

The Honorable Ross O. Doyen
President of the Senate
3rd Floor - State Capitol
Topeka, Kansas 66612

Re: Waters and Water Courses--Missouri River Boundary Line
Agreement--"Center of the Channel of the Missouri River"

Synopsis: The phrase "Center of the channel of the Missouri river"
as employed in K.S.A. 82a-521 means that line following
the middle of the principal channel of navigation in
the Missouri river.

* * *

Dear Senator Doyen:

You request the opinion of this office interpreting the phrase
"center of the channel of the Missouri river" as employed in
K.S.A. 82a-521.

K.S.A. 82a-521 (Chapter 510, Laws of 1949) represents Kansas'
codification of section one, of the Missouri River Boundary Line
Agreement (hereinafter referred to as the Agreement) ratified
by the United States Congress and approved by President Harry
Truman, August 3, 1950. It provides thus:

"Upon the ratification of this act and
a similar act of the state of Missouri by
the congress of the United States, the center
of the channel of the Missouri river, as its
flow extends from its intersection with the

fortieth (40th) parallel, north latitude, southward to the middle of the mouth of the Kansas or Kaw river, shall be that portion of the true and permanent boundary line between the states of Missouri and Kansas, subject only to changes which may occur by the natural processes of accretion and reliction, but not by avulsion." [Emphasis added.]

The essential question thus presented is what have the two parties, Kansas and Missouri, consented to recognize as the mutual boundary between them by using the phrase "the center of the channel of the Missouri river." We do not find this phrase defined in the body of the Agreement, however a number of decisions of the United States Supreme Court provide substantial precedent upon which an interpretation may be given.

It is the general rule of law recognized by the United States Supreme Court that when a navigable river comprises the boundary between two states, each state holds title to the center of the main channel of the stream. *Wisconsin v. Michigan*, 295 U.S. 455, 79 L. Ed. 1541, 55 S. Ct. 786 (1934); *United States v. Arizona*, 295 U.S. 174, 79 L. Ed. 1371, 55 S. Ct. 666 (1934); *New Jersey v. Delaware*, 291 U.S. 361, 78 L. Ed. 847, 54 S. Ct. 407 (1933); *Oklahoma v. Texas*, 265 U.S. 493, 68 L. Ed. 1118, 44 S. Ct. 571 (1923); *Missouri v. Kansas*, 213 U.S. 78, 53 L. Ed. 706, 29 S. Ct. 417 (1908); *Iowa v. Illinois*, 147 U.S. 1, 37 L. Ed. 55, 13 S. Ct. 239 (1892).¹ This rule, popularly referred to as the "rule of thalweg," was established in *Iowa v. Illinois*, *supra*, which adjudicated a controversy between the states of Iowa and Illinois over the exact location of the boundary located in the middle of the Mississippi river. Iowa there maintained that the boundary line lay in the middle of the "main body" of the river, a position which ignored the steamboat channel or deepest part of the stream. Illinois, on the other hand, claimed that its jurisdiction extended to the middle of the channel upon which commerce on the river by steamboats or other vessels was usually conducted. Mr. Justice Field, delivering the opinion of the Court, concluded:

1. See generally, 72 *Am. Jur. 2d*, *States, Territories, and Dependencies* §§ 26, 27.

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"When a navigable river constitutes the boundary between two independent states, the line defining the point at which the jurisdiction of the two separates is well established to be the middle of the main channel of the stream. The interest of each state in the navigation of the river admits of no other line. The preservation by each of its equal right in the navigation of the stream is the subject of paramount interest. *It is, therefore, laid down in all the recognized treatises in international law of modern times that the middle of the channel of the stream marks the true boundary between the adjoining states up to which each state will, on its side, exercise jurisdiction.* In international law, therefore, and by the usage of European nations, the term 'middle of the stream,' as applied to a navigable river, is the same as the middle of the channel of such stream, and in that sense the terms are used in the treaty of peace between Great Britain, France, and Spain, concluded at Paris in 1763. By the language, 'a line drawn along the middle of the River Mississippi from its source to the River Iberville,' as there used, is meant along the middle of the channel of the River Mississippi." [Emphasis added.]

The thalweg rule thus pivots upon the phrase "middle of the stream," which, as the above quote indicates, is synonymous with "middle of the channel." Both phrases have been further defined to mean the principal channel of navigation as opposed to the line equidistant from each bank. *Kansas v. Missouri*, 322 U.S. 213, 88 L. Ed. 1234, 64 S. Ct. 975 (1943); *Wisconsin v. Michigan*, 295 U.S. 455, 79 L. Ed. 1541, 55 S. Ct. 786 (1934); *New Jersey v. Delaware*, 291 U.S. 361, 78 L. Ed. 847, 54 S. Ct. 407 (1933); *Arkansas v. Tennessee*, 269 U.S. 152, 70 L. Ed. 206, 46 S. Ct. 31 (1925); *Minnesota v. Wisconsin*, 252 U.S. 273, 64 L. Ed. 558, 40 S. Ct. 313 (1919); *Louisiana v. Mississippi*, 202 U.S. 1, 50 L. Ed. 913, 26 S. Ct. 408 (1905). Mr. Justice McReynolds succinctly stated in *Minnesota v. Wisconsin*, *supra*, the application of this rule to the navigable channel:

"The doctrine of thalweg, a modification of the more ancient principle which required equal division of territory, was adopted in

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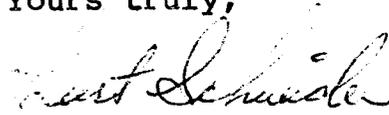
order to preserve to each state equality of right in the beneficial use of the stream as a means of communication. Accordingly, the middle of the principal channel of navigation is commonly accepted as the boundary."

The channel for navigation is generally defined as that line of deep water which vessels follow, the space within which vessels may and usually do pass. *Rowe v. Smith*, 51 Conn. 266, 47 At. 756 (1883); *Western Union Telegraph Co. v. Louisville and N. R. Co.*, 270 Ill. 399, 110 N.E. 583 (1915); *Buttenuth v. St. Louis Bridge Co.*, 123 Ill. 533, 17 N.E. 439 (1888). See also, *Moore v. Rone*, (Mo. App.) 355 S.W.2d 398 (1962).

The thalweg doctrine has been carefully and consistently followed since *Iowa v. Illinois*, *supra*, and has been held to apply also to a boundary in a main navigable channel which has been left dry by avulsion. *Arkansas v. Tennessee*, *supra*. However, some exceptions have made the rule inapplicable in certain situations, e.g., the defense of prescription and acquiescence; the doctrine that a state boundary is unaltered by an avulsion; and, etc. But, such exceptions perforce are based upon specific factual circumstances, and this opinion will not attempt to determine the application of the phrase in K.S.A. 82a-521 here questioned to the facts which may or may not exist concerning the boundary line between Kansas and Missouri generally located between Doniphan County, Kansas, and Buchanan County, Missouri.

Accordingly, it is the opinion of this office that the phrase "center of the channel of the Missouri river" in light of the United States Supreme Court's application of the thalweg doctrine can be reasonably interpreted to mean that line which follows the center of the principal channel of navigation in the Missouri river.

Yours truly,


CURT T. SCHNEIDER
Attorney General

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