

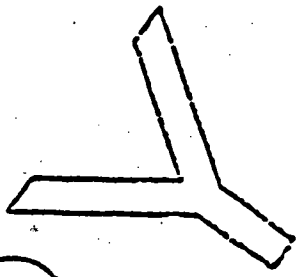


TYRONE C. FAHNER
ATTORNEY GENERAL
STATE OF ILLINOIS
SPRINGFIELD

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FILE NO. 80-041

STATE MATTERS:
Ohio River Boundary Between
Illinois and Kentucky



David Kenney, Director
Illinois Department of Conservation
605 William G. Stratton Building
400 South Spring Street
Springfield, Illinois 62766

Dear Mr. Kenney:

I have your letter wherein you request my opinion on whether the boundary between the State of Illinois and the State of Kentucky is the low water mark on the northwest side of the Ohio as it existed in 1792 or the current low water mark on the north side of the river. In my opinion, the boundary between Illinois and Kentucky is the low water mark on the northern side of the river as it existed in 1792.

In 1784, the State of Virginia ceded to the United States all lands "situate, lying and being to the northwest of the river Ohio". In 1792, the State of Kentucky succeeded to the rights and possessions of the State of Virginia. (Indiana v. Kentucky (1889), 136 U.S. 479, 508.) Consequently, it is

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clear that the boundary between Illinois and Kentucky is the low water mark on the northwest shore of the Ohio River. The question then is where the low water mark is to be fixed.

In Ohio v. Kentucky (1980), 100 S. Ct. 588, the United States Supreme Court considered this question with respect to the boundary between Ohio and Kentucky and held that the boundary should be fixed at the low water mark which existed in 1792. In that case, the court stated at page 589:

* * *

It should be clear that the Ohio River between Kentucky and Ohio, or, indeed, between Kentucky and Indiana, is not the usual river boundary between States. * * *

* * * [I]n the Kentucky-Ohio and Kentucky-Indiana boundary situation, it is indeed different. Here the boundary is not the Ohio River just as a boundary river, but is the northerly edge, with originally Virginia and later Kentucky entitled to the river's expanse. * * *

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The court also held at page 589 that the 1792 low water mark was a fixed point which would be unaffected by the usual rules regarding accretion and avulsion. Since the Illinois territory was carved out of the existing Indiana territory (Act of February 3, 1809, 2 U.S. Statutes at Large 514), the rules regarding the boundary between Indiana and Kentucky, or Ohio and Kentucky, should also apply to the boundary between Illinois and Kentucky.

Very truly yours,


ATTORNEY GENERAL