

1978 Mich. AG LEXIS 91, *; 1977-78 Op. Atty Gen. Mich. 518

OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF MICHIGAN

Opinion No. 5327

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July 6, 1978

CORE TERMS: riparian owner, water, beach, high water, trespass, edge, riparian land, shore, upland, riparian rights, front, property owner, exclusive use, riparian, et seq, right of passage, effective date, meander line, high-water, dwelling, exposed, bathers, adjoin

SYLLABUS:

[*1]

GREAT LAKES:

Control of riparian land between meander line and water's edge

REAL ESTATE:

Control of Great Lakes riparian land between meander line and water's edge

The owner of riparian property on the shore of one of the Great Lakes has the right of exclusive use of the bank and shore although title is in the State. Thus, the riparian owner may prevent persons from using the beach of his riparian land regardless of whether that land is above or below the ordinary high water mark.

REQUESTBY:

Alvin J. DeGrow
State Senator
The Capitol
Lansing, Michigan

OPINIONBY:

FRANK J. KELLEY
Attorney General

OPINION:

With respect to riparian rights on Lake Huron, you have asked for my opinion on the following questions:

- "1. What are the riparian rights or property control over beaches which adjoin and front the shore of Lake Huron?
- "2. May a property owner object and prevent bathers from using the beach in front of his private dwelling?
- "3. Does a riparian owner have trespass control of his beach to the water's edge?
- "4. Is there an effective date giving the riparian owner such trespass control rights?"

Your questions will be addressed *seriatim*.

- "1. What are the riparian rights

[*2] or property control over beaches which adjoin and front the shore of Lake Huron?"

In *Hilt v. Weber*, 252 Mich 198, 206 (1930); 233 NW 159, the Michigan Supreme Court enunciated the rule that, under the Federal law, when a purchaser acquires land from the government on the Great Lakes, he takes title to the water's edge and that upon acquisition of Federal lands by a person, state law governing ownership rights becomes paramount. The court further pointed out at page 225 that:

"Generally speaking, riparian rights are:

"(1) Use of the water for general purposes, as bathing, domestic use, etc. (2) To wharf out to navigability. (3) Access to navigable waters. . . . (4) The right to accretions." (Citations omitted)

The submerged lands of the Great Lakes in this state come within the purview of 1955 PA 274, MCLA 322.701 *et seq*, MSA 13.700(1) *et seq*. Section 2 of the act indicates that the dividing line between the upland and the submerged land is the ordinary high water mark. Thus, the riparian ownership extends to this line.

In considering your questions, it must also be kept in mind that a beach may have two areas. One is the portion of the beach that extends

[*3] to the ordinary high water mark; this area provides a convenient access of the water and a place for sunbathing. Secondly, there is an area between the high water mark and low water mark. The beach that extends to the ordinary high water mark may be defined as "upland" and is not subject to any public use.

With respect to the area between the high and low water line, the court said at page 226:

"The riparian owner has the exclusive use of the bank and shore, . . . although the title is in the State."

Thus, the owner "cannot extend structures into the space between low and high-water mark, without consent of the State".

"2. May a property owner object and prevent bathers from using the beach in front of his private dwelling?"

In *Hilt v. Weber, supra*, the court said at page 226:

". . . And it has been held that the public has no right of passage over dry land between low and high-water mark but the exclusive use is in the riparian owner, . . ."

Thus the riparian property owner may prevent persons from using the beach of his riparian land regardless of whether the land is above or below the ordinary high water mark.

"3. Does a riparian owner have trespass

["*4] control of his beach to the water's edge?"

As noted in *Hilt v. Weber, supra*, the riparian owner therefore has trespass control to the water's edge. Although there is no specific statute which gives a riparian owner trespass control to the water's edge of the Great Lakes n1, trespass control is provided as to our inland waters; 1972 PA 346, MCLA 281.951 *et seq*, MSA 11.475(1) *et seq*. Section 12 reads as follows:

"This act shall not deprive a riparian owner of rights associated with his ownership of water frontage. A riparian owner among other rights controls any temporarily or periodically exposed bottomland to the water's edge, wherever it may be at any time and holds the land secure against trespass in the same manner as his upland subject to the public trust to the ordinary high water mark."

"4. Is there an effective date giving the riparian owner such trespass control rights?"

n1 General trespass laws may be enforced against trespassers, MCLA 750.522, MSA 28.790.

Although *Hilt v. Weber, supra*, delineated the rights of the riparian owner, it may be assumed that these rights have continuously existed as a property right of the riparian owner.

[*5]

In summary:

1. A riparian at all times owns the upland to the ordinary high water mark, and may exercise control thereto, by virtue of rights stemming from the Federal patent.
2. The ordinary high water mark is set for all the Great Lakes by 1955 PA 247, *supra*, and when the water recedes below the ordinary high water mark, the riparian owner has control over the exposed area, but may not place any permanent structures, or do any dredging or filling on this land without a permit from the Department of Natural Resources.
3. The public may not use the beach whether it extends to the ordinary high water mark or to the low water mark. The public, however, has the right of passage in any area adjacent to riparian land covered by water.

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