

**OPINION**  
**50-76**

February 21, 1950            (OPINION)

GAME AND FISH

RE: Islands

Re: Section 20-1105 R.C. 1943

Yours of the 20th inst. desiring our opinion as to what would constitute an island under the provisions of section 20-1105 has been referred to my desk.

With reference to Devils Lake, an island would be a body of land entirely surrounded by water. If any of the islands then in this lake at the time of the land survey were retained by the government as part of the public domain, such islands would not be affected by this law. But if land in the lake has emerged from the water by reason of the subsidence of the water and has become dry land, such land would be an island, and would be affected by the law. So also would be any of the islands in the lake title to which was not retained by the government.

As for islands in the Missouri River, the manner of formation is different, but if an island existed in the river at the time this law was enacted, or was thereafter formed by accretion to the bed of the river, such islands are affected by this law. Most islands in navigable rivers are formed by the gradual accretion to sand bar. A sand bar emerges from the water, and seeds of trees or grasses alight there and grow. In succeeding flood stages, the silted waters are slowed down by such growths and deposit more silt. In the course of time the sand bar is built into a permanent body of land. Such land would be an island and a game refuge under this law. The mere fact that at some future time this island may possibly be washed away does not destroy its identity as an island until such destruction takes place.

An apt definition has been supplied by the Kansas Supreme Court:

"To constitute an 'island' in the river, the same must be a permanent character, not merely surrounded by water when the river is high, but permanently surrounded by a channel of the river, and not a sand bar subject to overflow by a rise in the river and connected with the land when the water is low."  
McBride v. Steinweden, 72 Kan. 508, 83 P.822.

You also ask what would be the effect of a transfer of title to the island from the State to a private party. The statute, section 15-0719 N.D.R.C. 1943, provides that islands formed in the beds of navigable streams belong to the state and may be leased and sold by the board of university and school lands and that the proceeds of such lease or sale shall become a part of the common school fund. This simply means that such islands are a part of the common school funds and may be leased and sold as such.

It is our opinion that if and when such islands are sold, they are no longer game refuges under the provisions of section 20-1105. Section 15-0719 became law long after section 20-1105, and therefore amended the older law.

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