

Opinion No. 66-37

March 30, 1966

BY: OPINION OF BOSTON E. WITT, Attorney General Roy G. Hill, Assistant Attorney General

TO: C. R. Sebastian, Director, Department of Finance and Administration, State Capitol Building, Santa Fe, New Mexico

QUESTION

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Is the bed of a stream which crosses private property itself private property?

CONCLUSION

Yes, but see analysis.

OPINION

{*45} ANALYSIS

The general rule followed almost exclusively throughout the United States and adopted specifically in New Mexico is that the bed of a non-navigable stream is private property if the property along the banks is privately owned. That is to say, if one owner owned both banks of a non-navigable stream, then such owner owns the entire bed. If, on the other hand, the banks of such a stream are owned by different private owners, then they each own to the middle of the stream. **State v. Red River Valley Co.**, 51 N.M. 207, 182 P.2d 421, 93 C.J.S. Waters, Section 71, 56 Am.Jur. Waters, Section 451.

You will note that the ownership rule we have relied on applies only when the stream in question is a non-navigable one. If a stream is navigable, then it seems well settled that the bed of the stream belongs to the public. In any given instance, whether or not a particular stream is a navigable one, is a question of fact and since we do not have before us any facts concerning the particular stream about which you have asked, we cannot, of course, comment on whether or not the stream which has given rise to our question is navigable or non-navigable.