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#93043

NO.
STATE OF NEBRASKA
OFFICIAL
JUN 1 1993
DEPT. OF JUSTICE

DATE: June 1, 1993

SUBJECT: State Boat Act

REQUESTED BY: Senator Jan McKenzie
Nebraska State Legislature

WRITTEN BY: Don Stenberg, Attorney General
Linda L. Willard, Assistant Attorney General

You have inquired about the definition of "waters of this state" as defined in the State Boat Act, Neb. Rev. Stat. §§ 37-1201 through 37-1274 (1988 and 1992 Cum. Supp.). Specifically, you ask if the definition of "waters of this state," as provided in the State Boat Act, includes waters contained by structures, earthen or of other material, created by a private individual, on private property for private use, and secondly, whether the requirement for numbering and registration includes motorboats and vessels used on private property. Our answer to both of your questions is yes.

The State Boat Act defines "waters of this state" to mean "any waters within the territorial limits of Nebraska" (Neb. Rev. Stat. § 37-1206 (1988)). In ***Kuester v. State***, 191 Neb. 680, 217 N.W.2d 180 (1974), the plaintiff sought to have the State Boat Act declared unconstitutional in its application to certain property owned by him. The plaintiff in ***Kuester*** owned property on which was situated a lake wholly located within the confines of the property and accessible only over roads owned and controlled by the plaintiff. The State Boat Act as it existed in 1974 was in all relevant respects the same as the current State Boat Act. In ***Kuester***, the Nebraska Supreme Court stated:

> Implicit in the trial court's order is a finding that the State Boat Act, . . . was applicable to the use and operation of boats upon the plaintiff's privately

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> owned lake. This we believe is correct. An examination of the Act shows that it was clearly the legislative intention to apply it to the operation of boats upon private as well as public waters. Section 81-815.02 (4), R. R. S. 1943, defines waters of the state as "any waters within the territorial limits of Nebraska." The purpose of the Act as well as the use of similar language in related legislation indicates rather clearly the intention of the legislature. Any other construction would largely defeat the legislative purposes. The right of an owner to use his property is subject to reasonable regulations, restrictions, and control by the State in the legislative exercise of the police power of the State.

191 Neb. at 685, 217 N.W.2d at 183 (citations omitted). Section 81-815.02(4) referenced in the above citation is identical to § 37-1206 of the current State Boat Act.

Therefore, based on the Nebraska Supreme Court holding in *Kuester*, it is our determination that under the State Boat Act, as it is currently written, "waters of this state" include all waters of the state whether public or private or whether contained by structures and created by private individuals on private property for private use.

Neb. Rev. Stat. § 37-1211 (1988) states that with the exceptions noted "every motorboat on the waters of this state shall be numbered. No person shall operate or give permission for the operation of any vessel on such waters unless the vessel is numbered" as set out in the statute, and the certificate of number is in full force and effect and the number is displayed and legible. These statutes currently provide no exception for motorboats or vessels operated on waters situated on private property. Therefore, it is our determination that, based on the definition of "waters of this state," any motorboat or vessel

operated on private or public property must comply with the requirements for numbering and registration contained in the State Boat Act.

Sincerely,

DON STENBERG
Attorney General

Linda L. Willard
Assistant Attorney General

28-02-14.op

cc: Patrick J. O'Donnell
Clerk of the Legislature

APPROVED:

Attorney General