Public and private beach access

Number: INFORMAL

Date: January 09, 2008

Lieutenant Bryan Maule, Jr.
Walton County Sheriff's Office
72 North Sixth Street
Defuniak Springs, Florida 32433

Dear Lieutenant Maule:

You state that recent events in Walton County have caused confusion with regard to public and private beach access and questions involving private property rights. You therefore state that you would like to get a determination of what law enforcement officers can do with regard to a homeowner's private property rights.

As discussed in this office's Statement Concerning Attorney General Opinions, a copy of which is enclosed, Attorney General Opinions are intended to address only questions of law, not questions of fact, mixed questions of fact and law, or questions of executive, legislative, or administrative policy. Resolution of an issue such as the one raised in your inquiry would likely depend upon the specific facts in question. Accordingly, in order to respond to your inquiry, this office would need to have a legal question presented based upon a specific set of facts. Such a request should be asked by the sheriff, or clearly indicate that the question is being asked on his or her behalf, and should be accompanied by a memorandum of law prepared by the attorney responsible for advising the sheriff's office.

If you are asking about the establishment of the mean high water line, such a factual determination is beyond the scope of this office. I would, however, generally note that section 161.191, Florida Statutes, provides:

"(1) Upon the filing of a copy of the board of trustees' resolution and the recording of the survey showing the location of the erosion control line and the area of beach to be protected as provided in s. 161.181, title to all lands seaward of the erosion control line shall be deemed to be vested in the state by right of its sovereignty, and title to all lands landward of such line shall be vested in the riparian upland owners whose lands either abut the erosion control line or would have abutted the line if it had been located directly on the line of mean high water on the date the board of trustees' survey was recorded.

(2) Once the erosion control line along any segment of the shoreline has been established in accordance with the provisions of ss. 161.141 - 161.211, the common law shall no longer operate to increase or decrease the proportions of any upland property lying landward of such line, either by accretion or erosion or by any other natural or artificial process, except as provided in s. 161.211(2) and (3). However, the state shall not extend, or permit to be extended through artificial means, that portion of the protected beach lying seaward of the erosion control line beyond the limits set forth in the survey recorded by the board of trustees unless the state

first obtains the written consent of all riparian upland owners whose view or access to the water's edge would be altered or impaired."

Section 161.201, Florida Statutes, provides that any upland owner or lessee who by operation of sections 161.141-161.211 ceases to be a holder of title to the mean high-water line shall, nonetheless, continue to be entitled to all common-law riparian rights except as otherwise provided in section 161.191(2). Such rights include, but not limited to rights of ingress, egress, view, boating, bathing, and fishing. The statute further provides:

"In addition the state shall not allow any structure to be erected upon lands created, either naturally or artificially, seaward of any erosion control line fixed in accordance with the provisions of ss. 161.141-161.211, except such structures required for the prevention of erosion. Neither shall such use be permitted by the state as may be injurious to the person, business, or property of the upland owner or lessee; and the several municipalities, counties and special districts are authorized and directed to enforce this provision through the exercise of their respective police powers."

You may wish to contact the Department of Environmental Protection on this matter. I note, however, that it appears from the materials attached to your letter that the determination of ownership of land seaward of the erosion control line is currently in litigation. As discussed in this office's Statement, opinions generally are not rendered on questions pending before the courts in order not to intrude upon the constitutional prerogative of the judicial branch.

In an effort to be of assistance, however, I am enclosing copies of several opinions generally on this issue. In Attorney General Opinion 02-38, this office discussed the regulation of the dry portion of the beach. In Attorney General Opinion 04-04, issued to the Interim Chief of the Fort Walton Police Department, this office discussed the authority of law enforcement officer to communicate an order to leave private property on behalf of private landowner. Attorney General Opinion 92-86 considers the authority of a municipality to regulate dogs on public beaches. *And see* Attorney General Opinions 82-74 and 79-71. Copies of the above referenced opinions are enclosed for your review and consideration.

Thank you for contacting the Attorney General's Office.

Sincerely,

Joslyn Wilson
Assistant Attorney General

JW/t

Enclosures