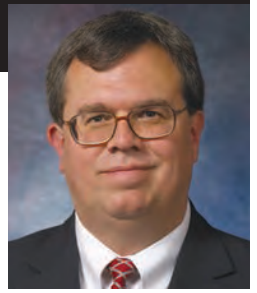


Can an ORV be driven on the BEACH?

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In Michigan, people often wonder whether it is lawful to operate an ORV (a four wheeler, ATV, motorcycle, go kart, Jeep®, dune buggy, side-by-side or the equivalent) on the shoreline or beach of an inland lake or the Great Lakes. There appears to be an almost uniform belief among laypeople and law enforcement officials alike that ORV's cannot be operated on the beach or shoreline of the Great Lakes in Michigan absent an emergency or use by law enforcement officials. However, the law is not that simple.

There is no statute in Michigan that outright bans the operation of ORV's on the shoreline or beach of the Great Lakes or inland lakes. MCL 324.81133 generally prohibits ORV use on the shore or beach of any inland lake or the Great Lakes where any of the following factors are present:

1. The property is state or federal land or park lands.
2. A designated natural area, game area, recreation area, or the equivalent is involved.
3. There is a trespass on the land of another without permission.
4. On lands lawfully posted as prohibiting ORVs.
5. Operation on any land or area in such a manner "as to create an erosive condition, or to injure, damage or destroy trees or growing crops."

If the topography is such that ORV use on the shore or beach will not cause erosion, the property is private, and no other factors listed above are involved, then it appears that such use would be lawful if done with the permission of the landowner (and in accordance with other applicable laws regarding speed, helmets, etc.)

The penalties for violating MCL 324.81133 can be severe. A person who operates an ORV in a prohibited area, or in a prohibited manner, can be charged with a criminal misdemeanor. Upon conviction, the person involved would have a criminal record and might have to disclose such a conviction on employment, loan and other applications. In addition to normal fines and penalties upon conviction, a person found guilty of violating the statute can be ordered to restore, at their cost, "any land, water, stream bank, streambed, or any other natural or geographic formation

damage." See MCL 324.81147. In addition, the ORV involved can be seized and sold in extreme cases.

Can an ORV be operated on the beach or shoreline of the Great Lakes without the permission of the adjoining riparian property owner? Assuming that such ORV use is not unlawful under any of the categories within MCL 324.81133 and such use occurs lakeward of the ordinary high water mark, it is possible that such use would not constitute a trespass. In 2005, the Michigan Supreme Court held in *Glass v Goeckel*, 473 Mich 667 (2005) that there exists a public trust easement lakeward of the ordinary high water mark on the Great Lakes adjoining Michigan for navigability (i.e., travel) purposes. Although that case involved a pedestrian, given that navigability typically involves travel, ORV use could conceivably fall under the definition of "navigability." Only time will tell if the Michigan courts will extend the *Glass v Goeckel* case to ORV use.

However, there is somewhat of a "wrinkle" with regard to the public trust easement situation. In the *Glass v Goeckel* case, the Michigan Supreme Court held that in most cases, the riparian landowner owns to the water's edge (wherever that might be on a given day) along the Great Lakes, subject to the public trust easement. This is consistent with part of a July 6, 1978 written opinion by the Michigan Attorney General stating that pursuant to *Hilt v Weber*, 252 Mich 198 (1930), a riparian landowner on the Great Lakes takes title to the water's edge. Attorney General Opinion No. 5327.

Despite that, the State of Michigan apparently takes the position that it owns all of the exposed bottomlands of the Great Lakes lakeward of the ordinary high water mark. Some law enforcement officials assert that ORV use on any portion of the shore or beach of a Great Lake constitutes "state land" for purposes of prohibiting ORV use thereon. This position is consistent with another part of that same Attorney General Opinion stating that under state statute, riparian ownership only extends to the ordinary high watermark (and not lakeward thereof). Attorney General Opinion No. 5327. A Michigan statute entitled the "Great Lakes Submerged Lands Act", MCL 324.32501 *et seq.* (referenced in the Attorney

General opinion), purports to establish state ownership of exposed bottomlands at the ordinary high water mark (and lakeward thereof). This, again, conflicts with *Glass v Goeckel*; however, a statute cannot take away or redefine existing property rights.

Thus, given the conflict and differing legal interpretations regarding how far a private riparian's ownership extends on the shore or beach of the Great Lakes in Michigan, a ticket authorized by a law enforcement official based on supposed state ownership of exposed bottomlands may not prevail.

ORV use on the shoreline or beach of inland lakes is different. In most cases, the riparian property owner owns not only to the shore or beach of an inland lake, but also the bottomlands under the water to the center of the lake. See *Hall v Wantz*, 336 Mich 112 (1953); *Gregory v LaFaive*, 172 Mich App 354 (1988); *West Michigan Dock & Market Corp v Lakeland Investment*, 210 Mich App 505 (1995). Accordingly, anyone who operates an ORV on the beach or shoreline of a private riparian property on an inland lake without permission would be trespassing. The exception would be if there exists a public road right of way or the equivalent running along the shore of the inland lake involved.

Regardless, even if ORV use does not violate a particular state statute, or is even done with permission on private property, the operator of an ORV on a beach or shoreline could conceivably be charged with malicious destruction of property or a similar charge if their ORV use is careless or reckless and causes damage to any lawful structure, foliage or other aspect of the beach or shoreline involved. In addition, it is highly likely that a local municipality (township, village or city) could ban ORV use on the beach or shoreline of any lake (including one of the Great Lakes) within the geographical limits of that municipality via a local ordinance, and could impose penalties for violating the ban.

I am not, of course, advocating ORV use on the shoreline or beaches of any Michigan inland lake or the Great Lakes. Rather, this article simply points out an area of the law that most people assume contains certainty when it does not. ●●●