

STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL
425 Fifth Avenue North
NASHVILLE, TENNESSEE 37243-0497

May 21, 2007

Opinion No. 07-75

Ownership of the *U.S.S. Undine*

QUESTION

Can the Governor claim ownership of the *U.S.S. Undine* on behalf of the State of Tennessee?

OPINION

No. The *U.S.S. Undine* is the property of the United States government.

ANALYSIS

The *U.S.S. Undine* was a steam-powered Civil War gunboat converted by the Union from a sternwheeler into a lightly armored vessel carrying eight (8) brass twenty-four (24) pound howitzers.¹ On October 30, 1864, the *Undine* was captured by Confederate forces, after an engagement on the Tennessee River near Paris Landing. On November 2 of the same year, the *Undine*, now under Confederate command, was badly damaged and escaped to Reynoldsburg Island after an engagement with Union gunboats. There, two days later, on November 4, 1864, the *Undine* was burned to the waterline by Confederate forces to prevent her recapture by Union gunboats attacking Reynoldsburg Island.² We are now asked whether the Governor has the authority to claim ownership of what remains of the *U.S.S. Undine* for the State of Tennessee.

¹One of a number of converted steam powered riverboats known as “tin-clads” for their relatively light (.25 to .5 inch thick) armor, the *Undine* was built in 1863 at Cincinnati, Ohio, as a conventional sternwheeler named the “*Ben Gaylord*.” The vessel was purchased by the United States Navy on March 7, 1864, and after conversion to an armored gunboat, was commissioned in Cincinnati in April of 1864 as the *U.S.S. Undine*. See *Dictionary of American Fighting Ships*, <http://www.hazegray.org/danfs/gunboats/undine.htm>.

²According to one source found on the internet (<http://www.panamconsultants.com/PAGE/archy.html>) the *Undine* has been “heavily salvaged of all her guns and armor,” and “very little remains of the burned vessel but her lower hull,” which lies buried under eight (8) feet of sediment.

Under federal law, the government of the United States succeeded to ownership of all property formerly owned by the Confederate government. At the conclusion of the Civil War, issues regarding the disposition of property owned by the Confederacy arose. In response, the United States Supreme Court developed the doctrine of succession. This principle was first formulated by the Court in *United States, Lyon, et al. v. Huckabee*, 83 U.S. 414, 21 L.Ed. 457 (1872). Huckabee, along with three other individuals, built an iron works in Alabama, which they eventually sold to the Confederate government, allegedly under duress. After the commencement of the Civil War, the factory was captured by Union forces and eventually sold by the federal government to a Francis Lyon. Huckabee filed suit alleging that, because he and his partners had sold the iron works to the Confederate government under duress, he and his partners were the rightful owners.

Although the case was dismissed for lack of jurisdiction, the Supreme Court adopted the traditional rule of “to the victor go the spoils,” and stated as follows regarding the United States’ ownership of the iron works after the war and before its sale to Lyon:

Power to acquire territory either by conquest or treaty is vested by the Constitution in the United States. Conquered territory, however, is usually held as a mere military occupation until the fate of the nation from which it is conquered is determined, but if the nation is entirely subdued, or in case it be destroyed and ceases to exist, the right of occupation becomes permanent and the title vests absolutely in the conqueror. **Complete conquest, by whatever mode it may be perfected, carries with it all the rights of the former government, or in other words, the conquered, by the completion of his conquest, becomes the absolute owner of the property conquered from the enemy, nation, or state. His rights are no longer limited to mere occupation of what he has taken into his actual possession, but they extend to all the property and rights of the conquered state,** including even debts as well as personal and real property.

Id. 83 U.S. at 434-435 (emphasis added)(footnotes omitted).

This “principle of succession” was reaffirmed in the subsequent Supreme Court cases of *Titus v. United States*, 87 U.S. 475, 20 Wall. 475, 22 L.Ed. 400 (1874), *Whitfield v. United States*, 92 U.S. 165, 2 Otto 165, 23 L.Ed. 705 (1875), and *Williams v. Bruffy*, 96 U.S. 176, 188, 6 Otto 176, 24 L.Ed. 716 (1877). In *Williams v. Bruffy*, the Court reiterated, in language reflecting the continuing bitterness that existed twelve (12) years after the cessation of hostilities, the doctrine that ownership of all property of the government of the Confederate States of America passed to the United States upon the military defeat of the Confederacy:

[The Confederacy] claimed to represent an independent nation and to possess sovereign powers; and as such to displace the jurisdiction and authority of the United States from nearly half of their territory, and,

instead of their laws, to substitute and enforce those of its own enactment. Its pretensions being resisted, they were submitted to the arbitrament of war. In that contest the Confederacy failed; and in its failure its pretensions were dissipated, its armies scattered, and the whole fabric of its government broken in pieces. **The very property it had amassed passed to the nation.** The United States, during the whole contest, never for one moment renounced their claim to supreme jurisdiction over the whole country, and to the allegiance of every citizen of the republic. They never acknowledged in any form, or through any of their departments, the lawfulness of the rebellious organization or the validity of any of its acts,

Id., 96 U.S. at 188-189 (emphasis added). The principle of succession also applied equally to wrecks of Confederate warships sunk during hostilities. *Leathers v. Salvor Wrecking, Etc., Co.*, 15 F.Cas. 116, No. 8164 (S.D.Miss. 1875).

In *United States v. Steinmetz*, 973 F.2d 212 (3rd Cir. 1992), the Third Circuit Court of Appeals had occasion to invoke these post-Civil War principles in a case involving the ship's bell of the famed Confederate raider, the *C.S.S. Alabama*. The *C.C.S. Alabama* was commissioned in August 1862 as a Confederate cruiser and was commanded by Captain Raphael Semmes, a native of the state of Alabama and a former officer in the United States Navy.³ For two years Capt. Semmes and the *Alabama* roamed the seas from the Atlantic Ocean and the American Gulf Coast to the African Cape and the China Sea, destroying or capturing at least sixty-two (62) merchant and whaling ships of the United States.

In June 1864, while the *C.S.S. Alabama* was docked in Cherbourg, France, for repairs, Capt. Semmes learned that the *U.S.S. Kearsarge*, a Union man-of-war under the command of Captain John Winslow,⁴ had taken position in international waters outside Cherbourg harbor. Unbeknownst to Capt. Semmes, the *Kearsarge's* outer planking concealed iron chain mail reinforcing its hull. On June 19, 1864, the *Alabama* weighed anchor and set out to meet the *Kearsarge*. Crowds from as far away as Paris had gathered along the harbor to watch the battle. After an engagement of more than an hour, the *Alabama* was badly damaged and sinking fast, and ran up a white flag. Many survivors were picked up by the *Kearsarge*, but Semmes and a number of officers and crew members from the *Alabama* were rescued by the English yacht *Deerhound*, which took them to England and released them.

³The following facts surrounding the *C.S.S. Alabama* are summarized from the account set forth by the court in *U.S. v. Steinmetz*, 973 F.2d at 214-215.

⁴As chance would have it, Semmes and Winslow were former cabin mates, having served together in the United States Navy during the War with Mexico.

Seventy-two (72) years later, in 1936, William Lawson, a British diver from the Isle of Guernsey, retrieved the brass bell from the wreckage of the *Alabama*, inscribed with the letters “C.S.S. Alabama.” Lawson sold it to a local bar, apparently for drinking privileges. The bar was subsequently destroyed by British bombers during World War II, the Isle of Guernsey having fallen into German hands at the time. The bell was dug out of the rubble after the war and exchanged hands until it landed in the shop of an antique dealer in Hastings, England.⁵ In 1979, Richard Steinmetz, an antique dealer from New Jersey, purchased the bell. After returning to New Jersey, he offered to sell or trade the bell to the United States Naval Academy. The Naval Academy apparently wished to display the bell but would not purchase it.

In December of 1990, Steinmetz put the bell up for auction in New York. When the Naval Historical Center learned about the auction, the Center claimed that the bell was the property of the United States and filed suit in federal court to obtain the bell. Applying the doctrine of succession as enunciated by the Supreme Court in the post Civil War cases cited above, the Court in *Steinmetz* held that, as a matter of law, the United States acquired title to the *Alabama* after the Civil War ended. The same reasoning therefore compels us to conclude that the United States acquired ownership of the *Undine* after the end of the Civil War.

The *Steinmetz* Court also rejected an argument that might be attempted with regard to the *Undine* as well—that the United States has abandoned the *Undine* and, thus, it can be claimed by another party such as the State of Tennessee. This argument falls to the principle that the United States cannot abandon its own property except by explicit action: “It is clear that vessels sunk during the Civil War are covered by the policy asserting United States title to them.”⁶ Accordingly, we conclude that the remains of the *U.S.S. Undine* are the property of the United States government.

ROBERT E. COOPER, JR.
Attorney General and Reporter

MICHAEL E. MOORE
Solicitor General

⁵Incidentally, the site of another rather significant military engagement in the year 1066.

⁶*Steinmetz*, 973 F.2d at 222, citing, *inter alia*, *United States v. California*, 332 U.S. 19, 40, 67 S.Ct. 1658, 91 L.Ed. 1889 (1947).

Page 5

KEVIN STEILING
Deputy Attorney General

Requested by:

The Honorable Willie Butch Borchert
Tennessee House of Representatives
23 Legislative Plaza
Nashville, Tennessee 37243