

## Opinion No. 60-12

January 28, 1960

**BY:** OPINION of HILTON A. DICKSON, JR., Attorney General

**TO:** Mr. Donald LaNoue Assistant Director State Park Commission P. O. Box 958 Santa Fe, New Mexico

### QUESTION

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May the State Park Commission license concessionaires within the state parks through negotiation?

#### CONCLUSION

Yes.

### OPINION

#### {\*352} ANALYSIS

The response to your question is guided largely through two sections of the New Mexico statutes. The first of these, codified as § 4-9-9, N.M.S.A., 1953 Compilation, reads as follows:

"The state park commission shall have power to grant concessions in state parks, upon such rentals, fees or percentage of income or profits as they may prescribe, but not for a longer period than five (5) years, said concession to be evidenced by a written contract, the faithful performance of which shall be secured by such bond as the commission may prescribe."

The other section which is related {\*353} to your inquiry is that codified as § 6-7-4 pertaining to the purchasing of supplies and letting of contracts upon advertising for bids. It is unnecessary to set forth this section in its entirety, but it is noted that it provides that sealed competitive bids must be invited for the purchase of all supplies and the letting of all contracts **where the estimated expenditure** exceeds the sum of \$ 1,000.00.

It is clear that the statutory authority expressed in the State Purchasing Act is not applicable to the situation at hand since it relates to the expenditure of funds by the State Government. The licensing of concessionaires, as I understand it, will in no way involve such an expenditure and therefore would not come within the purview of the Act or the particular section above noted.

Similarly, § 4-9-9, as above quoted, gives extensive broad powers to the State Park Commission in granting concessions. It is to be noted that it may license such concessions upon rentals, fees or percentage of income as the Commission may prescribe. The only limitation is that such concession contract may not exceed the term of five years.

It is inherent in the problem of administering the state parks and the licensing of concessionaires that discretion must be granted the administering authority. There are many intangibles inherent in the operation of such concessions which would not properly be the subject of an invitation to bid. This relates to such factors as past experience, public relations, capability and the like.

Therefore, in view of the broad powers given the Park Commission under the aforementioned statute and since the proposed licenses do not involve the expenditure of state funds, it is our conclusion that the State Park Commission need not advertise or invite bids from prospective licensees but may negotiate and exercise its discretionary authority in granting the concession contracts.

By: Thomas O. Olson

Assistant Attorney General