

Opinion No. 63-80

July 11, 1963

BY: OPINION of EARL E. HARTLEY, Attorney General

TO: Floyd Cross Superintendent State Park Commission P. O. Box 958 Santa Fe, New Mexico

QUESTION

QUESTIONS

1. Is the State Park and Recreation Commission authorized to obtain funds from federal or other agencies for use in planning park and recreation facilities under such terms that the funds become a loan if the project is found feasible and construction is started, and a grant if the project is found not to be feasible and abandoned?
2. Is the State Park and Recreation Commission authorized to use funds from the state park and recreation fund for the operation or improvement of recreation facilities on any property or project not under the control of the Commission?

CONCLUSIONS

1. Yes.
2. No, see analysis.

OPINION

{*170} ANALYSIS

The first question presented requires {*171} a determination of the authority of the parks and recreation commission to obtain funds. More particularly, we must examine the authority of the Commission to obtain funds from federal or other agencies under terms wherein the funds are used in planning park and recreation facilities and become a loan upon beginning construction of the facilities, or become a grant if the project is found not to be feasible and is abandoned. The answer to this question is found by reference to the "State Revenue Bond Act", Ch. 271, Laws 1963, and the Act creating the State Park and Recreation Commission, Ch. 98, Laws 1963.

Section 7 of Chapter 271 is a "General Grant of Powers to State Agencies". This section provides in part:

". . . A state agency undertaking from time to time the construction of any project is authorized, subject to the requirements of the State Revenue Bond Act:

1. to receive and accept from any federal agency or other source loans, grants, aid or contributions either money, property, labor and other things of value, to be held, used and applied only for the purposes for which such loans, grants, aid and contributions may be made;"

It is our opinion that the planning of a project, prior to the actual beginning of construction, is included in the above quoted section of Chapter 271. From this section it is obvious that a state agency can either accept a grant or take a loan for "undertaking the construction of any project". Since either of these means for obtaining funds is authorized, it is obvious that a contract for funds which are to be either a grant or a loan, depending on the disposition of them, is authorized by this provision. From the facts presented, it would seem that the funds would be considered a grant until such time as the project was determined to be feasible and that construction should be undertaken. At that time, prior to the beginning of construction on the project, the financial arrangements for repaying the loan would have to be finally determined. If suitable arrangements for repaying the loan could not be decided upon, then the project would be considered not feasible and abandoned. The funds would then be a grant, and not subject to repayment.

Section 17, Ch. 98, Laws 1963 provides further evidence of the commission's authority to accept funds which will either be construed to be a grant or a loan depending on the outcome of a feasibility study. This section provides:

"4-9-17. ACCEPTANCE OF DONATIONS OF MONEY, EQUIPMENT, OR MATERIAL. -
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A. The state of New Mexico is hereby authorized to receive and accept gifts, donations or bequests of money, equipment or material, either for state park and recreation purposes generally, or for any designated state park or recreation area or state park or recreation purposes, or as an endowment for any particular state park or recreation area, and shall hold, expend and use the same for the purposes designated in the donation, gift, bequest or endowment.

B. The state park and recreation commission shall be authorized to enter into agreements {*172} and contracts and to cooperate with the federal government in obtaining funds or other assistance for the acquisition, erection, maintenance and operation of state parks and recreation areas."

It is the opinion of this office that the above quoted section of Chapter 98 includes contracts for feasibility studies on projects for the parks and recreation areas. The funds contracted for would be included within the cost of construction if such was determined to be feasible. It is the opinion of this office that the parks and recreation commission does have authority to acquire funds from federal or other agencies for use in planning park and recreation facilities under such terms that the funds become a loan if the project is found feasible and construction is started, and a grant if the project is found not to be feasible and abandoned. The use of funds in such manner is a necessary

incident to the improvement of the State's parks and recreation areas within the purview of Chapters 98 and 271 of Laws 1963.

The second question requires a judgment on the authority of the State Parks and Recreation Commission to use funds from the state park and recreation fund. Section 4-9-18, N.M.S.A., 1953 Compilation, as amended, Ch. 98, Sec. 18, Laws 1963, provides in pertinent part:

"All moneys . . . appropriated for state park and recreation purposes by the legislature . . . shall be covered into a fund known as state park and recreation fund, which shall be a revolving fund . . . and said funds **shall be used solely for the purpose of acquiring, developing, operating and maintaining of state parks or recreation areas..** ." (Emphasis supplied)

Thus, it can be seen that expenditures from the state park and recreation fund are limited by law to "acquiring, developing, operating and maintaining of state parks and recreation areas". The definition of a "state park" would seem to cause little trouble since such term has been in use a considerable period of time, and has a well established connotation. Section 4-9-1, N.M.S.A., 1953 Compilation, as amended, Laws 1963, contains a definition of the term "recreation area" as used in Chapter 98, supra. The phrase "recreation area" means a recreation area "owned or leased by the state". Although the second question concerns property or projects "not under the control of the commission", it is assumed for the purposes of this opinion that this question is with reference to land not owned or leased by the state. If the land is owned or leased by the state, then the question of who is in control would seem to be moot. If the land is not owned or leased by the state, then the expenditure of state park and recreation funds is not authorized by the statute in question.

Chapter 76, Laws 1963, earmarks a portion of the motor fuel tax to the use of the state park commission in improving boating and related facilities in the state. Section 2 of this act creates a "motorboat fuel tax fund". This section further states that:

". . . money in the fund is appropriated to the State Park Commission for use under the regular budgeting procedure of the state to improve boating facilities in this state **under the jurisdiction of the State Park Commission.**" (Emphasis {*173} supplied)

It is obvious from the above quoted provision that the funds provided under this act must be used to improve boating or related facilities which are "under the jurisdiction of" the state parks and recreation commission. The term "jurisdiction" modified "facilities" in our opinion, and therefore, the facilities themselves must be under the jurisdiction of the state parks commission, not merely the improvement of the facilities.

As a corollary to this opinion, it should be noted that Section 4-9-9, N.M.S.A., 1953 Compilation, as amended, Laws 1963, specifically authorizes the state park and recreation commission to grant concessions in state parks and recreation areas. Nothing in this opinion should be taken to abrogate that section.

By: James E. Snead

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