

Opinion No. 75-47

September 9, 1975

BY: OPINION OF TONEY ANAYA, Attorney General

TO: Sam Graft, Director State Park and Recreation Commission 141 E. De Vargas
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QUESTIONS

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1. May the City of Gallup sublease Red Rock State Park?
2. Is the State Park and Recreation Commission obligated to lease the park for operation prior to its completion?

CONCLUSIONS

1. No. See Analysis.
2. No. See Analysis.

OPINION

{*128} ANALYSIS

The first question involves a determination of legislative intent. In this case, we must examine the general authority and responsibility of the State Park and Recreation Commission with respect to the development and maintenance of a state park system as well as {*129} the legislation relating specifically to the Red Rock State Park.

Section 4-9-1, NMSA 1953 Comp., is part of the general statutory scheme which delineates the functions and powers of the State Park and Recreation Commission. According to this particular section, the Commission "shall develop, maintain, manage and supervise all state parks and recreation areas within the state of New Mexico."

This language must be considered and conclusions drawn from it in connection with other statutes which are in **pari materia** *Allen v. McClellan*, 75 N.M. 400, 405 P.2d 405 (1965) so that all the provisions of each may, if possible, be given effect. **State v. New Mexico State Authority**, 76 N.M. 1, 411 P.2d 984 (1966).

Obviously, the recent Red Rock State Park legislation relates to the same class of things as Section 4-9-1, **supra**, and thus the statutes are in **pari materia**. Chapter 44, Laws of 1974, refers to the financing and leasing of the Red Rock State Park, and

Chapter 48, Laws 1975, likewise refers to the financing and leasing of such park, in addition to amending certain sections of the initial act. The title of each act describes, in part, the substance of the legislation as "PERMITTING A LEASE OF THE [RED ROCK] PARK TO THE CITY OF GALLUP." In the body of each act, there is language which provides that the State Park and Recreation Commission shall lease the park to the City of Gallup, "which city shall bear the total expense of maintaining the park for the period of the lease." Section 2(C) of the 1975 Act, **supra**, specifies the facilities which are to be included in the park "[u]pon the expiration of the initial lease between the state park and recreation commission and the city of Gallup." And, finally, section 2(D) of the same act states specifically that the Commission shall review annually "the operation and maintenance of the Red Rock state park by the city of Gallup."

When the Red Rock State Park legislation is compared with Section 4-9-1, **supra**, it appears that a conflict may exist between the operation of this specific park and the general rule that the Commission supervise and maintain state parks. Nevertheless, as stated in **Hopper v. Board of County Comm'rs**, 84 N.M. 604, 606-607, 506 P.2d 348, 350-351 (Ct. App. 1973, **cert. denied**, 84 N.M. 592, 506 P.2d 336:

". . . Where such a conflict exists, the specific statute is given effect because it is considered an exception or qualification of the general statute"

Thus, in this instance, the operation and maintenance of the Red Rock State Park is an exception to the general statutory requirement that state parks be operated and maintained by the Commission.

Moreover, as has been observed, a lease to the City of Gallup is the prescribed method or mode to be utilized by the Commission in facilitating the operation and maintenance of this particular state park. There is no language in the Red Rock State Park legislation which suggests that a lease or sublease to any other entity was contemplated. Indeed, as the titles to both Chapter 44, Laws of 1974, and Chapter 48, Laws of 1975, seem to indicate, a lease of the Red Rock State Park to the City of Gallup is the only conveyance of a property interest in the {**130*} facility which is permissible. As the Court explained in **Fancher v. Board of Commissioners of Grant County**, 28 N.M. 179, 210 Pac 237 (1922):

"Where authority is given to do a particular thing and the mode of doing it is prescribed, it is limited to be done in that mode This is a part of the so-called doctrine of *expressio unius est exclusio alterius*."

Thus, it seems apparent that the City of Gallup may not sublease the Red Rock State Park.

Finally, it should be noted that, while the City of Gallup must bear the total expense of maintaining the Red Rock State Park for the period of the lease and is accountable to the State Park and Recreation Commission for the operation and maintenance of the park, the lessee is not thereby precluded from employing or otherwise contracting for

such professional skills and services as it may deem advisable for the effectual and efficient operation and maintenance of the facility.

In answering the second question, we are guided by the following language of Section 72-18-37.25, NMSA 1953 Comp (Ch. 48, Laws 1975):

"Upon completion of the Red Rock state park, the state park and recreation commission shall lease, for a period of not less than twenty-five years, for a consideration of one dollar (\$ 1.00) per year, the Red Rock state park to the city of Gallup," (Emphasis added.)

This language appears clear and unambiguous. Thus, there is no need for statutory construction. **Keller v. City of Albuquerque**, 85 N.M. 134, 509 P.2d 1329 (1973).

There is no mandatory language to the effect that a lease must be entered into before completion of the park. Therefore, the Commission is under no obligation to lease until the park has been completed.

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