

HB

16

Alaska State Legislature

Senate Resources Committee



Sen. John B. (Jack) Coqhill, Chairman
Sen. Paul Fischer, Vice-Chairman
Sen. Lloyd Jones
Sen. Arliss Sturgulewski
Sen. Jim Duncan
Sen. Fred Zharoff
Sen. Dick Eliason

Box V
Juneau, Alaska 99811
(907) 465-4907

AMENDMENT FOR SENATE SC TO CS HB 16

page 2, line 7

add a new subsection (d) to read:

(d) Until regulations are adopted under AS 41.21.026 (c) take effect, existing state regulations otherwise applicable to user fees remain in effect.

reletter the existing (d) as (e) on page 2, line 7

(4)

R

Alaska State Legislature



WHILE IN SESSION:
PO BOX V
JUNEAU, ALASKA 99811
(907) 485-3779

CHAIR, RULES COMMITTEE

✓
HOME ADDRESS:
PO BOX 169
KENAI, ALASKA 99811
(907) 262-0360

DISTRICT 5

Representative Mike Navarre

May 1, 1987

M E M O R A N D U M

TO: Senator Jack Coghill, Chair
Senate Resources Committee

FROM: Representative Mike Navarre

SUBJECT: House Bill 16, Park User Fees

As you are aware, HB 16 is currently awaiting action in the Senate Resources Committee. This measure is designed to relieve some of the financial burden on a consistently underfunded Division of Parks, thus allowing better maintenance and supervision of existing facilities, and improvement and expansion of the system to better serve all park users.

I feel it is extremely important that this measure become law this session, and would sincerely appreciate your assistance in scheduling this measure for a hearing by the committee as soon as possible.

Thanks very much for your efforts.

SENATE COMMITTEE REPORT

FURTHER: FINANCE

4/24/87

DATE TURNED INTO OFFICE _____

Mr. President:

RESOURCES _____ Committee considered CSHB 16(Fin) am

levy and collection of fees for the use of state park system facilities; relating to contracts for services and facilities in the state park system;efd.

and recommended:

[] replace with CS FOR CSHB 16 (res)) [] same title
[] or adopt _____ CS FOR _____) [] new title

[] attached amendment(s) and

[] do pass

[] do not pass

[] no recommendation

[] individual recommendations

[] further referral to _____

[] letter of intent adopted _____

Finance Impact of Res.

Committee [] attached or [] adopted fiscal note(s)

[] new [] updated or [] previous
[] zero [] fiscal impact

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

[Handwritten signatures]

[Handwritten signature]
Chairman signature and recommendation

[] Committee Backup Attached

Alaska State Legislature

Senate Resources Committee



Sen. John B. (Jack) Coghill, Chairman
Sen. Paul Fischer, Vice-Chairman
Sen. Lloyd Jones
Sen. Atliiss Sturgulewski
Sen. Jim Duncan
Sen. Fred Zharoff
Sen. Dick Ellason

Box V
Juneau, Alaska 99811
(907) 465-4907

TO: SENATE RESOURCES COMMITTEE
FROM: COMMITTEE STAFF
DATE: MAY 8, 1987
RE: SCSCSHB 16 (CRA) "Fees for use of state park system"

The Senate CS for CS for HB 16 (CRA) would allow the Department of Natural Resources to charge fees in a state park unit.

The bill would also spell out the procedure that the state may enter into for awarding concession contracts to provide services or construct facilities in a state park unit.

CONTENTS OF FOLDER

1. Staff memo and Contents
2. Fiscal Note from DNR
3. Photos of various Parks
4. Letter to Senator Sturgulewski from Neil Johannsen
5. Letters of support for park fees
6. Attorney General's Opinion and statutes and regulations

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST: _____
 Revision Date: March 4, 1987
 Title: Fees for use of state park facilities
 Sponsor: House Resources
 Requestor: House Finance

Bill Version: CSHB 16(Fin)
 Publish Date: HOUSE 3/6/87

Agency Affected: Natural Resources
 BRU: Park Management

Components: _____

FY EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES		26	30	34	34	34
TRAVEL		18	8	3	3	3
CONTRACTUAL		20	15	10	10	10
SUPPLIES		3	2	2	2	2
EQUIPMENT		27	20	10	10	10
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		96	75	59	59	59

CAPITAL						
---------	--	--	--	--	--	--

REVENUE		30	170	334	490	550
---------	--	----	-----	-----	-----	-----

FUNDING: (Thousands of Dollars)

GENERAL FUND		96	75	59	59	59
FEDERAL FUNDS						
OTHER						
TOTAL		96	75	59	59	59

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY		1	2	1	1	1

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Neil Johannsen
 Division: Parks and Outdoor Recreation

Phone: 465-2400
 Date: 2-3-87

Approved by Commissioner: C. Johnson for JMB
 Agency: Natural Resources

Date: 3/5/87

- Distribution (by preparer):
- Legislative Finance
 - Legislative Sponsor
 - Requestor
 - Office of Management and Budget
 - Impacted Agency(ies)
 - Senate Secretary

RECEIVED

MAR 05 1987

Costs
FY88

personnel services \$28.0

- *increase existing Natural Res. Manager I position in charge of concessions and fees from 6 months to 12 months \$25.8
- *hire one seasonal Alaska Conservation Corps staff person or support a volunteer college intern through a \$15/day stipend cost is \$2.2

Travel \$18.0

- *statewide regulations hearings to adopt fee structure \$8.0
- *meetings & hearings on proposed concessions \$5.0
- *field inspections of concessions \$5.0

Contractual \$20.0

- *establish campground fee registration and payment systems at 20 campgrounds. \$1,000 per campground as follows:
 - signs \$200
 - Iron Ranger fee device \$350
 - lock device \$ 50
 - labor to install \$400

Supplies and Materials \$3.0

- *purchase of printed payment envelopes \$2.5
- *accounting and reporting forms \$0.5

Equipment \$27.0

- *install fee box device in park ranger vehicles to transport fees to park offices. Prevents tampering with funds 225 vehicles at \$680 per vehicle \$17.0
- *Safes and lock boxes for 10 area offices. Estimated cost is \$1.0 per office. \$10.0

Revenues
FY88

Fees:

- Commercial Use Permits \$6.0 (120 at \$50 each)
- Public Cabins \$5.0 (1986 level of revenues)

Concessions (Franchise Fee Payments)

- Potter Section House \$10.5 (3% of \$350.0 gross receipts)
- Rika's Roadhouse \$8.5 (3% of \$280.0 gross receipts)

estimated total revenue for FY88 is \$30.0

Future Revenues (campground fees are added and additional concessions and commercial use permits are established)

FY 89	\$170	FY 91	\$490
FY 90	\$334	FY 92	\$550

**STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE**

Bill Version: CSHB 16 (SC&RA)
Publish Date: _____

REQUEST: _____

Revision Date: 5/5/87
Title: Fees for use of State Park facilities

Agency Affected: Natural Resources
BRU: Park Management

Sponsor: Rep. Navarre
Requestor: Senate Resources

Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES		42.0	42.0	42.0	42.0	42.0
TRAVEL		8.0	5.0	2.0	2.0	2.0
CONTRACTUAL		20.0	15.0	8.0	8.0	8.0
SUPPLIES		3.0	3.0	2.0	2.0	2.0
EQUIPMENT		23.0	10.0	5.0	5.0	5.0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		96.0	75.0	59.0	59.0	59.0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE		30.0	170.0	334.0	400.0	550.0
---------	--	------	-------	-------	-------	-------

FUNDING: (Thousands of Dollars)

GENERAL FUND		96.0	75.0	59.0	59.0	59.0
FEDERAL FUNDS						
OTHER						
TOTAL		96.0	75.0	59.0	59.0	59.0

POSITIONS:

FULL-TIME		1	1	1	1	1
PART-TIME		1	1	1	1	1
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

See attachment. Fiscal note provides for program management, fiscal control, installation of iron rangers, field management and public involvement.

Prepared by: Neil Johannsen Phone: 465-2400
Division: Parks and Outdoor recreation Date: 5/5/87

Approved by Commissioner: [Signature] Date: _____
Agency: Natural Resources

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)
Senate Secretary

<u>PERSONAL SERVICES</u>	<u>FY 88</u>	<u>FY 89</u>	<u>FY 90</u>	<u>FY 91</u>	<u>FY 92</u>
Economic Program Manager, HRO 11	4 mos. @ 4.3 = 17.2	17.2	17.2	17.2	17.2
Accounting Technician	8 mos. @ 3.1 = 24.8	24.8	24.8	24.8	24.8
		42.0	42.0	42.0	42.0
TRAVEL					
Statewide Regulation Hearings	8.0	5.0	2.0	2.0	2.0
Statewide Concession Hearings					
Implementation of Fee Program					
Permit Reviews/Compliance					
Cabin Program Management					
CONTRACTURAL					
Fee Program Implementation	20.0	15.0	8.0	8.0	8.0
\$1,000 per camp loop for signs, iron rangers, lock system, safes, installation, repair/ replacement, public notices, vehicle mileage					
SUPPLIES					
Fee envelopes, accounting and office supplies	3.0	3.0	2.0	2.0	2.0
EQUIPMENT					
Iron Rangers, Safes, vehicle outfitting	23.0	10.0	5.0	5.0	5.0

Revenues
 FY88

Fees:

Commercial Use Permits \$6.0 (120 at \$50 each)
 Public Cabins \$5.0 (1906 level of revenues)

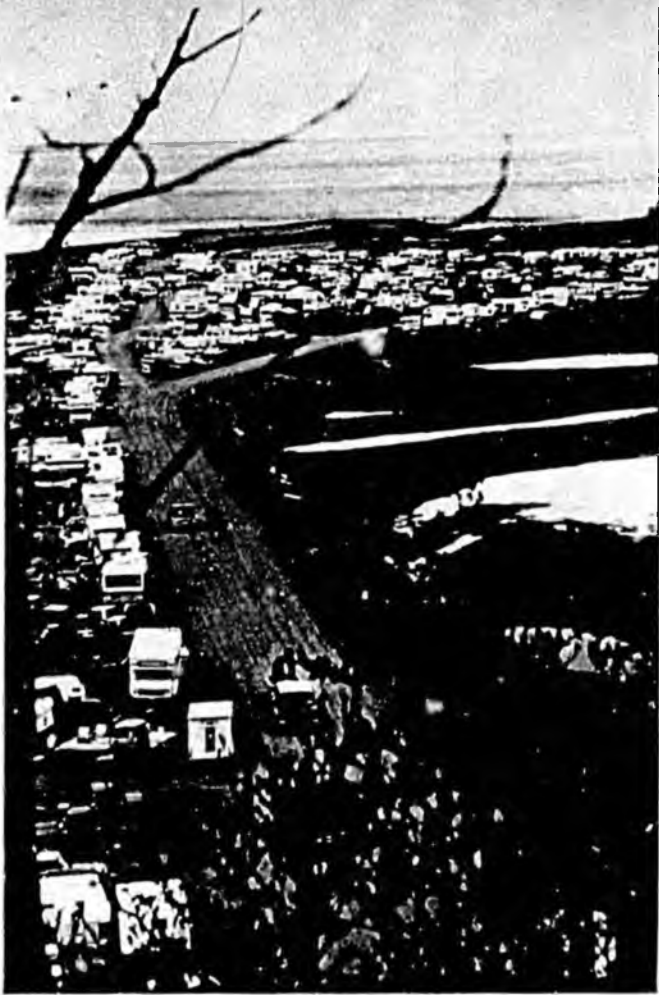
Concessions (Franchise Fee Payments)

Potter Section House \$10.5 (3% of \$350.0 gross receipts)
 Rika's Roadhouse \$0.5 (3% of \$200.0 gross receipts)

estimated total revenue for FY88 is \$30.0

Future Revenues (campground fees are added and additional
 concessions and commercial use permits are established)

FY 89 \$170 FY 91 \$490
 FY 90 \$334 FY 92 \$550



Deep Creek State Park on the Kenai Peninsula is the most popular campground in the state. Upwards of 400 motorhomes, campers and travel trailers jam this facility all summer.

The Montana Creek State Park facility near Willow has experienced heavy crowding since its construction in 1985.





Totem Bight State Historic Park in Ketchikan receives heavy use from cruise ship passengers.

Mirror Lake State Park, near Chugiak, is always heavily used during summer months.





The newly restored turn-of-the-century roadhouse within Big Delta State Historic Park, will be operated by a private company. Private sector tourism jobs will result from this preservation project.



Restroom at McHugh Chugach State Park. Typical conditions following summer weekend use.



Vandalism, theft and occasional arson, to the state park system. Remains of a \$20,000 restroom burned in Chugach State Park in Spring of 1986.

STEVE COWPER, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF PARKS AND OUTDOOR RECREATION

3601 C STREET
ANCHORAGE, ALASKA 99503
PHONE: (907) 561-2020

MAILING ADDRESS
PO BOX 7001
ANCHORAGE, ALASKA 99510

December 1, 1986

Honorable Arliss Sturgulewski
Alaska State Senate
2957 Sheldon Jackson
Anchorage, Alaska 99508

Dear Senator *Sturgulewski*

Each year, prior to the legislative session, I provide each legislator with a short summary of state park activities. I've also enclosed a few snapshots taken in our parks, recreation areas and historic sites this summer.

The 1986 fiscal year was our busiest ever, with 6.4 million visits to our 118 unit state park system; 1.5 million of these visits were by non-resident tourists. Use of the park system was up 14 percent over 1985. Our surveys show that Alaskans pursue outdoor recreation at twice the national average. This, combined with an ever-growing tourism industry, as well as new recreation facilities being provided, has continued to increase use of our accessible state park facilities: campgrounds, picnic areas, fishing access sites, visitor centers and historic sites.

Several new park facilities were built this year. A new visitor center was completed in Chugach State Park, near the Potter Marsh. Also in Chugach State Park, a new self-guiding nature trail was constructed adjacent to the Eagle River Visitor Center. Two new recreation areas were constructed in the Matanuska Valley area: the Kepler-Bradley Lakes State Recreation Area was developed as was a refurbished and expanded park at Big Lake. Substantial work was finished on the Delta State Historic Park and a new campground on Tok River will be completed this Spring. The CIP budget for building new recreation facilities in FY'87 is about \$250,000.

Three years ago, anticipating declining state revenues and budget cuts, we embarked on major strategies to stretch our services. One was our VIP program -- Volunteers-in-Parks (see enclosed folder). In 1986, we recruited 483 volunteers who donated 56,000 hours of free labor as campground hosts, trail crews and visitor center staff. The other is our use of inmate, prison labor. We pay inmates \$5.00 per day and prisoners worked 23,000 hours this past year in park maintenance, light construction and vandalism repairs. A new economic strategy we are now using is non-profit corporations. We helped form three

December 1, 1986

Page 2 -

such organizations this year to stretch our ability to serve people and operate parks during lean times. We also utilize the Alaska National Guard's engineering battalions to build recreation facilities as part of their training exercises.

To utilize these economic strategies will require paid professional staff and unfortunately deep budget cuts are threatening some of these programs. Without our park rangers to recruit, train, supervise volunteers and inmates, many program gains will be lost. The division spends 82 percent of its budget on field operations. Since July 1, we've been cut 25 percent and with additional reductions ahead, we are forced to plan the closures of some recreation areas beginning in the Spring of 1987. Alaskans and our tourist visitors may find several locked gates next year.

We are optimistic over the increasing interest of lawmakers in the tourism industry; we hope that this interest includes keeping our parks, recreation areas and historic sites open for visitors. We appreciate your interest in state parks and if I can provide additional information, please contact me at 762-4505.

Sincerely,



Neil C. Johannsen
Director

enclosures

NCJ:clk

Arvis,

We need a campground fee bill to raise revenues. Can you help?

NEIL



SUSITNA RECREATIONAL CAMPS, INC.
MONTANA CREEK CAMPGROUND.
MILE 96.5 PARKS HWY.

816 OCEANVIEW DRIVE ANCHORAGE, ALASKA 99515

(907) 345-5764

MAR 9 March 4, 1987
1987

Senator Jack Coghill,
P.O. Box V
Juneau, Ak 99811

Dear Senator Coghill,

I am writing regarding CS HB 16. I support the overall concept of the bill; however, there are some provisions in the bill which I find objectionable. I hope that when this bill reaches the Senate you will consider those objections regarding day use of state parks and recreation facilities without charge. It is my understanding that the underlying principle behind charging user fees is to help offset the cost of maintaining our state parks. Picnickers, fishermen, hikers, etc., who use the facilities for a day are as likely as an overnight camper to leave litter or require cleanup of some type. It is not logical, fair, or equitable to charge user fees only to overnight campers, and I believe that doing so will leave the State open to some type of litigation.

Also, in the past, technically day use parks (no camp spots, no tables, no tent pads) have been used as overnight camp sites by self-contained motorhomes. Those sites have charged no user fees and have effectively made the State a competitor to private camp enterprises who charge user fees. A good example is our own campground still under development at Montana Creek, Mile 96.5 of the Parks Highway. Upon learning that we did charge user fees, many motorhomes would cross the creek to park without charge in the State's "Montana Creek Recreational Site." If day parks are not to charge user fees, then some mechanism should be instituted that restricts use of these areas to day use only.

It is in the best interest of the State and its citizens that good legislation be passed. We feel that the above points are important for you to consider before voting. Please feel free to contact me if I can answer any further questions or be of any assistance. I would also appreciate it if you would let me know your position on the above points. Thank you for your consideration.

Sincerely,

Joe B. Mathis
Vice President

PRESIDENT'S LETTER



JOHN LITTEN

With the 1986 AVA Convention still fresh in our minds, I would like to take this opportunity to applaud and personally thank Holland America Line, Westours, Convention Chairmen Tom Tougas, Dale Fox and our office staff for putting together the most educational, prosperous and enjoyable convention in AVA history.

The AVA Board of Directors can be proud of our past year's accomplishments. They are a result of many intense meeting hours and represent a basic refinement of our policies and goals. A new slate of officers has been elected to work on the coming year and several committees are already at work. As your newly-elected president I am certainly looking forward to the challenge of the year ahead and will work to make 1987 a prosperous year for everyone in tourism.

Our government relations team has already gotten a running start on one of our most important goals this year which is to improve the level of funding for the Division of Tourism. Part of our program to achieve this goal will be to rally the tourism advocates in the Alaska House and Senate and remind our newly elected state legislators of their campaign promises to support an \$8.2 million budget for the Division of Tourism.

Newly elected Governor Steve Cowper told AVA delegates at this year's convention that he also supports \$8.2 million for DOT. He wants economic growth to return to Alaska and knows tourism will only grow if properly nurtured and for that reason has pledged 100% support for our funding request.

It will be imperative that each and every Alaskan member of AVA take a leadership role in the grassroots support effort in the coming session. Your representatives and legislators are not facing an easy job. They need to know you support their efforts on behalf of tourism and that tourism is alive and well and working in and for Alaska.

CALENDAR OF EVENTS

AVA Board Meeting Dates:
November 21, 1986 Seattle

AVAMC Meeting Dates:
December 2, 1986 Anchorage, Alaska
March 3, 1987 Juneau, Alaska
May 5, 1987 Fairbanks, Alaska
August 4, 1987 Seattle, Washington

Other Events:
December 5, 1986 — Anchorage AVA Legislative Reception, Clarion Hotel, 6:30 p.m.
December 16, 1986 — Pacific NW Chapter Christmas Party, Seattle Airport Hilton, 6 p.m.
February 6, 1987 — AVA Travel Auction — Details to come.

ALL AVA MEETINGS ARE OPEN TO THE PUBLIC.

Membership Passes Four Out of Five Resolutions

This year the Resolutions Committee, chaired by Capt. Jim Binkley, submitted five resolutions to the membership for action. After discussion by the membership four of the five were passed.

Resolutions passed by the membership form the basis of the association's future actions. Given below is a summary of the resolutions passed at this year's Annual Convention:

Resolution Commending the Staff of the Nieuw Amsterdam

Now, therefore be it resolved that AVA in this membership gathering extends its thanks and appreciation to the staff of the Nieuw Amsterdam and the staff of Holland America Line, Westours Inc. for a truly outstanding conference.

Resolution Supporting Authorization of Fees for Use of State Campgrounds and Public Use Cabins

Now, therefore be it resolved, that the Alaska Visitors Association requests that the Alaska Legislature authorize the levying of fees for the use of state campgrounds and public use cabins.

Resolution Supporting Maintenance Budget for State Parks

Now, therefore be it resolved that the Alaska Visitors Association supports a budget for the Division of Parks and Outdoor Recreation which allows for the adequate maintenance of our Alaska State Park System.

Resolution Supporting Relief for Placer Miners

Therefore be it resolved that the Alaska Visitors Association now appeals to all members of all political parties to join us in prevailing upon the new State of Alaska Administration and Legislature to promptly enact whatever legislation is needed to avert the impending calamity which now hovers over our Great State.



ALASKA VISITORS ASSOCIATION

P.O. Box 10-2220, Anchorage, AK 99510
(907) 276-6663

The official newsletter of the AVA is published monthly for AVA members. Copy deadline is the 15th of each month.

President John Litten	Vice-President/Marketing Ral T. West	Treasurer Bob Berto	Vice-President: Gov't Relations Bob Dindinger
Vice-Pres./Administration Gary Odle	Secretary Dennis Brandon	Executive Director Dale Fox	

Staff: Jeralyn Cox, Diane Wiseman, Roy Regalado, Kathy McKibben, Joe Dinneen
Newsletter Editor: Sara Juday

PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE FRANK

NAME: DALLAS E. SEARS

TITLE:

ADDRESS: 1660 PEGER ROAD

CITY: FAIRBANKS

PHONE: 474-0216

BILL NO: HB 16

SUBJECT: STATE PARK SYSTEM USE FEES/CONCESSIONS

MESSAGE: PLEASE DELETE WORD "THE" AFTER FEES ON LINE 29 PAGE 1. ALSO DELETE
ALL OF LINE 1 PAGE 2. MAKE EFFECTIVE DATE IMMEDIATELY. AS IT STANDS, ACTION
WOULD BE DELAYED ANOTHER FULL YEAR.

*****EOM/TM*****

ZIP: 99709

POMID: 07150743

DATE: 03/09/87

TIME: 15:07:43

LIONAME: FAIRBANKS LIO

COPIES: REPRESENTATIVES SENATORS

SUND

BOYER

DAVIS

KOPONEN

MILLER

BENNETT

COGHILL

FAHRENKAMP

*I've spoken
with SEN Coghill
about this & he will review it
closely for his committee*

PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE FRANK

NAME: JOY MCDUGALL

TITLE:

ADDRESS: 1009 GALENA

CITY: FAIRBANKS, ALASKA

PHONE: 474-0501

BILL NO:

SUBJECT: KUAC

MESSAGE: I SUPPORT KUAC. TELEVISION AND RADIO GIVES AN IMPORTANT
EDUCATIONAL ALTERNATIVE TO THE FAIRBANKS RESIDENTS. PLEASE DO ALL YOU CAN TO
KEEP KUAC FUNDED.

ZIP: 99709

EOM-FZ

POMID: 07151534

DATE: 03/09/87

TIME: 15:15:34

LIONAME: FAIRBANKS LIO

COPIES: REPRESENTATIVES SENATORS

BOYER

DAVIS

KOPONEN

MILLER

ADAMS

BROWN

GOLL

LARSON

POURCHOT

RIEGER

SWACKHAMMER

WALLIS

BENNETT

COGHILL

FAHRENKAMP

BINKLEY

DUNCAN

FISCHER

HENSLEY

UEHLING

ZHAROFF

MEMORANDUM

State of Alaska

TO: House Finance Committee
Attn: Eric Meyers

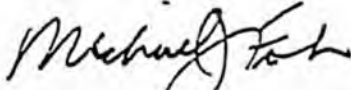
DATE: February 23, 1987

FILE NO:

TELEPHONE NO: 276-3550

THRU: Grace Berg Schaible
Attorney General

SUBJECT: CSHB No. 16



FROM: Michael J. Frank
Assistant Attorney General

This memorandum responds to your request for an outline of the existing authority the Department of Natural Resources, through the Division of Parks and Outdoor Recreation, ²/has to charge fees for use of park facilities and to contract for "concessions and rentals".

I. CONTRACTS FOR THE OPERATION OF "CONCESSIONS AND RENTALS".

Under AS 41.21.020 DNR "shall"

- (4) control, develop and maintain state parks and recreational areas;
- (5) provide for the care, control, supervision, development, . . . and maintenance of public recreational land, and make necessary arrangements, contracts or commitments for the improvement and development of land acquired under AS 41.21.010 - 41.21.040.
(Emphasis supplied.)

The foregoing statute was passed in 1959 (ch. 158 SLA 1959), as was AS 41.21.030. The latter statute reads in full:

All money received from the operation of parks and recreational facilities, including money from concessions, rentals, or donations shall be deposited in the general fund of the state.
(Emphasis supplied.)

1/ AS 41.21.040, passed as part of ch. 158 SLA 1959, gave the DNR commissioner authority to create a separate division in DNR to "perform functions relative to parks and recreational facilities specified in AS 41.21.010 - 41.21.040. . . ."

AS 41.21.020 and 41.21.030 have provided the legal authority to DNR to adopt the existing concession contract regulations (see attached) at 11 AAC 14.200 et seq. While the two statutes are certainly are not as clear in granting contracting authority as they might be, it seems obvious from them that the 1959 Legislature anticipated that there might be contractors operating concessions or rentals ^{2/} in State parks.

For your information I am also enclosing existing National Park Service "concession" contracting laws, 16 U.S.C. §§ 20 et seq., and regulations, 36 C.F.R. Part 51.

II. FEES.

Currently DNR only has express statutory authority to "establish and collect fees for guided tours through historical sites". AS 41.35.045 (1986 Michie Suppl.).

Prior to 1978, DNR did charge fees for entry into and use of a state park or campground. DNR did so via 11 AAC 12.310, a regulation which allowed the division of parks' director to set fees for use of a state park facility and which established an annual \$10.00 vehicle entrance fee to state parks.

In 1978, however, the Legislature nullified this regulation, in effect, by passing AS 28.10.411, governing motor vehicle registration (license tag) fees. Subsection (e) of AS 28.10.411 reads:

Notwithstanding any other provision of law, fees paid for registering a vehicle . . . shall include all fees required for entry and use of a state park or campground.

Since the "nullification" was in a motor vehicle registration statute, it's not exactly clear how broad the 1978 Legislature

2/ Neither the word "concessions" nor "rentals" is defined in AS 41.21. At common law "concession" was a term "ordinarily applied to the grant of specific privileges by a government". Black's Law Dictionary 361 (4th Ed. 1968). In the context of especially protected lands -- like parks -- the use of the word "concession" is very apt in that it implies that being allowed to operate a commercial venture on such lands is an extraordinary privilege to grant someone.

House Finance Committee
Attn: Eric Meyers

February 23, 1987
Page 3

intended AS 28.10.411(e) to be. If, for example, a backpacker had no vehicle registered in Alaska and walked into and used a state park campground, could the backpacker legally be charged a campground user fee?

In any event, the 1986 Legislature resolved any ambiguities, perhaps unintentionally, with the passage of AS 37.10.050(a). That statute prohibits a state agency from charging "for the provision of state services unless the charge is authorized by statute". Although it's not exactly clear what "state services" includes, it seems apparent that entrance fees at campgrounds and other comparable direct levies on park visitors are prohibited. A concessioner's sale of natural history books might, however, not be.

III. CONCLUSION

From an attorney-to-client standpoint, the existing statutes are in a sufficient muddle to make it difficult for our office to give unambiguous legal advice to DNR when contracting and fee questions arise. Thus, if the Committee should desire further help with the drafting of CSHB 16, our office would be eager to assist it.

MJF:amh

cc: Ron Lorensen, Esq.
Art Peterson, Esq.

of any default on the part of the contractor in observance or performance of any of the conditions or covenants of the contract is not a waiver of the forfeiture provision or any other provision of the contract. (Eff. 1/13/73, Reg. 44)

Authority: AS 41.21.020
AS 41.21.040

ARTICLE 2. CONCESSION CONTRACTS

Section

- 200. Concession contracts
- 210. Concession rental
- 220. Cancellation by the state
- 230. Improvements by concessionaire
- 240. Chattels and personal property
- 250. Removal of personal property
- 260. Renewal of concession contracts

11 AAC 14.200. CONCESSION CONTRACTS. A concession contract may be obtained under the procedure, and is subject to the conditions, in 11 AAC 14.010 through 11 AAC 14.130. The director may enter into a contract with a qualified person to construct, maintain, or operate a concession in a state park. A fee schedule established in a concession contract may be subject to annual review and approval by the director. (Eff. 8/1/68, Reg. 27; am 1/13/73, Reg. 44)

Authority: AS 41.21.020
AS 41.21.040

11 AAC 14.210. CONCESSION RENTAL. The rental charged by the division shall be one of the following:

- (1) percentage of the annual gross receipts;
- (2) guaranteed annual minimum or percentage of the gross, whichever may be the greater;
- (3) annual rental; or
- (4) a combination of the above. (Eff. 3/1/68, Reg. 27; am 1/13/73, Reg. 44)

Authority: AS 41.21.020

11 AAC 14.220. CANCELLATION BY THE STATE. If the concession is terminated or forfeited during its term, the state shall pay the concessionaire the value of his interest in fixed improvements unless the termination is due to

concessionaire default or request. The value of the interest is calculated by the straight-line depreciation method less any amount due the state at the time of contract termination. (Eff. 8/1/68, Reg. 27; am 1/13/73, Reg. 44)

Authority: AS 41.21.020

11 AAC 14.230. IMPROVEMENTS BY CONCESSIONAIRE. The concession contract may provide for the construction of fixed improvements or additions to real property. Each improvement or addition to real property shall become the property of the state without cost upon expiration of the contract. The cost of an improvement shall be the principal determinant of the length of the concession contract in order to insure the concessionaire a reasonable return on the original investment in the improvement during the term of the contract. (Eff. 3/1/68, Reg. 27; am 1/13/73, Reg. 44)

Authority: AS 41.21.020

11 AAC 14.240. CHATTELS AND PERSONAL PROPERTY. The concessionaire shall remove chattels and personal property within 30 days of the notification to vacate. If the personal property is not removed within 30 days the director may forfeit the property. (Eff. 1/13/73, Reg. 44)

Authority: AS 41.21.020
AS 41.21.040

11 AAC 14.250. REMOVAL OF PERSONAL PROPERTY. Nothing in these regulations may be construed to deny the concessionaire the right to sell, remove, or otherwise dispose of any personal property used in the conduct of the concession granted under these regulations. (Eff. 3/1/68, Reg. 27; am 1/13/73, Reg. 44)

Authority: AS 41.21.020

11 AAC 14.260. RENEWAL OF CONCESSION CONTRACTS. A concession contract for a term of less than 10 years may contain a clause granting the concessionaire the option to renew the contract for a period of time, not to exceed the original term of the contract. (Eff. 3/1/68, Reg. 27; am 1/13/73, Reg. 44)

Authority: AS 41.21.020

ARTICLE 3. GENERAL PROVISIONS

Section 300. Definitions

11 AAC 14.300. DEFINITIONS. In this chapter

(1) "director" means the director of the division of parks, Department of Natural Resources or his authorized agent;

(2) "division" means the division of parks within the Department of Natural Resources;

(3) "state park land or water facilities" means all lands and waters dedicated as public recreation lands and waters or facilities constructed or operated in conjunction with state parks and waters for the purpose of augmenting recreational opportunities. (Eff. 3/1/68, Reg. 27; am 1/13/73, Reg. 44)

Authority: AS 41.21.020

CHAPTER 15. TRAILS AND FOOTPATHS GRANT PROGRAM

Article

- 1. Jurisdiction and Procedure
- 2. General Provisions

ARTICLE 1. JURISDICTION AND PROCEDURE

Section

- 10. Jurisdiction
- 20. Qualification
- 30. Application
- 40. Allocation of funds
- 50. Project agreement

11 AAC 15.010. JURISDICTION. The division of parks will administer the trails and footpaths grant program established by AS 41.20.355. (Eff. 3/12/76, Reg. 57)

Authority: AS 41.21.020
AS 41.21.040
AS 41.21.364

11 AAC 15.020. QUALIFICATION. Applicants eligible under AS 41.21.364 may establish qualification for grants under this program by adopting a comprehensive trail plan that includes

(1) evidence of the applicant's legal authority to participate in the grant program and to operate and maintain recreation facilities;

(2) a summary of all trails needed during the coming five-year period, a forecast of all funding needs, and a ranking of projects described in the order of the applicant's priorities;

(3) a five-year schedule of trail acquisition, development, and maintenance, which reflects priorities based on need and considers the extent of funding available under other federal, state, and local aid programs and donations of rights-of-way, easements, and volunteer labor;

(4) evidence of citizen input in the preparation of the applicant's comprehensive trail plan;

(5) evidence of coordination between this plan and the long-range program for local services

Cross References

Administration of real estate acquired by United States in payment of debts arising under internal revenue laws, see section 7506 of Title 26, Internal Revenue Code.
Detachment of real estate, see section 6311 et seq. of Title 26.
Purchase of lands sold on execution by United States, see section 3715 of Title 31, Money and Finance.

Notes of Decisions

Property transferred for payment of debts
Sale and disposal of transferred property 2

1. Property transferred for payment of debts

There can be no doubt that this section regulating the duties of former Solicitor had a reference to existing laws in some of the States, which authorize the debtor to set off his real estate on execution, and in other cases where he surrenders all his property to the United States on which he is released, but all the provisions are not limited to these cases and some of them are general and apply to cases of "trusts created for the benefit of the United States in payment of debts due them". U.S. v. Lane, C.C. Ind. 1844, 3 McLean, 365, Fed. Cas. No. 15,552.

2. Sale and disposal of transferred property

The General Counsel [formerly the Solicitor of the Treasury] by virtue of this section and former section 302 of this title, had charge of, and, with the approval of the Secretary of the Treasury, power to rent or sell, lands acquired in satisfaction of judgments on bonds of internal revenue collectors. 1878, 16 Op. Atty. Gen. 144.

There is no imaginable reason why a trustee having power to sell lands should not have power to sell movables and incorporeal rights, and the policy of this section demands it; at any rate, the General Counsel [formerly the Solicitor of the Treasury] is charged with the administration of said trusts and he may do, therefore, under this section, whatever any other trustee would be allowed to do in a court of chancery. 1842, 4 Op. Atty. Gen. 135.

§ 302. Repealed. Oct. 31, 1951, c. 654, § 1(95), 65 Stat. 705

Historical Note

Section, U.S. § 7749, related to the renting or selling of unproductive lands, or other property of the United States acquired under judicial process or otherwise in the collection of debts. See sections 483 and 484 of this title.

§ 303. Repealed. Aug. 5, 1947, c. 493, § 2, 61 Stat. 774

Historical Note

Section, Acts July 28, 1892, c. 316, 27 Stat. 321, May 29, 1928, c. 901, § 1(29), 45 Stat. 988, related to lease of property not required for public use by Secretary of Army. See section 2667 of Title 10, Armed Forces.

§ 303a. Repealed. Oct. 31, 1951, c. 654, § 1(96), 65 Stat. 705

Historical Note

Section, Act Mar. 1, 1879, c. 182, § 1, 20 Stat. 183, related to leasing, by the Secretary of the Treasury, of unoccupied and unproductive property of the United States under his control and annual reports thereon. See sections 483, 484 and 492 of this title. The provision requiring the submission of annual reports had been previously repealed by Act Aug. 7, 1946, c. 770, § 1(49), 60 Stat. 1001.

§ 303b. Lease of buildings by Government; money consideration

On and after June 30, 1932, except as otherwise specifically provided by law, the leasing of buildings and property...

a money consideration only, and there shall not be included in the lease any provision for the alteration, repair, or improvement of such buildings or properties as a part of the consideration for the rental to be paid for the use and occupation of the same. The moneys derived from such rentals shall be deposited and covered into the Treasury as miscellaneous receipts.

Act, 1932, c. 314, § 321, 47 Stat. 412.)

Cross References

- Lease of this section to--
1. Lease housing and veterans' housing leases by Secretary of Housing and Urban Development, see section 1514 of Title 42, The Public Health and Welfare.
2. Lands and improvements administered by National Park Service, privileges, leases, etc., for visitor facilities, see section 20f of Title 16, Conservation.
3. Lease of real or personal property by secretaries of military departments, see section 2667 of Title 10, Armed Forces.
4. Leases for maintenance and repairs by grantees notwithstanding this section--
a. Park visitors' accommodations, see section 301e of this title.
b. Veterans' Administration leases for assistance to medical schools, see section 5070 of Title 38, Veterans' Benefits.
c. Veterans' Administration leases in general, see section 5022 of Title 38.
d. Union Station Building leases for model intermodal transportation terminal, see section 1653 of Title 42, Transportation.

Library References

United States ©-58(1)
U.S. United States §§ 75 to 79.

Notes of Decisions

- Collection of sums for alteration, repair, or improvements
Concession contract between General Services Administration and Guest Services, Inc., included clause requiring that percentage of Guest Services, Inc. gross profits be credited to receive used for replacement of government property, did not violate this section, in light of historically unique nature of agreement. 1985-64 Op. Comp. Gen. 217.

§ 303c. Maintenance and repair of Government Improvements under concession contracts

Privileges, leases, and permits granted by the Secretary of the Interior for the use of land for the accommodation of park visitors, pursuant to section 16 of Title 16, may provide for the maintenance and repair of Government improvements by the grantee notwithstanding the provisions of section 303 of this title, or any other provision of law.

P.L. 87-608, Aug. 21, 1962, 76 Stat. 4053

Library References

United States ©-56, 57
U.S. United States §§ 72, 74.

§ 304. Disposal of lands acquired by devise

The General Services Administration is authorized to take custody, for disposal as excess property under the Federal Property and Administrative Services Act of 1949, as amended [40 U.S.C.A. § 471 et seq.], of such lands as have been or may hereafter be acquired by the United States by devise.

Historical Note

Legislative History. For legislative history and purpose of Pub.L. 90-209, see 2150.

§ 19l. Tax exemptions; contributions toward costs of local government; contributions, gifts, or transfers to or for use of United States

The Foundation and any income or property received or owned by it, and all transactions relating to such income or property, shall be exempt from all Federal, State, and local taxation with respect thereto. The Foundation may, however, in the discretion of its directors, contribute toward the costs of local government in amounts not in excess of those which it would be obligated to pay such government if it were not exempt from taxation by virtue of the foregoing or by virtue of its being a charitable and nonprofit corporation and may agree so to contribute with respect to property transferred to it and the income derived therefrom if such agreement is a condition of the transfer. Contributions, gifts, and other transfers made to or for the use of the Foundation shall be regarded as contributions, gifts, or transfers to or for the use of the United States.

Pub.L. 90-209, § 8, Dec. 18, 1967, 81 Stat. 657.

Historical Note

Legislative History. For legislative history and purpose of Pub.L. 90-209, see 2150.

§ 19m. Liability of United States

The United States shall not be liable for any debts, defaults, acts, or omissions of the Foundation.

Pub.L. 90-209, § 9, Dec. 18, 1967, 81 Stat. 657.

Historical Note

Legislative History. For legislative history and purpose of Pub.L. 90-209, see 2150.

§ 19n. Annual reports to Congress

The Foundation shall, as soon as practicable after the end of each fiscal year, transmit to Congress an annual report of its proceedings and activities, including a full and complete statement of its receipts, expenditures, and investments.

Pub.L. 90-209, § 10, Dec. 18, 1967, 81 Stat. 657.

Historical Note

Legislative History. For legislative history and purpose of Pub.L. 90-209, see 2150.

CONCESSIONS FOR ACCOMMODATIONS, FACILITIES, AND SERVICES IN AREAS ADMINISTERED BY NATIONAL PARK SERVICE

§ 20. Congressional findings and statement of purpose

In furtherance of sections 1 and 2 to 4 of this title, as amended, which directs the Secretary of the Interior to administer national park system areas in accordance with the fundamental purpose of preserving their scenery, wildlife, natural and historic objects, and providing for their enjoyment in a manner that will leave them unimpaired for the enjoyment of future generations, the Congress hereby finds that the preservation of park values requires that such public accommodations, facilities, and services as have to be provided within these areas should be provided only under carefully controlled safeguards against unregulated and indiscriminate use, so that the heavy visitation will not unduly impair these values and so that development of such facilities can best be limited to locations where the least damage to park values will be caused. It is the policy of the Congress that such development shall be limited to those that are necessary and appropriate for public use and enjoyment of the national park area in which they are located and that are consistent to the highest practicable degree with the preservation and conservation of the areas.

Pub.L. 89-249, § 1, Oct. 9, 1965, 79 Stat. 989.

Historical Note

Legislative History. For legislative history and purpose of Pub.L. 89-249, see 3159.

Cross References

Uniform application of sections 20 to 20g of this title to all areas of national park system when not in conflict with specific provisions applicable to individual section 10(a) of this title.

Library References

Wood and Forests

U.S. Woods and Forests, M.D. 17

§ 20a. Authority of Secretary of Interior to encourage concessioners

Subject to the findings and policy stated in section 20 of this title, the Secretary of the Interior shall take such action as may be appropriate to encourage and enable private persons and corporations (hereinafter referred to as "concessioners") to provide and operate facilities and services which he deems desirable for the accommodation of visitors in areas administered by the National Park Service.

Pub.L. 89-249, § 2, Oct. 9, 1965, 79 Stat. 989.

Historical Note

Legislative History. For legislative history and purpose of Publ. L. 89-219, see 1965 U.S. Code Cong. and Adm. News, p. 3159.

Notes of Decisions

Bus. tours or sightseeing services—

Generally 3

Certificate of convenience and necessity 1

Monopoly 5

Engaging in or selling business without permit 6

Exclusiveness of Secretary's authority 2

Responsibility for providing facilities and services 1

1. Responsibility for providing facilities and services

The Secretary is responsible for maintaining national parks and for providing facilities and services for their public enjoyment through concessionaires or otherwise. *Universal Interpretive Shuttle Corp. v. Washington Metropolitan Area Transit Commission*, 1954 Cal 1968, 89 S. Ct. 351, 393 U.S. 186, 21 L. Ed. 2d 310.

2. Exclusiveness of Secretary's authority

Congress, in creating Washington Metropolitan Area Transit Commission, did not disturb exclusivity of control by Secretary over Capitol Mall either by extinguishing entirely his power to contract for transportation services or by burdening the concessionaire with two separate agencies engaged in regulating precisely some aspects of its conduct. *Universal Interpretive Shuttle Corp. v. Washington Metropolitan Area Transit Commission*, 1954 Cal 1968, 89 S. Ct. 351, 393 U.S. 186, 21 L. Ed. 2d 310.

3. Bus tours or sightseeing services—
Generally

Secretary was free to enter contract with concessionaire to conduct bus tours on Capitol Mall, and is free to exclude traffic from Mall altogether or to exclude any carrier licensed or instructed by Washington Metropolitan Area Transit Commission. *Universal Interpretive Shuttle Corp. v. Washington Metropolitan Area Transit Commission*, 1954 Cal 1968, 89 S. Ct. 351, 393 U.S. 186, 21 L. Ed. 2d 310.

The Shuttle Corp. v. Washington Metropolitan Area Transit Commission, 1954 Cal 1968, 89 S. Ct. 351, 393 U.S. 186, 21 L. Ed. 2d 310.

4. — Certificate of convenience and necessity

Concessionaire under contract with Secretary to conduct bus tours of Capitol Mall could operate without certificate of convenience and necessity from Washington Metropolitan Area Transit Commission. *Universal Interpretive Shuttle Corp. v. Washington Metropolitan Area Transit Commission*, 1954 Cal 1968, 89 S. Ct. 351, 393 U.S. 186, 21 L. Ed. 2d 310.

5. — Monopoly

Even if transit system's franchise would protect mass transportation on Capitol Mall from unrestricted competition, and even if provision giving exclusive transportation rights protected charter or sightseeing services, it did not follow that system had monopoly over sightseeing on Capitol Mall. *Universal Interpretive Shuttle Corp. v. Washington Metropolitan Area Transit Commission*, 1954 Cal 1968, 89 S. Ct. 351, 393 U.S. 186, 21 L. Ed. 2d 310.

Transit system's franchise did not give it absolute monopoly of sightseeing service on Capitol Mall and did not protect system against competition from concessionaire acting under contract with Secretary. *Id.*

6. Engaging in or selling business without permit

Secretary in promulgating regulation prohibiting engaging in or selling business in park areas except in accordance with permit or contract with United States does not exceed statutory authority granted to him. *U.S. v. Carter*, 100 Ariz 1952, 329 F. Supp. 490.

§ 20b. Protection of concessioner's investment—Contract terms; compensation for loss of investment

(a) Without limitation of the foregoing, the Secretary may include in contracts for the providing of facilities and services such terms and conditions as, in his judgment, are required to assure the concessioner

of adequate protection against loss of investment in structures, fixtures, improvements, equipment, supplies, and other tangible property provided by him for the purposes of the contract (but not against loss of anticipated profits) resulting from discretionary acts, policies, or decisions of the Secretary occurring after the contract has become effective under which acts, policies, or decisions the concessioner's authority to conduct some or all of his authorized operations under the contract ceases or his structures, fixtures, and improvements, or any of them, are required to be transferred to another party or to be abandoned, removed, or demolished. Such terms and conditions may include an obligation of the United States to compensate the concessioner for loss of investment, as aforesaid.

Profit commensurate with capital invested and obligations assumed

(b) The Secretary shall exercise his authority in a manner consistent with a reasonable opportunity for the concessioner to realize a profit on his operation as a whole commensurate with the capital invested and the obligations assumed.

Reasonableness of concessioner's rates and charges

(c) The reasonableness of a concessioner's rates and charges to the public shall, unless otherwise provided in the contract, be judged primarily by comparison with those current for facilities and services of comparable character under similar conditions, with due consideration for length of season, provision for peakloads, average percentage of occupancy, accessibility, availability and costs of labor and materials, type of patronage, and other factors deemed significant by the Secretary.

Determination of franchise fees; reconsideration every five years or oftener

(d) Franchise fees, however stated, shall be determined upon consideration of the probable value to the concessioner of the privileges granted by the particular contract or permit involved. Such value is the opportunity for net profit in relation to both gross receipts and capital invested. Consideration of revenue to the United States shall be subordinate to the objectives of protecting and preserving the area and of providing adequate and appropriate services for visitors at reasonable rates. Appropriate provisions shall be made for reconsideration of franchise fees at least every five years unless the contract is for a lesser period of time.

Pub. L. 89-219, § 3, Oct. 9, 1965, 79 Stat. 969.

Historical Note

Legislative History. For legislative history and purpose of Publ. L. 89-219, see 1965 U.S. Code Cong. and Adm. News, p. 3159.

§ 20c. New or additional services; preferential rights; operations by single concessioner

The Secretary may authorize the operation of all accommodations, facilities, and services for visitors, or of all such accommodations, facilities, and services of generally similar character, in each area, or portion thereof, administered by the National Park Service by one responsible concessioner and may grant to such concessioner a preferential right to provide such new or additional accommodations, facilities, or services as the Secretary may consider necessary or desirable for the accommodation and convenience of the public. The Secretary may, in his discretion, grant extensions, renewals, or new contracts to present concessioners, other than the concessioner holding a preferential right, for operations substantially similar in character and extent to those authorized by their current contracts or permits.

Pub.L. 89-249, § 4, Oct. 9, 1965, 79 Stat. 970.

Historical Note

Legislative History. For legislative history and purpose of Pub.L. 89-249, see 1965 U.S. Code Cong. and Adm. News, p. 3189.

§ 20d. Renewal preference for satisfactory performance; extensions; new contracts; public notice

The Secretary shall encourage continuity of operation and facilities and services by giving preference in the renewal of contracts or permits and in the negotiation of new contracts or permits to the concessioners who have performed their obligations under prior contracts or permits to the satisfaction of the Secretary. To this end, the Secretary, at any time in his discretion, may extend or renew a contract or permit, or may grant a new contract or permit to the same concessioner upon the termination or surrender before expiration of a prior contract or permit. Before doing so, however, and before granting extensions, renewals or new contracts pursuant to the last sentence of section 20c of this title, the Secretary shall give reasonable public notice of his intention so to do and shall consider and evaluate all proposals received as a result thereof.

Pub.L. 89-249, § 5, Oct. 9, 1965, 79 Stat. 970.

Historical Note

Legislative History. For legislative history and purpose of Pub.L. 89-249, see 1965 U.S. Code Cong. and Adm. News, p. 3189.

§ 20e. Concessioner's possessory interest in concession property; limitations; compensation for taking; determination of just compensation

A concessioner who has heretofore acquired or constructed or who hereafter acquires or constructs, pursuant to a contract and with the

approval of the Secretary, any structure, fixture, or improvement upon land owned by the United States within an area administered by the National Park Service shall have a possessory interest therein, which shall consist of all incidents of ownership except legal title, and except as hereinafter provided, which title shall be vested in the United States. Such possessory interest shall not be construed to include or imply any authority, privilege, or right to operate or engage in any business or other activity, and the use or enjoyment of any structure, fixture, or improvement in which the concessioner has a possessory interest shall be wholly subject to the applicable provisions of the contract and of laws and regulations relating to the area. The said possessory interest shall not be extinguished by the expiration or other termination of the contract and may not be taken for public use without just compensation. The said possessory interest may be assigned, transferred, encumbered, or relinquished. Unless otherwise provided by agreement of the parties, just compensation shall be an amount equal to the sound value of such structure, fixture, or improvement at the time of taking by the United States determined upon the basis of reconstruction cost less depreciation evidenced by its condition and prospective serviceability in comparison with a new unit of like kind, but not to exceed fair market value. The provisions of this section shall not apply to concessioners whose current contracts do not include recognition of a possessory interest, unless in a particular case the Secretary determines that equitable considerations warrant recognition of such interest.

Pub.L. 89-249, § 6, Oct. 9, 1965, 79 Stat. 970.

Historical Note

Legislative History. For legislative history and purpose of Pub.L. 89-249, see 1965 U.S. Code Cong. and Adm. News, p. 3189.

§ 20f. Use of non-monetary consideration in leases of government property

The provisions of section 303b of Title 40, relating to the leasing of buildings and properties of the United States, shall not apply to privileges, leases, permits, and contracts granted by the Secretary of the Interior for the use of lands and improvements thereon, in areas administered by the National Park Service, for the purpose of providing accommodations, facilities, and services for visitors thereto, pursuant to sections 1 and 2 to 4 of this title, as amended, or sections 461 to 467 of this title, as amended.

Pub.L. 89-249, § 7, Oct. 9, 1965, 79 Stat. 971.

Historical Note

Legislative History. For legislative history and purpose of Pub.L. 89-249, see 1965 U.S. Code Cong. and Adm. News, p. 3189.

§ 20g. Record keeping; audit and examination; access to books and records

Each concessioner shall keep such records as the Secretary may prescribe to enable the Secretary to determine that all terms of the concession contract have been and are being faithfully performed, and the Secretary and his duly authorized representatives shall, for the purpose of audit and examination, have access to said records and to other books, documents, and papers of the concessioner pertinent to the contract and all the terms and conditions thereof.

The Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of five (5) calendar years after the close of the business year of each concessioner or sub-concessioner have access to and the right to examine any pertinent books, documents, papers, and records of the concessioner or subconcessioner related to the negotiated contract or contracts involved.

Pub.L. 89-219, § 9, Oct. 9, 1965, 79 Stat. 971.

Historical Note

Legislative History. For legislative history and purpose of Pub.L. 89-219, see 1965 U.S. Code Cong. and Adm. News, p. 3199.

YELLOWSTONE NATIONAL PARK

§ 21. Establishment

The tract of land in the States of Montana and Wyoming, lying near the headwaters of the Yellowstone River and described as follows, to wit, commencing at the junction of Gardiner's River with the Yellowstone River, and running east to the meridian passing ten miles to the eastward of the most eastern point of Yellowstone Lake; thence south along said meridian to the parallel of latitude passing ten miles south of the most southern point of Yellowstone Lake; thence west along said parallel to the meridian passing fifteen miles west of the most western point of Madison Lake; thence north along said meridian to the latitude of the junction of the Yellowstone and Gardiner's Rivers; thence east to the place of beginning, is reserved and withdrawn from settlement, occupancy, or sale under the laws of the United States, and dedicated and set apart as a public park or pleasuring ground for the benefit and enjoyment of the people; and all persons who locate, or settle upon, or occupy any part of the land thus set apart as a public park, except as provided in section 22 of this title, shall be considered trespassers and removed therefrom.

R.S. § 2174.

Historical Note

Declaration. Act Mar. 1, 1872, c. 21, § 1.
17 Stat. 32

Cross References

Change of boundaries see section 21a of this title.
Limitation on further extension or establishment of national park in Wyoming see section 15a of this title.

Library References

Woods and Forests C29

C.F.S. Woods and Forests 121-12

§ 21a. Revision of boundaries; contiguous national forests; Jurisdiction of forests

The boundary of the Yellowstone National Park is changed so as to read as follows:

Beginning on the present north boundary line of Yellowstone National Park at its intersection with the hydrographic divide immediately north of Pebble Creek, approximately at park boundary monument 29 east; thence following said divide around the head of the drainage of Pebble Creek to its intersection with the present east boundary line of Yellowstone National Park, at a point near park boundary monument 54 north; thence southerly along said boundary line to its intersection with the hydrographic divide between Soda Butte and Cache Creeks, at a point near park boundary monument 51 north; thence easterly along said hydrographic divide to its intersection with the crest of the Absaroka Range; thence southerly along said crest to its intersection with the main hydrographic divide between Little Lamar River and the North Fork of Shoshone River, passing over Republic and Hoodoo Peaks; thence westerly along said divide passing over Notch Mountain to its intersection with the present east boundary line of Yellowstone National Park, at a point near park boundary monument 26 north; thence continuing westerly along said divide, now between the headwaters of Lamar River and Jones Creek; headwaters of Sedge, Bear, Cub, and Clear Creeks, and the headwaters of Jones and Crow Creeks, and between Crow Creek and Middle Creek, to its intersection with the present east boundary line of Yellowstone National Park, approximately at park boundary monument 18 north, passing over Pyramid and Cathedral Peaks, Mount Chittenden, and Avalanche Peak; thence southerly along said boundary line to its intersection with the hydrographic divide immediately south of Middle Creek, approximately at park boundary monument 15 north; thence westerly along said divide, now between a southern tributary of Middle Creek, headwaters of Reaverdam, Trappers, and Mountain Creeks, and the headwaters of Canfield and Eagle Creeks, to its intersection with the present east boundary line of Yellowstone National Park, at a point near park boundary monument 5 north, passing over Reservation and Altice Peaks, Mount Schutz, Mount Humphreys, and Eagle Peak; and

Beginning on the present west boundary line of Yellowstone National Park at its intersection with the left bank of Gallatin River to

inspection in the Office of the Site Manager, the locations within these park areas that are available for the sale or distribution of printed matter. Locations may be designated as not available only if the sale or distribution of printed matter would:

(1) Cause injury or damage to park resources; or

(II) Unreasonably impair the atmosphere of peace and tranquility maintained in commemorative areas; or

(III) Unreasonably interfere with interpretive, living history, visitor services, or other program activities or with the administrative functions of the National Park Service; or

(IV) Substantially impair the operation of public use facilities or services of concessioners or contractors.

(4) The permit may contain such conditions as are reasonably consistent with protection and use of the park area.

(5) No permit shall be issued for a period in excess of 14 consecutive days: *Provided*, That permits may be extended for like periods, upon a new application, unless another applicant has requested use of the same location and multiple occupancy of that location is not reasonably possible.

(6) Persons engaged in the sale or distribution of printed matter under this section shall not conduct activities from other than a stand in the location designated, or hawk or call out from the stand. Each stand shall bear a sign identifying the sponsor, in a form approved by the Unit Manager.

(7) The sale or distribution of printed matter without a permit, or in violation of the terms or conditions of a permit, is prohibited.

(8) Any permit may be revoked under any of those conditions, as listed in paragraph (b)(2) of this section, which constitute grounds for denial of a permit, or for violation of the terms and conditions of the permit. Such a revocation shall be made in writing, with the reasons for revocation clearly set forth, except under emergency circumstances, when an immediate verbal revocation or suspension may be made, to be followed by written confirmation.

in the sale or distribution of printed matter under this section shall not obstruct or impede pedestrians or vehicles, harass park visitors with physical contact, misrepresent the purposes or affiliations of those engaged in the sale or distribution, or whether the printed matter is available without cost or donation.

(Sec. 3 of the Act of August 25, 1916, 39 Stat. 535, as amended (16 U.S.C. 3); 49 Code Code 198 and 245 DM (34 FR 13079), as amended)

144 FR 50936, Oct. 3, 1979, as amended at 47 FR 39602, Oct. 10, 1982

PART 51—CONCESSION CONTRACTS AND PERMITS

- Sec.
- 51.1 Authority.
- 51.2 Policy.
- 51.3 Definitions.
- 51.4 Solicitation and award of concession contracts and permits where no right of preference exists.
- 51.5 Solicitation and award of concession contracts and permits or extensions or renewal of concession contracts and permits, where a right of preference exists.
- 51.6 Preferential right for additional services where a right to additional services and facilities exists by specific contract provisions.
- 51.7 Sale, assignment, or encumbrance of concession contracts, permits, and assets.

Authority: The Act of August 25, 1916, as amended and supplemented, 16 U.S.C. 3 *et seq.*, particularly, the Concessions Policy Act of 1965, 16 U.S.C. 20 *et seq.*

Source: 44 FR 6205, Nov. 1, 1979, unless otherwise noted.

51.1 Authority.
Concession contracts and permits are awarded by the Director on behalf of the Secretary pursuant to the authority of the Act of August 25, 1916, as amended and supplemented, 16 U.S.C. 3 *et seq.*, particularly, the Concessions Policies Act of 1965, 16 U.S.C. 20 *et seq.* All concession contracts and permits are subject to the requirements of this Part 51.

51.2 Policy.
It is the policy of the Secretary, as mandated by law, to permit conces-

ions in park areas only under carefully controlled safeguards against unregulated and indiscriminate use so that heavy visitation will not unduly impair park values and resources. Concession activities in park areas shall be limited to those that are necessary and appropriate for public use and enjoyment of the park areas in which they are located and that are consistent to the highest practicable degree with the preservation and conservation of the park areas.

51.3 Definitions.
The following definitions shall apply to this Part 51:

(a) "Concession Contracts" and "Concession Permits" (or "contracts" and "permits") are agreements between the Director and a concessioner whereby the concessioner agrees to provide certain public accommodations, facilities or services within a park area under the administration of the Director. Concession Permits are generally utilized where the authorized concession operations are not expected to gross more than \$100,000 annually, where the term of the permit is less than five (5) years, where no possessory interest is to be granted to the concessioner, and where no preferential rights to additional services are authorized. In other instances, Concession Contracts are utilized.

(b) "Right of Preference" refers to the right of existing satisfactory concessioners to a preference in the renewal or negotiation of a new contract or permit covering substantially the same accommodations, facilities and services as provided by the concessioner under the terms of its existing contract or permit. Prior to the expiration or termination of a contract or permit a determination shall be made based on annual evaluations, as to whether or not the concessioner is entitled to a preference in the renewal of its contract or permit. An unsatisfactory rating, results in the loss of the right of preference.

(c) "Preferential Right" refers to the right to provide new or additional services and facilities which may be granted to a concessioner by Concession Contract as the Director may con-

and convenience of the public.
(d) The term "Director" refers to the Director of the National Park Service or his authorized representatives.
(e) The term "Secretary" refers to the Secretary of the Interior or his authorized representatives.

51.4 Solicitation and award of concession contracts and permits where no right of preference exists.

(a) Where no right of preference exists, the Director shall issue a prospectus soliciting proposals describing the concession operation to be authorized, the material terms and conditions of the proposed Concession Contract or Permit, and the principal factors considered in selection. Public notice of the availability of the concession opportunity shall be published in the FEDERAL REGISTER and/or at least once in local or national newspapers or trade magazines, as appropriate, and will be distributed to interested parties and organizations. The prospectus will be made available upon request to all interested parties and will allow a minimum of sixty days for proposals to be submitted unless a written determination is made that a shorter period is necessary because of exceptional circumstances. All proposals received shall be evaluated by the Director, and the proposal considered best by the Director on an overall basis shall be selected as the basis for negotiation of the Concession Contract or Permit.

(b) The principal factors to be considered in selection of the best proposal shall be (1) the experience and related background of offerors, (2) the offeror's financial capability, and (3) conformance to the terms and conditions of the prospectus in relation to quality of service to the visitor. Secondary factors shall include franchise offered and other factors as may be specified.

(c) The Director may solicit from any applicant additional information, or written or verbal clarification of a proposal, and may extend the solicitation period in his discretion. The Director may choose to reject all proposals received at any time and to allow

his discretion when in the best interest of the Government. Any material information made available to any applicant by the Director must be made available to all applicants, and will be available to the public upon request.

(d) Negotiation of a final contract and permit with the selected applicant shall commence promptly. Material amendments to the proposed terms and conditions of the Concession Contract or Permit, as described in the prospectus, may be negotiated only after resolicitation of the concession opportunity for an appropriate period of time by amendment to the prospectus and readvertising. After negotiation of Concession Contracts with anticipated gross receipts in excess of \$100,000 or five (5) years or more in duration, such contracts shall be forwarded to the Senate Committee on Energy and Natural Resources and the House Committee on Interior and Insular Affairs for a 60-day waiting period prior to award. The Director may, in his discretion, terminate negotiation of a Concession Contract or Permit at any time prior to execution by the Government and resolicit or cancel the solicitation when in the best interest of the Government.

(e) The terms and conditions of the solicitation must represent the requirements of the National Park Service and not be developed to accommodate the capabilities or limitations of any particular party.

(f) Upon a written determination that exceptional circumstances warrant waiver of the procedures described in this subsection and that it is in the public interest to protect visitor or park resources or otherwise, the Director may negotiate a Concession Contract or Permit with any qualified party without public notice or advertising.

§ 51.5 Solicitation and award of concession contracts and permits or extensions or renewal of concession contracts and permits, where a right of preference exists.

The procedures described in § 51.4 shall apply to the solicitation, negotiation and award of extensions, renewals, or replacement of contracts or per-

mits by a new contract or permit where an existing concessioner has a right of preference except as follows:

(a) A fact sheet rather than a prospectus will be developed by the Director and will describe the existing concessioner's right of preference as well as the material terms and conditions under which the National Park Service proposes to negotiate a new concession contract or permit with the existing satisfactory concessioner.

(b) The concessioner with the right of preference shall be required to submit a proposal in response to the fact sheet. If, after evaluation of all proposals received, a proposal other than that of the existing concessioner is determined to be the best proposal, the existing concessioner shall be given an opportunity to meet the terms and conditions of the best proposal. If the existing concessioner does so and its proposal, as amended, is in the judgment of the Director, at least substantially equal to the best proposal, the existing concessioner shall be selected for negotiation of the contract or permit. If not, the contract or permit will be negotiated with the party that submitted the best proposal.

(c) The requirement for public notice and evaluation of proposals received may not be waived.

§ 51.6 Preferential right for additional services where a right to additional services and facilities exists by specific contract provisions.

Where the Director seeks to authorize new or additional accommodations, facilities and services of generally the same character as provided by an existing satisfactory concessioner in a park area, and such concessioner by Concession Contract has a right to provide such additional services, the Director shall develop a description of the new or additional services and the terms and conditions upon which they are to be provided without reference to any private party and give the existing concessioner a reasonable opportunity to review such description to determine if it wishes to provide the services. If so, the Director shall authorize the additional services by

amendment to the concessioner's contract. If the existing concessioner does not agree to provide the additional services upon the terms and conditions described, the Director shall authorize additional services to be provided by a new concessioner under substantially the same terms and conditions and pursuant to the procedures of § 51.4 hereof.

§ 51.7 Sale, assignment, or encumbrance of concession contracts, permits, and assets.

(a) Concession Contracts and Permits or operations authorized thereby or controlling interests therein may not be transferred, sold, or assigned, or assets thereof encumbered in any manner, including stock purchases, mergers, consolidations or reorganizations, except with the written approval of the Director. Transfers, sales, assignments, or encumbrances consummated in violation of this requirement shall be considered null and void by the Director and a material breach of the contract or permit.

(b) The term "controlling interest," as used herein means, in the case of corporate concessioners, an interest, beneficial or otherwise, of sufficient outstanding voting securities or capital of the concessioner so as to permit exercise of managerial authority over the actions and operations of the concessioner or election of a majority of the Board of Directors of the concessioner, and, in the instance of a partnership, limited partnership, joint venture or individual entrepreneurship, beneficial ownership of the capital assets of the concessioner so as to permit exercise of managerial authority over the actions and operations of the concessioner.

(c) Prior to consummating any transfer, sale, assignment or encumbrance of a controlling interest, the concessioner will request approval of the Director in writing and provide the following information:

(1) All instruments proposed to implement the transaction;

(2) An opinion of counsel from the buyer to the effect that the proposed transaction is lawful under all applicable Federal and State laws;

(3) A narrative description of the proposed transaction and the operational plans for conducting the transaction;

(4) Statement as to the existence of any litigation questioning the validity of the proposed transaction;

(5) Description of the management qualifications and financial background of the proposed transferee and

(6) A statement as to whether the proposed sale constitutes a controlling interest and the particulars thereof as described in paragraph (b) of this section; and

(7) Such other information as the Director may require.

(d) Prior to the sale, transfer, assignment or encumbrance of anything other than a controlling interest, the concessioner must have notified the Director in writing and must have received acknowledgment from the Director. Information as to why it is not a controlling interest and identification of the transferee must be submitted with the required notification. Failure to comply with this provision shall make the subject sale or transfer null and void and constitute a material breach of the Contract or Permit.

(e) The Director may choose not to approve a proposed sale, transfer, assignment or encumbrance in his discretion or may place appropriate conditions on any approval as are necessary to protect the public interest. Concession Contracts and certain Concession Permits contain provisions which limit the purposes for which they may be encumbered. Such limitations are incorporated by reference herein as an element of the Director's review of such transactions.

PART 60—NATIONAL REGISTER OF HISTORIC PLACES

Sec.

- 60.1 Authorization and expansion of the National Register
- 60.2 Effects of listing under Federal law
- 60.3 Definitions
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