

OFFICIAL OPINION NO. 68-1, Transfer of Mina Lake Park to the State of South Dakota from Edmunds County

STATE OF SOUTH DAKOTA
OFFICE OF
THE ATTORNEY GENERAL

July 3, 1968

Oscar E. Huber
State Representative, Edmunds County
Bowdle, South Dakota 57428

OFFICIAL OPINION NO. 68-1

Transfer of Mina Lake Park to the State of South Dakota from Edmunds County

Dear Mr. Huber:

You have asked for an official opinion based upon the following fact situation:

"The Edmunds County Board of Commissioners wish to transfer to the State of South Dakota, through its Department of Game, Fish and Parks, that property located in Edmunds County now known as Parmley Park or Mina Lake Park. The deed granting the property to Edmunds County contained a restriction that the land was to be used for 'public park purposes only.' The State of South Dakota will, should such a transfer take place, continue to use the said area as a park to be under the control of the Game, Fish and Parks Department."

You ask the following questions:

"1. If the State Department of Game, Fish and Parks imposes a park user's fee at this area, should they acquire it, will the title fail as not being used for 'public park purposes only,' thus breaching the condition and reverting the land to the original grantor or his heirs?"

"2. May the Commissioners of Edmunds County grant Mina Lake Park to the State of South Dakota through its Department of Game, Fish and Parks, subject to the following proposal made by that Department?"

"BE IT FURTHER RESOLVED, that Edmunds County shall contribute three thousand (\$3,000.00) dollars annually to the Department of Game, Fish and Parks for maintenance of said Mina Park until such time as park user fee shall be charged at which time this annual payment shall cease until the park user fee is removed, and upon cessation of the park user fee charge this annual payment to the Department of Game, Fish and Parks shall begin again."

Chapter 24 of the 1967 Session Laws expressly gives the counties, through their Board of County Commissioners, the authority to give lands to the State for use as parks.

In answer to your first question, I must first assume that there is no restriction in the deed to the County that the area known as Mina Lake Park be operated only by Edmunds County but granted said property only with the provision that it be used "for public park purposes only" and did not specify who was to operate the park as long as it was used for this purpose.

Common sense would dictate that because a fee is charged for the entrance to a park would not mean that it is no longer used for "public purposes."

A number of "public" places charge fees for their use. For example, zoos, swimming pools and toll roads, but are still considered public as long as such service is provided on a non-discriminatory basis. The answer to your first question would then be that in my opinion the charge of a park user fee would not take the land in question out of the category of that used for "public purposes only" and therefore must be NO.

With reference to your second question, I must again refer to the statute passed by the 1967 Legislature. It reads:

"Notwithstanding any provision of law to the contrary, the board of county commissioners of any county may by unanimous vote of its members give upon such terms and on such conditions as may be agreed to, any of its park lands or any other lands suitable therefor, whether or not abandoned, to the State of South Dakota or to cities in the manner provided under SDC 1960 Supp. 25.0106-1 as amended and SDC 45.2520, respectively, for the purposes authorized by law relating to state parks and recreation areas and city parks."
Approved March 14, 1967.

This gives the county express authority to deal with park land "**upon such terms and on such condition as may be agreed to**" (underscoring added). It is my opinion this statute would give the county authority to enter into such a contract and give the State that amount agreed upon for the maintenance of the park. Therefore, it is my opinion that as long as any such contract does not fall within violation of the Constitution of the State of South Dakota the Legislature may grant that authority which it wishes to the county. Here they have done so and your second question must be answered YES. (See Chapter 187, Session Laws of 1966,)

Respectfully submitted,

Frank L. Farrar
Attorney General