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OPINION LETTER NO. 135-90

G. Tracy Mehan, III, Director
Department of Natural Resources
Post Office Box 176
Jefferson City, Missouri 65102

Dear Mr. Mehan:

This opinion letter is in response to your question asking:

Does the Department of Natural Resources have the power and authority to obtain architectural documents and plans; let contracts for repair, rehabilitation or construction; supervise construction; perform inspection and maintenance of buildings; and construct suitable public services, privileges, conveniences and facilities under any land, site or object under the department's jurisdiction and control without the approval of the Director of the Division of Design and Construction?

Your question requires an examination of several state statutory provisions involving the Department of Natural Resources, Division of Parks, Recreation and Historic Preservation, and the Office of Administration, Division of Design and Construction.

Section 8.310, RSMo Supp. 1989, explains the duties of the Division of Design and Construction as follows:

8.310. Duties of director as to construction, repairs and purchases--
exceptions.--The director of the division of design and construction shall serve as

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advisor and consultant to all department heads in obtaining architectural plans, letting contracts, supervising construction, purchase of real estate, inspection and maintenance of buildings. No contracts shall be let for repair, rehabilitation or construction without approval of the director of the division of design and construction, and no claim for repair, construction or rehabilitation projects under contract shall be accepted for payment by the state without approval by the director of the division of design and construction; except that after the need for the construction, repair, maintenance or improvement of any building or facility serving the department of conservation or a state institution of higher learning has been determined and the proposed construction or improvement has been approved as a part of the state's building program by the division of design and construction and has been authorized by the general assembly and the governor through a proper appropriation, the department of conservation, the boards of curators of the state university and Lincoln University, the several boards of regents of the state colleges and the boards of trustees of the community junior colleges may contract for architectural and engineering services for the design and supervision of the construction, repair, maintenance or improvement of buildings or institutions and may contract for construction, repair, maintenance or improvement. The director of the division of design and construction shall not be required to review any claim for payment under any such contract not originally approved by him. No claim under any contract executed by the department of conservation or an institution of higher learning, as provided above, shall be certified by the commissioner of administration unless the entity making the claim shall certify in writing that the

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payment sought is in accordance with the contract executed by the entity and that the underlying construction, repair, maintenance or improvement conforms with applicable regulations promulgated by the director pursuant to section 8.320. No architectural or engineering fees shall be paid or allowed by any state agency relating to the purchase of movable equipment, furniture or fixtures or for repair or improvement projects, unless the director of the division of design and construction or the contracting entity heretofore exempted from review by the director of the division of design and construction, determines that the services of an architect or engineer are required in a particular situation. [Emphasis added.]

Section 8.320, RSMo 1986, provides:

8.320. Director to prescribe conditions and procedures for repair and maintenance of buildings.--The director of the division of design and construction shall set forth reasonable conditions to be met and procedures to be followed in the repair, maintenance, operation, construction and administration of state facilities. The conditions and procedures shall be codified and filed with the secretary of state in accordance with the provisions of the constitution. No payment shall be made on claims resulting from work performed in violation of these conditions and procedures, as certified by the director of the division of design and construction. [Emphasis added.]

Section 8.360, RSMo 1986, provides:

8.360. Inspection and report as to condition of buildings.--The director of the division of design and construction shall inspect all facilities and report to the general assembly at the commencement of

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each regular session on their condition, maintenance, repair and utilization.

The pertinent statutes relating to the Department of Natural Resources are Sections 253.040, RSMo 1986, and 253.080, RSMo Supp. 1989. These are set out below:

253.040. Acquisition of land-- eminent domain.--1. The department of natural resources is hereby authorized to accept or acquire by purchase, lease, donation, agreement or eminent domain, any lands, or rights in lands, sites, objects or facilities which in its opinion should be held, preserved, improved and maintained for park or parkway purposes. The department of natural resources is authorized to improve, maintain, operate and regulate any such lands, sites, objects or facilities when such action would promote the park program and the general welfare. The department of natural resources is further authorized to accept gifts, bequests or contributions of money or other real or personal property to be expended for any of the purposes of sections 253.010 to 253.100; except that any contributions of money to the department of natural resources shall be deposited with the state treasurer to the credit of the state park earnings fund and expended upon authorization of the department of natural resources for the purposes of sections 253.010 to 253.100 and for no other purposes.

2. In the event the right of eminent domain be exercised, it shall be exercised in the same manner as now or hereafter provided for the exercise of eminent domain by the state highways and transportation commission. [Emphasis added.]

253.080. Director of natural resources may construct and operate facilities and collect fees for usage-- concession contracts--limitations.--

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1. The director of the department of natural resources may construct, establish and operate suitable public services, privileges, conveniences and facilities on any land, site or object under the department's jurisdiction and control, and may charge and collect reasonable fees for the use of the same. The director may charge reasonable fees for supplying services on state park areas. Any facilities so constructed under this provision shall only be done by appropriated funds.

2. The director may award by contract to any suitable person, persons, corporation or association the right to construct, establish and operate public services, privileges, conveniences and facilities on any land, site or object under the department's control for a period not to exceed twenty-five years with a renewal option, and may supervise and regulate any and all charges and fees of operations by private enterprise for supplying services and operating facilities on state park areas.

3. All contracts awarded under this section shall be entered into upon the basis of competitive sealed bids. A sworn financial statement shall accompany each bid, and all contracts shall be let by the director at a regular meeting after public notice of the time of the letting. All bids submitted prior to the opening of the meeting shall be considered. Advertisements for bids in daily or weekly newspapers shall be made by the director. The director shall accept the bid most favorable to the state from a responsible and reputable person but may, for good cause, reject any bid.

4. No contract for a period of ten years or more or a renewal thereof for such period, as provided in subsection 2 of this

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section, shall be finally awarded until approved by the general assembly by concurrent resolution considered and adopted as other concurrent resolutions of the general assembly.

5. A good and sufficient bond conditioned upon the faithful performance of the contract and compliance with this law shall be required of all contractors, except that if the contractor states he is unable to provide a bond, the contractor shall place a cash reserve in an escrow account in an amount proportional to the volume of the contractor's business on the lands controlled by the department of natural resources.

6. Any person who contracts under this section with the state shall keep true and accurate records of his receipts and disbursements arising out of the performance of the contract and shall permit the division of parks and recreation of the department of natural resources and the state director or revenue to audit them. The division of parks and recreation of the department of natural resources and the state director of revenue shall audit the receipts and disbursement of each contract once every two years and upon the expiration of the contract. For the purpose of subsection 5 of this section and this subsection, no contract shall be deemed to extend to operations or management in more than one state park.
[Emphasis added.]

Similar questions have previously been addressed by this office. In Attorney General Opinion No. 25, Bond, 1974, a copy of which is enclosed, this office responded to the question: "Does the Department of Conservation have the power and authority to obtain architectural documents, let contracts for repair, rehabilitation or new construction of facilities, supervise construction, and perform inspection and maintenance of facilities without the approval of the Commissioner of Administration?" In that opinion we concluded that Sections

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8.310 and 8.320, RSMo 1969, were applicable to the Conservation Commission and did not conflict with Article IV, Section 40 of the Missouri Constitution which vests with the Commission the "control, management, restoration, conservation and regulation" of the state's wildlife. Opinion No. 25, Bond, 1974, states:

A close examination of Section 8.310 reveals that while the statute imposes a duty upon the Commissioner of Administration to serve as "advisor and consultant" in all of those above-mentioned matters, the statute actually requires formal approval only as to contracts "let for repair, rehabilitation or construction." Consequently, the Department of Conservation may obtain architectural documents, supervise construction, and perform inspection and maintenance of facilities without formal approval of the commissioner provided the Department's procedures in doing so conform to whatever reasonable conditions and procedures have been set by the Commissioner of Administration, pursuant to his authority under Section 8.320.
[Emphasis added.]

pp. 5-6.¹ See also Attorney General Opinion Letter No. 27, Bond, 1974 (conclusion reached in Opinion No. 25, Bond, 1974, is applicable to the State Park Board) and Attorney General Opinion No. 28, Bond, 1974, copies of which are enclosed. Opinion Letter No. 27, Bond, 1974, is particularly relevant since the State Park Board was transferred by the Omnibus State Reorganization Act of 1974 (Appendix B, RSMo 1986) to the Department of Natural Resources. See Section 640.010.3, RSMo 1986.

¹Subsequent to this opinion, Section 8.310, RSMo 1969, was amended by Senate Bill No. 691, 82nd General Assembly, Second Regular Session (1984), adding the exemption pertaining to the Department of Conservation.

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Accordingly, we conclude that the Department of Natural Resources is not required to obtain formal approval of the Director of the Division of Design and Construction in obtaining architectural documents and plans, in supervising construction, or in the inspection and maintenance of facilities, provided the Department's procedures conform to whatever reasonable conditions and procedures have been set by the Director of the Division of Design and Construction pursuant to Section 8.320, RSMo 1986. The Department of Natural Resources must obtain formal approval of the Director of the Division of Design and Construction of contracts let for repair, rehabilitation or construction of facilities.

Very truly yours,



WILLIAM L. WEBSTER
Attorney General

Enclosures: Opinion No. 25, Bond, 1974
Opinion Letter No. 27, Bond, 1974
Opinion No. 28, Bond, 1974