

NATURAL RESOURCES, DEPARTMENT OF:
STATE PARKS:
TAXATION - SALES TAX:

The Department of
Natural Resources is not
authorized to spend
monies generated by the

Parks and Soils Sales Tax, Article IV, Section 47(a), of the
Constitution of Missouri, or monies in the State Park Earnings
Fund, Section 253.090, RSMo 1986, to make payments to counties
and other political subdivisions in lieu of taxes on real
property acquired by the Department.

October 28, 1991

OPINION NO. 195-91

G. Tracy Mehan, III, Director
Department of Natural Resources
Post Office Box 176
Jefferson City, Missouri 65102-0176

Dear Director Mehan:

This opinion is in response to your question asking:

Whether monies generated by the Parks
and Soils Sales Tax, Art. IV, Section
47(A), Constitution of Missouri, or the
State Park Earnings Fund, Section 253.090,
RSMo, may lawfully be expended to make
payments in lieu of real property taxes to
counties and other political subdivisions
for formerly privately-owned lands that
have been acquired by the state for state
park purposes.

Along with your question, you provided the following
statement of facts:

The Department of Natural Resources is
authorized by Section 253.040, RSMo, to
acquire real property for state park
purposes. Once acquired, such real
property is exempt from local taxation by
reason of Art. X, Section 6, Constitution
of Missouri.

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Several interested parties, representing both local political subdivisions and the state parks, are interested in exploring the concept of a payment in lieu of taxes, to be paid out of either Parks and Soils Sales Tax revenues or the State Parks Earnings Fund, by the Department of Natural Resources to the local political subdivisions.

Presently, the Department of Conservation makes such payments in lieu of taxes.

Section 253.040, RSMo 1986, authorizes the Department of Natural Resources to acquire land for park or parkway purposes. This section states:

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.

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Property acquired by the Department of Natural Resources, as an executive department of state government, is state property. Article X, Section 6 of the Constitution of Missouri specifically exempts all real and personal property of the state from taxation. Therefore, the Department of Natural Resources is under no duty or obligation to make real property tax payments to counties or other political subdivisions.

The question is whether authority exists to allow the Department of Natural Resources to make payments in lieu of taxes to compensate local governments for revenues lost when real property is acquired by the Department.

Article IV, Section 47(a) of the Constitution of Missouri provides for a sales and use tax to be levied for state parks.

Section 47(a). Sales and use tax levied for soil and water conservation and for state parks.--For the purpose of providing additional monies to be expended and used by the department of natural resources through the state soil and water districts commission as defined in Section 278.070, RSMo, 1986, for the saving of the soil and water of this state for the conservation of the productive power of Missouri agricultural land, and by the department of natural resources for the acquisition, development, maintenance and operation of state parks in accordance with Chapter 253, RSMo, 1986, and for the administration of the laws pertaining thereto, an additional sales tax of one-tenth of one percent is hereby levied and imposed upon all sellers for the privilege of selling tangible personal property or rendering taxable services at retail in this state upon the sales and services which now are or hereafter are listed and set forth in, and, except as to the amount of tax, subject to the provisions of and to be collected as provided in the "Sales Tax Law" and subject to the rules and regulations promulgated in connection therewith; and an additional use tax of one-tenth of one percent is levied and imposed for the privilege of storing, using or consuming within this state any article of tangible personal property as

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set forth and provided in the "Compensating Use Tax Law" and, except as to the amount of the tax, subject to the provisions of and to be collected as provided in the "Compensating Use Tax Law" and subject to the rules and regulations promulgated in connection therewith.

Section 253.090, RSMo 1986, establishes the state park earnings fund and specifies the use of this fund.

253.090. State park earnings fund created, how used.--1. All revenue derived from privileges, conveniences, contracts or otherwise, and all moneys received by gifts, bequests or contributions or from county or municipal sources shall be paid into the state treasury to the credit of the "State Park Earnings Fund", which is hereby created. In the event any state park or any part thereof is taken under the power of eminent domain by the federal government the moneys paid for the taking shall be deposited in the state park earnings fund. The fund shall be used solely for the payment of the expenditures of the department of natural resources in the administration of this law, except that in any fiscal year the department may expend a sum not to exceed fifty percent of the preceding fiscal year's deposits to the state park earnings fund for the purpose of:

(1) Paying the principal and interest of revenue bonds issued;

(2) Providing an interest and sinking fund;

(3) Providing a reasonable reserve fund;

(4) Providing a reasonable fund for depreciation; and

(5) Paying for feasibility reports necessary for the issuing of revenue bonds.

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2. A good and sufficient bond conditioned upon the faithful performance of the contract and compliance with this law shall be required of all contractors.

3. 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 department of natural resources and the state auditor to audit same.
[Emphasis added.]

These preceding provisions specifically limit the use of funds for the purposes provided therein. We find no authority for the use of funds for the purpose of making payments in lieu of taxes to local governments.

In your opinion request, you refer to the Conservation Commission making payments in lieu of taxes. In Attorney General Opinion No. 31, Noren, 1977, (now withdrawn), this office concluded that the Conservation Commission was not authorized to make payments from the Conservation Commission fund to county or other local collectors for taxes on real property located in the county and owned by the Conservation Commission. However, in 1980, Article IV, Section 43(b) of the Constitution of Missouri was amended and now expressly authorizes the Conservation Commission "to make payments to counties for the unimproved value of land for distribution to the appropriate political subdivisions as payment in lieu of real property taxes for privately owned land acquired by the commission. . . ." Because of this subsequent constitutional amendment, Opinion No. 31, Noren, 1977, was withdrawn by this office.

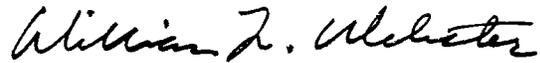
No provision similar to that authorizing payments in lieu of taxes by the Conservation Commission exists concerning funds of the Department of Natural Resources. Because of the absence of authority for the Department of Natural Resources to make payments in lieu of real property taxes, we conclude the Department is not authorized to make such payments.

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CONCLUSION

It is the opinion of this office that the Department of Natural Resources is not authorized to spend monies generated by the Parks and Soils Sales Tax, Article IV, Section 47(a), of the Constitution of Missouri, or monies in the State Park Earnings Fund, Section 253.090, RSMo 1986, to make payments to counties and other political subdivisions in lieu of taxes on real property acquired by the Department.

Very truly yours,



WILLIAM L. WEBSTER
Attorney General