

STATE BOARD OF HEALTH: Fees must be paid on cabins operated in state parks by private individuals, but not when operated by state.

September 11, 1939

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Honorable I. T. Bode, Director  
State Park Board  
Jefferson City, Missouri



Dear Sir:

We are in receipt of your request for an opinion, dated September 5, 1939, in which you inquire as to the liability of the State Park Board and other individuals for the payment of the license fees required by Senate Bill No. 7, passed by the 1939 Legislature, under the situations outlined by you, which are as follows:

"1. In some instances the park superintendent rents the cabins and facilities to the public, remits all collections to this office and this office pays all expenses such as laundry and cleaning. The collections received are turned over to the State Treasurer in due course and the expenses which we pay are paid from our appropriation. This is obviously a case of straight out State operation. An example of this kind of operation is at Alley Spring State Park.

2. In some instances the park superintendent operates the concession on a percentage basis. In this case the park superintendent makes all collections, pays the expenses of operation from these collections, and remits a percentage of the net collections to this office. This percentage of the net collections, or net profit, which is remitted to this office is turned over to the State Treasurer in due course. An example of this kind of operation is at Roaring River State Park.

3. In one case we have a concessionaire who operates on a percentage basis similar to the one above, in which the concessionaire makes all collections and, after the payment of all expenses, the net profit is determined and a percentage of this net profit is paid to the State which is deposited with the State Treasurer. An example of this kind of operation is at Meremac State Park.

4. In some instances the park concessions are leased for an annual fee, a definite amount of money which is determined in advance. When this money is received by us it is forwarded to the State Treasurer."

Senate Bill No. 7, passed by the Sixtieth General Assembly reads as follows:

"Section 1. That Article 7, Chapter 93, Revised Statutes of Missouri, 1929, relating to inspection of hotels, inns, and boarding houses, be and the same is hereby amended by adding a new section thereto, to be known and numbered as Section 13084-A relating to the same subject, and to read as follows:

Section 13084-A. The State Board of Health is empowered and it is hereby made their duty through their deputies to have inspected, at least annually and as often as shall be necessary, for the proper regulation and sanitation thereof, all tourist camps, cabins or resorts of whatever kind kept, used, maintained or advertised or held out to the public to be a place where sleeping accommodations are furnished for pay to transient or permanent guests in which two or more cabins, whether in combination or under separate roofs, are furnished for the accommodations of guests. For this purpose the said inspectors shall have the right of entry and access thereto at any reasonable time.

b. To carry out the provisions of this act the State Board of Health shall be empowered to promulgate such rules and regulations as they deem necessary for the proper cleanliness and sanitation of said tourist camps, cabins or resorts and for the proper regulations of water supplies in connection therewith.

c. No person shall open or conduct a tourist camp, cabin camp or tourist resort in this State without procuring a permit from the secretary of the State Board of Health for such tourist camp, cabin camp or resort and after the passage and approval of this act, the fees contained in subsection 'd' shall be due and payable to the State Board of Health and thereafter all permits shall be issued as of June 1st of each year.

d. The annual fee for a permit to conduct a tourist camp, cabin camp, or resort in this state shall be as follows:

For 2 and less than 5 cabins.....	\$3.00
For 5 and less than 10 cabins.....	\$5.00
For 10 and less than 15 cabins.....	\$7.50
For 15 and less than 20 cabins.....	\$10.00
For 20 and less than 25 cabins.....	\$12.50
For 25 and less than 30 cabins.....	\$15.00
For 30 and over.....	50 cents per cabin.

Section 2. The General Assembly determines this bill to be a Revision Bill within the meaning of Section 41, Article IV of the Constitution of Missouri."

Under the first situation outlined by you, and as you indicate in your letter, the cabins in Alley Spring State Park are operated directly by the State Park Board and are plainly exempt from the license fee. The State Park Board, as established by Laws of Missouri, 1937, at page 520, is plainly comparable as a state agency to the State Highway Commission, which has been held a branch of the State Executive Department and a public entity. State Highway Commission v. James, 115 S. W. (2d) 225; Bush v. State Highway

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Commission, 46 S. W. (2d) 854, and Manley v. State Highway Commission, 82 S. W. (2d) 619.

It will be noticed that subsection c of the foregoing bill is applicable only to "persons" and would, therefore, not include any state agency.

The general rule in regard to the application of license fees to state agencies is laid down in 37 Corpus Juris at page 217, where we find the following:

"Nor does a statute imposing license fees apply to state public agencies, unless the intention so to do is clearly expressed."

Under the second situation outlined by you, it is plain that the park superintendent operates the cabins as a private individual. We note that you use the word "concession", which is defined in Webster's Dictionary as "a grant by government or other authority of land, property or a privilege or right to do something."

The further fact that he derived some profit from the operation clearly distinguishes it from a state or public enterprise. Paragraphs 3 and 4 are clearly private enterprises in which the cabins are conducted by individuals, and there is no question but that said individuals are liable for the fees set out in Senate Bill No. 7, provided the law is applicable in other respects.

#### CONCLUSION

We are of the opinion that all operations conducted in the manner described in paragraph no. 1 of your letter are exempt from the provisions of Senate Bill No. 7, but that in the other three instances the license fee prescribed by said bill must be paid to the State Board of Health provided the number of cabins operated in each instance bring them within the meaning of the bill.

Respectfully submitted,

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APPROVED:

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RLH:VC