

PARK BOARD:

Powers of maintenance and improvement are limited to territorial bounds of State Parks.

June 30, 1939

Honorable E. A. Mayes
Assistant Director
State Park Board
Jefferson City, Missouri



Dear Mr. Mayes:

We acknowledge your request for an opinion, dated June 27, 1939, which reads as follows:

"From time to time the State Park Department is asked to do work on Sugar Lake in Buchanan County which adjoins a part of Lewis and Clark State Park or, more correctly, Lewis and Clark State Park is on a part of the shore line of Sugar Lake. The same situation obtains in the case of Big Lake State Park which is on a part of the shore line of Big Lake in Holt County. In each case the length of the shore line which is in the State park is a relatively small part of the shore line of the entire lake, possibly about one-fiftieth of the entire shore line.

"The question has arisen regarding the authority of the State Park Department to use the State park appropriation to do work which will benefit these lakes. It is true that any improvement in the lake will improve that part of the shore line which adjoins the park. We are asked to do such things as build dams some distance from the park, to pump water into the lake, etc. In the event maps of these particular parks are needed in order to render an opinion on this matter, we will be glad to supply them and we will be glad to furnish the legal description of these parks.

"The legal question involved is, does the State Park Department have authority by law to spend money on land or water which is not included in the legally described land to which the State Park Department has title and over which the State Department has jurisdiction?"

The State Park Board is a creature of the statutes. It is elemental law that the powers of the board are statutory. Laws of 1937, page 520 creates the State Park Board and prescribes its duties and powers. Section 2 reads as follows:

"The State Park Board shall have the power to acquire by purchase, eminent domain or otherwise, all property necessary, useful or convenient for the use of said Park Board or the exercise of its powers hereunder necessary for the recreation of the people of the State of Missouri. 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 Highway Commission. Said Park Board shall have the power to make and promulgate all rules and regulations as it may deem necessary for the proper maintenance, improvement, acquisition and preservation of all state parks. Said park board is hereby authorized to employ such persons or assistants as may be necessary and may fix the compensation of persons thus employed within the amount appropriated therefor by the Legislature. All vouchers for the payment of bills or for compensation shall be drawn and approved by the Director of State Parks and when presented to the State Auditor shall be paid out of the funds appropriated for such purposes."

Thus we see that the State Park Board has power to acquire real estate and power to make rules for maintenance, improvement, acquisition and preservation of all state parks.

Where the language of the legislative act granting power is plain and unambiguous, there is no occasion for statutory construction. In construing a statute that created and gave the St. Louis Board of Education the "supervising control, government and management of the public schools and public school property", the Supreme Court in *State ex rel. v. Board of Education*, 294 Mo. 106 l.c. 115; 24 S. W. 85 said:

"What is the business committed to the care of the Board of Education? It is clear from Section 11457 that it is charged with the supervising control, government and management of the public schools and public school property. These are the affairs 'committed to their charge,' and the court has power to require the board to account for its official conduct in the management and disposition of all of the business and affairs committed to its charge; not simply of the funds and property which are, comparatively, of minor importance. This construction gives effect to the intention of the Legislature."

CONCLUSION

We believe the language of the act, creating and giving the State Park Board power, is clear and unambiguous. The board's powers are limited by legislative intent, expressed in the language of Section 2, supra, and the only proprietary power the board has is power to acquire and power to make rules and regulations necessary for the proper maintenance, improvement, acquisition and preservation of all state parks.

Not one word is said in the act which could be reasonably interpreted as giving the board power, as a state agency, to spend money maintaining or improving non-park lands or in

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maintaining or improving waters abutting on State Park land, the ownership of which is in some other person or corporation other than the State Park Board.

We are of the opinion that the State Park Board has no authority to spend money for improvements, such as dams and wells for water supply, on lands or on lakes or streams not located within the bounds of the legally described lands in which the State Park Board has title. The jurisdiction of the State Park Board, in spending money for maintenance and improvement is limited to the territorial confines of state parks. When such improvements are located in state park land, the expenditures by the State Park Board would be legal, so long as the improvements be maintained without damage to neighboring property owners.

Respectfully submitted,

WM. ORR SAWYERS
Assistant Attorney-General

APPROVED:

(Acting) Attorney-General

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