

Opinion No. 52-5483

January 31, 1952

BY: JOE L. MARTINEZ, Attorney General

TO: Mr. Carl A. Freeman, Chairman State Park Commission Santa Fe, New Mexico

{*197} This is in reply to your request of September 12, 1951, for an opinion as to whether or not a contract could be drawn up between the State Park Commission and an individual as an independent contractor with provisions for the contractor to have a concession at the State Park as well as be responsible for the maintenance of the Park.

As you are well aware, § 4-110, N.M.S.A., 1941 Comp., states:

"The Superintendent of State Parks, with the approval of the State Park Commission, shall employ park custodians and employees {*198} for each State Park at such salaries as the Commission may prescribe; but no Park custodian or employee shall have any interest in or in any manner be connected with any concession granted to any person within any State park."

The language of that section is mandatory upon the Superintendent of State Parks. It definitely requires him to **employ** custodians and employees and to pay them salaries. There is no discretion vested in the Superintendent of Parks as to whether he will or will not employ a custodian or whether he will employ an independent contractor.

While I realize that the arrangement which exists presently at Bottomless Lakes State Park is beneficial and any change would be a difficult one for the State Park Commission to make, I can only point out that the statutes do not permit of such an arrangement as you propose with an independent contractor.

Inasmuch as the existing statutes seem impractical in this regard by not allowing under certain instances for the combining of a concessionaire contract with a maintenance contract, let me suggest that you bring this matter to the attention of our Legislative Council Service so that it can be set up in the form of proposed legislation to be recommended to the next session of the Legislature.

The concession contract which you requested that we draft covering the Bottomless Lakes State Park concession for and with Mr. M. L. Boykin will be prepared and sent to you in the next few days.