

Opinion No. 58-37

February 20, 1958

BY: OPINION OF FRED M. STANDLEY, Attorney General Robert F. Pyatt, Assistant Attorney General

TO: Mr. Donald La Noue, Acting Superintendent of State Parks, Santa Fe, New Mexico

QUESTION

QUESTION

Does the State Park Commission have authority to operate directly certain commercial facilities, commonly known as concessions, in state parks, if it desires to do so?

CONCLUSION

Yes.

OPINION

ANALYSIS

A significant provision, Section 4-9-1, N.M.S.A., 1953 compilation, reads as follows:

"There is hereby created a state park commission, which shall develop, maintain, manage and supervise all state parks, within the state of New Mexico."

In our opinion, this is a rather broad and general grant of authority. We are well aware of the rule that an executive agency only has those powers that are expressly or impliedly granted by statute and yet, it was doubtless recognized by the Legislature that state parks would attract large numbers of people who would find commercial facilities useful, and indeed necessary. You have informed us that such facilities include, in this instance, lodging, restaurant facilities, a boat dock, and a store where food and other supplies may be purchased. We think the direct operation of such facilities are included within the power to "maintain" and "manage" state parks.

True, the State Park Commission has the power to grant concessions to private individuals, as provided by Section 4-9-9, N.M.S.A., 1953 Compilation. This is an authorization statute, but it does not provide, either in terms or by necessary implication, that such commercial facilities shall not be operated by the State directly. We do not believe its existence negates powers fairly implied under Section 4-9-1, *supra*. In short, two means of operation are available; direct operation or operation by a concessionaire. This is of course a choice to be exercised by the State Park Commission, in its discretion, and is a choice which is not to be dictated by this office.

Your letter of request discloses that the State Park Commission will purchase fixtures and equipment from present concessionaires. We do not believe this would be illegal, so long as you abide by Sections 6-7-1 et seq., N.M.S.A., 1953 Compilation, since Section 4-9-6, N.M.S.A., 1953 Compilation authorizes the purchase of machinery, equipment and supplies necessary and proper for the maintenance, operation and management of state parks.

Lastly, we find nothing in Sections 4-9-1, et seq., N.M.S.A., dealing with the State Park Commission, which warrants our rendering a negative answer to your question.