

Opinion No. 60-78

April 21, 1960

BY: OPINION of HILTON A. DICKSON, JR., Attorney General

TO: Joe M. Clark, Superintendent State Park Commission P. O. Box 958 Santa Fe, New Mexico

QUESTION

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Does Ch. 338, Laws of 1959 (short title; Boat Act), contravene the authority of the State Park Commission, under Sec. 4-9-7, N.M.S.A., 1953 Comp., particularly in connection with the lake use fees charged by the State Park Commission for all vessels used on lakes in state parks?

CONCLUSION

No.

OPINION

{*438} ANALYSIS

The purpose of the Boat Act of 1959 is stated in Sec. 2 as follows:

". . . to promote safety for persons and property in and connected with the use, operation and equipment of vessels and to promote the uniformity of law relating thereto."

Certain requirements in the way of equipment and inspection are made applicable to all vessels used or capable of being used as a means of transportation on water. However, the identification number required by the Boat Act is applicable only to motor boats propelled by machinery of a horsepower greater than ten. This identification number is obtained by various methods, the most common of which will be by the payment of a fee of \$ 5.00. Certain exceptions to the numbering of motor boats are set out in Sec. 7 of the Act.

The fee then will be paid by those motor boats of ten horsepower or more not coming under the exceptions set out in Sec. 7. No fee is charged on row boats or motor boats of less than ten horsepower.

Under Sec. 4-9-7, N.M.S.A., 1953 Comp., authority to promulgate rules and regulations pertaining to the development, maintenance, upkeep, management and use of state

parks is vested in the State Park Commission. Among the duties set out in that section, is the duty to prescribe such rules and regulations **"to the end that each state park may be made as nearly self-supporting as possible."** You have advised that under the present rules and regulations, a lake use license is required on all vessels prior to being used upon a lake in a state park.

We see nothing in these two sections which would conflict insofar as your authority to continue to charge a lake use license for all vessels on a state park lake.

That the legislature did not intend that The Boat Act should supercede Sec. 4-9-8 is made clear by the wording of Sec. 15 of the Boat Act of 1959. This section reads in part as follows:

"The provisions of the Boat Act **and of other applicable laws of this state** shall govern the operation, equipment, numbering and all other matters ^{*439} relating thereto whenever any vessel shall be operated on the waters of this state, . . ."

It is the opinion of this office that you may continue to charge a lake use fee on a state park lake under Sec. 4-9-7 in addition to any requirements set up in the Boat Act of 1959.

By: B. J. Baggett

Assistant Attorney General