

Opinion No. 82-05

May 13, 1982

OPINION OF: Jeff Bingaman, Attorney General

BY: John F. Kennedy, Assistant Attorney General

TO: William S. Huey, Secretary, Natural Resources Department, Santa Fe, New Mexico 87503

PARKS, RECREATION AND FAIRS; PUBLIC FINANCES

The State Park and Recreation Division may utilize state funds to maintain the amphitheater constructed at San Jon.

QUESTIONS

May the State Park and Recreation Division of the Natural Resources Department utilize state funds for the maintenance of the amphitheater at San Jon, constructed pursuant to the provisions of Laws 1980, Chapter 19, Section 3 and Laws 1982, Chapter 70.

CONCLUSIONS

Yes.

ANALYSIS

In its 1980 capital improvements appropriation to the State Park and Recreation Division, the Legislature allocated \$150,000 for architect's fees for development of plans for an amphitheater at San Jon. It also limited total project costs to \$2,550,000. Laws 1980, Chapter 19, Section 3A. The division was required to regulate the development of the plans and securing of bids, Section 3B, and to enter into a contract governing the use of the facility with a public entity or nonprofit organization prior to expenditure or encumbrance of appropriated funds, Section 3C.

OPINION

The contract was required to include at least the following specific terms and conditions: "(1) a requirement that the public entity or nonprofit organization provide productions in the amphitheater for a [sic] least five consecutive years; (2) a requirement that the public entity or nonprofit organization have sufficient recurring revenues to assure productions as required by Paragraph (1) of this subsection; (3) **adequate assurances that state funds will not be needed for operations of the amphitheater**; and (4)

agreement by the State Park and Recreation Division to maintain the amphitheater. " (Emphasis added.) Section 3C(1) to (4).

In 1982, the Legislature authorized the sale of \$1,600,000 in severance tax bonds and appropriated the proceeds to the State Park and Recreation Division for the amphitheater at San Jon. Laws 1982, Chapter 70. The Legislature added the following language: "The appropriation is contingent on the formulation and acceptance of an agreement between the New Mexico outdoor drama association and the state that no further state funds will be sought **for construction or operation at this facility.** " (Emphasis added.)

The division is now seeking to enter into an agreement and is unsure whether its obligation to maintain the facility as stated in Section 3C(4) of the 1980 appropriations act continues.

Normally, statutes are to be read and given effect as written, with words used given their ordinary and usual meaning, unless a contrary intent is clearly shown. **Board of County Commissioners v. City of Las Vegas**, 95 N.M. 387, 622 P.2d 695 (1980).

{*277} According to Black's Law Dictionary, 4th ed. rev., "operation" means ". . . the process of operating or mode of action; an effect brought about in accordance with a definite plan; action; activity," p. 1243. "Maintain" means "acts of repairs and other acts to prevent a decline, lapse or cessation from existing state or condition;. . . hold or preserve in any particular state or condition; . . . keep in good order; . . ." p. 1105. Likewise, "maintenance" is defined as "the upkeep, or preserving the condition of property to be operated." p. 1106.

In the 1980 act, the Legislature recognized the distinction between "operate" and "maintain" by requiring that the division not utilize state funds for "operations" of the amphitheater but directing it to assume the duty to "maintain" the facility. Nothing in the 1982 act affects this distinction.

The prohibition against the use of further state funds for "construction or operation" does not imply a repeal of the duty of the division to "maintain" the facility. As a rule, repeals by implication are not favored. **Buresh v. City of Las Cruces**, 81 N.M. 89, 463 P.2d 513 (1969). Rather, whenever two acts can be reconciled to give effect to both, the court is so bound to construe them. **State ex rel. Bird v. Apodaca**, 91 N.M. 279, 573 P.2d 213 (1977).

The 1980 act provided for legislative reconsideration of the project after plans had been drawn. In 1982, the Legislature chose only to reduce the amount of the appropriation and to make it contingent upon an agreement that no further state funds would be sought for "construction or operation." No reference was made to the duty to "maintain" the facility and that provision of the 1980 act remains, therefore, unchanged. **Frkovich v. Petranovich**, 48 N.M. 382, 151 P.2d 337 (1944).

In summary, the division may utilize state funds to maintain the amphitheater constructed at San Jon.

ATTORNEY GENERAL

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