



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

May 17, 1976

ATTORNEY GENERAL OPINION NO. 76-154

Mr. Lynn Burris, Jr.
Director
Kansas Park and Resources Authority
Box 758
Topeka, Kansas 66601

Re: State Park Concessionaire Operations--Contracts--
Pomona Reservoir

Synopsis: Contracts entered into between State Park and Resources Authority and Aquamarine Inc. and Lighthouse, Inc., both original and all supplementals, reflect an intent by all parties to convey specific rights by such agreements. Tent and trailer pad rental authority was conveyed to Aquamarine, Inc. only by the supplemental agreements. Said agreements have expired and Aquamarine is therefore without authority to continue the operation of such activities.

* * *

Dear Mr. Burris:

You have requested an opinion from this office relative to a contractual dispute which has developed between the State Park and Resources Authority and Aquamarine Corporation, the latter presently operating a concession at Pomona Reservoir pursuant to a contract initially entered into with Lighthouse Marine, Inc. (which was later assigned to Aquamarine). You advise that the disagreement pivots upon Aquamarine's "trailer site rental operation." We understand that the trailer site rental was permitted at the park pursuant to a supplemental agreements specifically

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addressed to that activity,¹ however upon the expiration date of these agreements Aquamarine declined to cease its trailer pad rental notwithstanding the Park Authority's request to do so. Aquamarine has since requested another agreement to permit the continued operation of the trailer pad rentals, and the Park Authority continues to demand the cessation of the activity. We are asked specifically if Aquarmine is required to terminate the rental of the trailer pads.

Pursuant to the provisions of K.S.A. 74-4513 the State Park and Resources Authority is empowered to enter into contracts for the operation of concessions at Pomona Reservoir. The contract in question contains two paragraphs particularly relevant to the issue here presented:

"NOW THEREFORE, in consideration of the price appearing in the schedule hereinafter set forth, Authority does, for itself and the State of Kansas, grant the Concessionaire the right and privilege, during the term of this agreement to construct, maintain, equip, operate and repair concession stands, buildings, and floating boat dock concessions, for the purpose of buying, selling, leasing, renting, or otherwise, and preparing, dealing in, or otherwise acquiring or disposing of food, prepared or unprepared, food condiments, non-alcoholic beverages, candy, bait, fishing tackle, ice, ice containers, fuel, gasoline, oil, grease, cameras, boats, boat motors, repairs, guides and sightseeing services, and *any or all other rights or privileges inherent to the nature of this concession agreement*, within Lake Pomona State Park, on the following terms and conditions [emphasis added.]

19. It is mutually understood and agreed that the Authority retains the right to determine the location of all concession facility areas within the Park, however, Authority

1. The Supplemental agreements were initially designed to permit tent rental operations. However, the tent rentals deteriorated and the last agreement entered into (which expired October 15, 1975) specifically permitted the trailer pad rentals. A copy of both supplemental agreements is attached hereto for your convenience.

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agrees that it will not, during the existence of this contract, *itself exercise*, or grant like or similar privileges, within the area designated on the attached site plan, as those hereby granted, to any other person, firm or corporation, unless Concessionaire's written consent is first obtained [emphasis in original agreement].²

It has been suggested that Aquamarine can rely entirely on the original contract with the Park Authority to continue its trailer site rental operation, consequently obviating the necessity for a new supplemental agreement. This position is premised on the language emphasized in the first quoted paragraph, *supra*. Aquamarine contends that this phrase "clearly gives . . . [it] the right to operate essentially anything in the park that would be within the ambit of a concessionaire." We are not so persuaded. While the language, broad as it may be, conveys to the concessionaire those powers that it should necessarily require to operate pursuant to the contract it does not authorize the operation of a tent or trailer pad rental business. In fact a careful examination of the entire contract in light of the phrase "any or all other rights or privileges inherent to the nature of this concession agreement" clearly suggests that its ultimate effect is to reflect what is granted only in the original contract itself. Further, we find no specific or general reference elsewhere in the agreement to permit trailer or tent pad rental as is the case with such activities as the sale of food and water craft. This we believe clearly manifests the intent of the parties to convey and receive only that which is clearly provided by the terms of the contract. The express objective of the supplemental contracts further buttresses this conclusion.

As the first supplemental reveals (*see* attached copy) the parties acknowledged as early as October 14, 1971, that the original contract of December 9, 1975, granted certain concessions, none of which carried tent pad rental authority. This is particularly evidenced by the specific grant of authority found at paragraph 1 thereof:

2. A copy of the original agreement is attached hereto for your convenience; note should be made that Aquamarine became the assignee of this contract prior to the execution of the first supplemental regarding tent pad rental.

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"1. Concessionaire is hereby granted the right and privilege to install, equip, operate and maintain a tent rental service not to exceed twenty-five (25) tent units [any increase in the number of tent units is subject to approval by the Authority] in accordance with operating procedures established by the Authority." [See also, second supplemental agreement attached hereto.]

Clearly the supplemental agreements are singularly addressed to the authority for renting tent (and trailer) pads. We think that the juxtaposition of the wording of the supplemental agreement with that of the original agreement is *prima facie* evidence that it was the intent and mutual understanding of both parties that tent pad or trailer pad rental was not to be authorized until the supplementals had been executed. Such an obvious manifestation of intent must be considered controlling for an interpretation of the original contract now in issue. See, *First National Bank v. Methodist Home for Aged*, 181 Kan. 100, 309 P.2d 389 (1957). Thus, the Authority, in exercising the power to grant this rental privilege to Aquamarine, did so by the supplemental contracts alone, and therefore Aquamarine can not now look to the original contract for its authority to operate the pad rental service since its signature to the supplemental persuasively implies that it did not recognize (or understand) the original contract to empower the concessionaire with authority to rent such tent and trailer pads.

Accordingly, it is the opinion of this office that the language of the original contract speaks for itself. The original concession agreement specifically identified the activities which concessionaire was permitted to engage in, none of which directly or inferentially dealt with camping services such as are now in question. Further, the wording of the supplementals speaks for itself as well. It unequivocally deals with the single activity of tent pad and trailer pad rental. By entering into the latter agreements Aquamarine patently acknowledged that the right to operate this rental service derived solely from the supplemental agreements and not from the original. By doing so they are estopped from asserting that the original contract may be now interpreted to permit such business activities, thereby claiming specific rights premised upon general, inferential language referring to inherent authority which is simply not present as claimed.

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Thus the tent and trailer pad rental authority granted to Aquamarine Inc. pursuant to the above referenced agreements no longer exists as of October 15, 1975, and they should be so advised.

Yours very truly,

A handwritten signature in cursive script that reads "Curt Schneider".

CURT T. SCHNEIDER
Attorney General

CTS:JPS:kj

cc: Mr. James Logan
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