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FILE NO. S-464

**STATE MATTERS:**  
**Leases - Department of**  
**Conservation**

Honorable Henry N. Barkhausen  
Director  
Department of Conservation  
102 State Office Building  
Springfield, Illinois 62706

Dear Director Barkhausen:

I have your letter wherein you state:

"Attached hereto please find a copy of the lease between Saul Corush, concessionaire at Illinois Beach State Park, and the Department of Conservation.

"Will you please render an opinion pursuant to the provisions of Ill. Rev. Stat. 1971, Ch. 127, par. 63a21, indicating whether or not, if Mr. Corush will make substantial improvements in the present facilities at Illinois Beach State Park, namely, capital improvements to the lodge, does the Department of Conservation have the authority to grant Mr. Corush a 40 year lease, pursuant to the provisions of the above cited statute?"

Honorable Henry N. Barkhausen - 2.

Section 63a of the Civil Administrative Code of Illinois (Ill. Rev. Stat., 1971, ch. 127, par. 63a) provides as follows:

"The Department of Conservation has the power enumerated in Sections 63a1 through 63a28."

Section 63a21 of the Civil Administrative Code of Illinois (Ill. Rev. Stat., 1971, ch. 127, par. 63a21) provides, in part, as follows:

"To lease lands over which the Department has jurisdiction to persons or public or private corporations for a period not to exceed 40 years for the construction, maintenance and operation of public accommodation facilities including, but not limited to marinas, overnight housing facilities, tent and trailer camping facilities, food service facilities and similar accommodations. \* \* \*"

I note from examining the lease agreement attached to your letter that it is a concession lease entered into for a term of ten years, the term to begin on January 1, 1968 and to expire December 31, 1977. (See, Ill. Rev. Stat., 1971, ch. 127, par. 63a14). You propose to cancel this concession lease and to enter into a lease for a term of forty years. Also, it

Honorable Henry N. Barkhausen - 3.

is noted that the concession lease agreement is between Illinois Dunes Incorporated and the Department of Conservation. In your letter you state that the concession lease is between Saul Corush and the Department of Conservation. I assume that you actually meant Illinois Dunes Incorporated and that the forty year lease would be entered into between Illinois Dunes Incorporated and the State of Illinois.

Section 63a21 gives the Department of Conservation (hereinafter referred to as Department) authority to lease lands within the Department's jurisdiction. Furthermore, the Department can lease said lands for a term not to exceed forty years only if the lessee agrees to undertake the construction, maintenance and operation of public accommodation facilities.

With reference to the phrase "construction, maintenance and operation," the word "and" is subject to two possible constructions. "And" can be construed in the conjunctive or the alternative. Black's Law Dictionary (Black's Law Dictionary 112 (1951)) defines the word "and" as follows:

Honorable Henry N. Barkhausen - 4.

"A conjunction connecting words or phrases expressing the idea that the latter is to be added to or taken along with the first. Grand Trunk Western Ry. Co. v. Thrift Co. 68 Ind. App. 198, 116 N.E. 756, 759."

The plain meaning of the language used by the General Assembly in the statute is the safest guide to follow in construing the statute. (Stiska v. City of Chicago, 405 Ill. 374). Therefore, I am of the opinion that the word "and" is to be construed in the conjunctive sense and that a lease agreement made pursuant to section 63a21 must require that the following three activities be undertaken by the lessee: construction, maintenance and operation of a public accommodation facility.

In your letter, you indicate that the lessee, Illinois Dunes Incorporated, is to make improvements to a present facility, namely, capital improvements to the lodge at Illinois Beach State Park. Assuming, arguendo, that said lodge is a public accommodation facility and that the lessee will undertake the maintenance and operation of said public accommodation facility, the issue boils down to whether or not the word "construction" as used in section 63a21 is synonymous with "improvements."

Honorable Henry N. Barkhausen - 5.

The word "construction" in its ordinary sense means to build or erect something which theretofore did not exist. (The Board of Supervisors of Covington County v. State Highway Commission, 188 Miss. 274, 194 So. 743, 748). The word "construct" is not synonymous with "repair," "improve" or "maintain" under the accepted terminology. (People v. New York Cent. R. Co., 397 Ill. 247). Construction means the creation of something new, rather than the repair or improvement of something already existing. Cabell v. City of Portland, 153 Ore. 528, 57 P. 2d 1292, 1297.

I am of the opinion that the legislature intended by the word "construction" as used in section 63a21 that a new facility be built rather than the improvement of one that already exists.

Furthermore, the legislature has taken notice of problems that sometimes exist when buildings and structures are affixed to said lands. Section 63a6 reads as follows:

"To do and perform each and every act or thing considered by the Director to be necessary or desirable to fulfill and carry

Honorable Henry N. Barkhausen - 6.

out the intent and purpose of all laws pertaining to the Department of Conservation including the right to rehabilitate or sell at public auction, buildings or structures affixed to lands over which the Department has acquired jurisdiction when in the judgment of the Director such buildings or structures are obsolete, inadequate or unusable for the purposes of the Department and to lease such lands with or without appurtenances for a consideration in money or in kind for a period of time not in excess of 2 years for such purposes and upon such terms and conditions as the Director considers to be the best interests of the State when such lands are not immediately to be used or developed by the State. All such sales shall be made subject to the written approval of the Governor. The funds derived from such sales and from such leases shall be deposited in the Game and Fish Fund."

It is important to note that in section 63a6 the legislature specifically refers to "buildings or structures affixed to lands;" however, in section 63a21 the legislature merely refers to "lands." This indicates the legislature only intended lands without buildings or structures to be used as the subject of a forty year lease agreement.

In answer to your question, the Department of Conservation does not have the authority to grant Illinois Dunes

Honorable Henry N. Barkhausen - 7.

Incorporated a lease for forty years even if Illinois Dunes  
Incorporated makes substantial improvements to the present  
facilities at Illinois Beach State Park.

Very truly yours,

A T T O R N E Y G E N E R A L