

N.D.A.G. Letter to Eiken (Jan. 10, 1986)

January 10, 1986

Mr. Doug Eiken
Director
North Dakota Parks and Recreation Department
Pinehurst Office Park
1424 West Century Avenue
Suite 202
Bismarck, ND 58501

Dear Mr. Eiken:

Thank you for your letter of October 30, 1985, concerning the legality of state park annual entrance fee increases prior to July 1, 1985. I apologize for the delay in responding.

Prior to July 1, 1985, N.D.C.C. 55-08-06 allowed state parks to charge a fee of \$5 for an annual motor vehicle entrance permit. The 1985 Legislative Assembly amended 55-08-06 to allow state parks to charge a maximum fee of \$15 for an annual motor vehicle entrance permit. However, in 1979 and in 1983, the North Dakota Parks and Recreation Department proposed increases in the annual motor vehicle entrance permit fee from \$5 to \$7 and from \$7 to \$10, respectively. These increases were adopted by the department and approved through legislative action by means of appropriations bills which recognized the increased fees and, accordingly, increased the appropriation proportionately based on the revenues anticipated from the increased fees.

For example, in 1979, Senate Bill 2033, as introduced, estimated income to the Parks and Recreation Department as \$8,645,633. \$150,000 was mentioned in the legislative history as the estimated increased income based on an increase in the annual motor vehicle entrance permit fee from \$5 to \$7. The actual estimated income in the appropriation was \$8,895,633 (See 1979 N.D. Session Laws 71), which was exactly \$150,000 more than the estimated income in the original bill. Although the appropriation bill does not specifically mention increased permit fees, it in fact bases a line item amendment to estimated income on that increase.

In a recent audit, the State Auditor's Office noted that they believed a violation of N.D.C.C. 55-08-06 occurred (charging fees greater than statutorily authorized) prior to July 1, 1985, when that section was again amended to increase fees. The State Auditor has asked the Parks and Recreation Department for clarification or an Attorney General's Opinion as to the legality of raising fees through an appropriation without a corresponding change to N.D.C.C. 55-08-06.

Since 1965, when the original legislation establishing the predecessor of the Parks and Recreation Department was passed, N.D.C.C. 55-08-06 has appeared to place specific

statutory limits on the amount of the fee to be charged for annual state park permits for motor vehicles. In 1965 the permits were \$2. The Legislative Assembly amended N.D.C.C. 55-08-06 to increase the fee for the permit to \$4 in 1971 and \$5 in 1975.

There is, however, authority in statute for increasing annual motor vehicle entrance permit fees notwithstanding the specific limitation of N.D.C.C. 55-08-06. N.D.C.C. 55-08-05 states, in part, as follows:

55-08-05. CHARGES FOR SERVICES. The director is hereby authorized to provide special services within state parks, state campgrounds, state recreation areas, and reserves, and to make rules and regulations for the use of such services. The director shall establish and cause to be collected charges, fees, and rentals for the use of all such special services, and shall revise the same, when necessary, in such manner that the revenue derived therefrom will be sufficient to pay the cost of providing each such service and to pay the principal of and interest on all bonds issued for projects furnishing the facilities for any such services, and to maintain a reserve for the security of said bonds as herein provided. The director may, however, waive the collection of charges, fees, and rentals for the use of all such special services by health care-related charitable organizations conducting group camp activities without charge to participants. specifically, but without limitation of said general authorization, the director may: Charge and collect motor vehicle permit fees in such amounts as are or shall be prescribed by the legislative assembly, not less than the amounts now prescribed in section 55-08-06, which fees are and shall be imposed for the sole purposes of paying capital costs of projects required to provide the special services herein described and referred to, and of meeting the principal and interest and reserve requirements of bonds issued to finance such projects. (Emphasis supplied.)

In 1965, when the original N.D.C.C. § 55-08-06 was passed, subsection 6 was not included as a part of N.D.C.C. § 55-08-05; it was added in 1967 (1967 N.D. Sess. Laws 413, § 1) . When subsection 6 was added, the Legislative Assembly was undoubtedly aware of the specific limitations found in § 55-08-06, but apparently it wished to put some flexibility into the setting of the annual entrance permit fees. If it did not wish to do so, the language of first half of subsection 6 would seem to be totally unnecessary since N.D. C.C. § 55-08-06 already prescribed the specific amount of the fee.

The Legislative Assembly is presumed to have given meaning and significance to the laws it passes. See, City of Fargo v. Annexation Review Commission of Cass County, 148 N.W. 2d 338 (N.D. 1966); Ferch v. Housing Authority of Cass County, 59 N.W. 2d 849 (N.D. 1953).

There is nothing in the legislative history of 1967 House Bill 798, which included the addition of subsection 6 to N.D.C.C. § 55-08-05, to indicate the specific intent of adding subsection 6. However, what is available from the testimony (See attached legislative

history) indicates that the Legislative Assembly was aware of the specific \$2 fee limitation then in existence and that it was interested in providing additional income for special projects.

The director of the Parks and Recreation Department has authority to increase annual motor vehicle permit fees if the Legislative Assembly prescribes or approves the increase, notwithstanding the limitation found in N.D.C.C. § 55-08-06. The language of N.D.C.C. § 55-08-06 prior to July 1, 1985 ("[a] fee of five dollars shall be charged . . .") was originally mandatory, not a maximum or minimum. However, the addition of N.D.C.C. § 55-08-05(6) in 1967 made, in effect, the fee of five dollars a minimum charge.

There is nothing in N.D.C.C. § 55-08-06 that would preclude the legislative assembly from prescribing or authorizing a fee greater than five dollars. As long as legislative approval has been obtained for the increased fee there is no conflict with or violation of N.D.C.C. § 55-08-06.

It should be noted that N.D.C.C. § 55-08-05(6) also requires that motor vehicles permit fees are to be used for a specific purpose, that of paying capital costs of projects required to provide special services and of meeting principle and interest and reserve requirements bonds issued to finance such projects.

Certainly, the annual motor vehicle entrance permit fees paid by North Dakota state park users between 1979 and 1985 were in amounts greater than the fees specifically allowed by N.D.C.C. 55-08-06. However, N.D.C.C. § 55-08-05(6) gave the director of the Parks and Recreation Department the authority to charge motor vehicle permit fees in amounts greater than the amount prescribed in § 55-08-06 from 1979 to 1985, since the Legislative Assembly by means of an appropriations bill approved those fee increases. There is no inconsistency in such an interpretation and, in fact, such a construction gives effect to both N.D.C.C. §§ 55-08-06 and 55-08-05(6). There has been no violation of law by the North Dakota Parks and Recreation Department in charging these greater fees from 1979 through 1985.

Sincerely,

Nicholas J. Spaeth

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Enclosure