

STATE OF NORTH DAKOTA

ATTORNEY GENERAL'S OPINION 89-16

Date issued: November 15, 1989

Requested by: Douglas Eiken, Director
Parks and Recreation Department

- QUESTION PRESENTED -

Whether the North Dakota Parks and Recreation Department may allow the Fort Abraham Lincoln Foundation to conduct pari-mutuel betting or the playing of a calcutta in Fort Abraham Lincoln State Park.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that if the Fort Abraham Lincoln Foundation otherwise complies with licensure requirements and has the approval of the local jurisdiction, the North Dakota Parks and Recreation Department may allow the Foundation to conduct pari-mutuel betting or the playing of a calcutta in Fort Abraham Lincoln State Park.

- ANALYSIS -

N. D. C. C. ' 55-08-03 provides:

55-08-03. Duties -- Powers -- Limitations --
Penalty. The director of state parks and recreation shall be the administrative and executive head of the department. Subject to the provisions hereof and other applicable laws, he shall have the following powers and duties:

1. The director and his authorized agents and employees shall have charge and control full powers of management over all state parks, state campgrounds, state recreation areas and reserves of the state, including, but not limited to, site selection and planning, setting of fees and charges, setting hours and seasons of operation, regulating the conduct of guests and visitors, employment and bonding of personnel, compensation of employees, acquisition, construction, reconstruction, betterment, improvement, operation, and maintenance of facilities, and promotion of wide utilization of and the use, sale, leasing, and disposition of facilities and of all records pertaining to the performance of his functions relating thereto.

.

7. The director may:
 - a. Use any land of the state under his jurisdiction or control so far as is not inconsistent with the laws governing the same.

.
8. The director shall have the power to make and enforce suitable rules and regulations relating to the protection, care, and use of any state park, state campground, state recreation area, or reserve, and the violation of any such regulation shall constitute an infraction.

As this section of the Code provides, the director of State Parks and Recreation has control and management over all state parks. The director can make use of the land under his jurisdiction in any manner not inconsistent with the law, including "regulating the conduct of guests and visitors," and "promotion of wide utilization of . . . facilities." N. D. C. C. ' 55-08-03.

In addition, the director has promulgated rules under N. D. C. C. ' 55-08-03 relating to the use of state parks. N. D. Admin. Code ' 58-02-08-17 provides:

58-02-08-17. Advertising, special events, and authorized concession operations.

.

3. No person, firm, or corporation may operate any concessions, business, enterprise, or sell personal property in a state park without prior written permission from the director.

Under existing statutes and rules relating to the state park system, games of chance or pari-mutuel horse racing are not prohibited. However, no corporation or firm may operate any business or other enterprise including conducting games of chance or horse racing within a state park without prior written permission from the director.

In addition to receiving the written permission of the director, organizations wishing to conduct this type of activity must obtain a license from the Attorney General. The licensing process includes a showing that site authorization or approval has been received from the appropriate jurisdictional authority (city or county). N. D. C. C. ' 53-06.1-03(4)(b).

It is my opinion if the Fort Abraham Lincoln Foundation is properly licensed by the Attorney General, has site approval of the appropriate jurisdictional authority, and has received written permission from the director of State Parks and Recreation to conduct pari-mutuel betting or a calcutta in Fort

ATTORNEY GENERAL' S OPINION 89-16
November 15, 1989
Page 3

Abraham Lincoln State Park, the Foundation may conduct that activity in the Park.

- EFFECT -

This opinion is issued pursuant to N.D.C.C. ' 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.

Nicholas J. Spaeth
Attorney General

Assisted by: Lisa Turrini
Assistant Attorney General

ja