

In the event the present position of fireman chauffeur is eliminated, anyone who is reduced in rank or pay may demand a hearing before the civil service commission if he feels aggrieved. Section 14 of Act 78 specifically so provides as follows:

“* * * No member of any fire or police department within the terms of this act shall be removed, discharged, reduced in rank or pay, suspended or otherwise punished except for cause, and in no event until he shall have been furnished with a written statement of the charges and the reasons for such actions, and all charges shall be void unless filed within 90 days of the date of the violation, except in the case of a probationer, whose violations may accumulate for the probationary period. In every case of charges having been made a copy of the statement of reasons therefor and answer thereto, if the person sought to be removed desires to file such written answer, shall be furnished to the civil service commission and entered upon its records. Such answer shall be filed by the member within 5 days after service of the charges upon him. If the person sought to be removed or reduced shall demand it, the civil service commission shall grant him a public hearing, which hearing shall be held within a period of 10 days from the filing of the charges in writing and a written answer thereto. * * *”

FRANK J. KELLEY,
Attorney General.

63118.1

MACKINAC ISLAND STATE PARK COMMISSION: Powers of Commission.

Mackinac Island State Park Commission is without power to construct and acquire an approved airport upon the state park lands on Mackinac Island.

Lease of state park lands to the City of Mackinac Island for the purpose of construction of an approved airport would constitute a non-state park use, subjecting state park lands to revert to the United States.

Mackinac Island State Park Commission has no statutory authority to lease state park lands to the City of Mackinac Island for approved airport purposes.

No. 4162

November 18, 1963.

Mr. Walter J. Murray, Chairman
Mackinac Island State Park Commission
3965 Penobscot Building
Detroit, Michigan

You have requested my opinion on the following questions:

1. Does the Mackinac Island State Park Commission have authority to construct, maintain and operate an airport?
2. Would a lease for airport purposes cause the park property to be subject to the reversionary clause contained in the original grant of conveyance to the State of Michigan?

3. May the Mackinac Island State Park Commission lease to the City of Mackinac Island an airport site located on park property on Mackinac Island under an arrangement whereby the city would advance 25% of the construction funds, with the balance being provided by the State and Federal government?

1. By act of Congress, dated March 3, 1875, 18 U.S. Statutes at Large, page 517, Chapter 191, Session II, 43rd Congress, the Congress of the United States set aside certain federal lands located on the Island of Mackinac in the Straits of Mackinac within the State of Michigan, as a national park under the jurisdiction of the Secretary of War. Subsequently the Congress of the United States authorized the grant of the aforesaid property to the State of Michigan pursuant to Act dated March 2, 1895, 28 U.S. Statutes at Large, page 946, Chapter 189, Session III, 53rd Congress, with a reversionary interest in the United States, as follows:

"Military Reservation on Mackinac Island, Michigan: The Secretary of War is hereby authorized, on the application of the governor of Michigan, to turn over to the State of Michigan, for use as a State park, and for no other purpose, the military reservation and buildings and the lands of the national park on Mackinac Island, Michigan: Provided, that whenever the State ceases to use the land for the purpose aforesaid it shall revert to the United States." (Emphasis supplied)

The Michigan legislature accepted the land for use as a State park under the provisions of Act 222, P.A. 1895.

The history of such grant of lands on Mackinac Island to the State of Michigan was reviewed by the Michigan Supreme Court in the case of *Kerrigan v. Poole*, 131 Mich. 305, 307 (1902), when the court upheld the power of the Mackinac Island State Park Commission to require a license fee from owners of carriages using park roads, and passed upon the right of the State of Michigan to use the land in the park and military reservation, ruling that:

"By the act of Congress of March 2, 1895, the secretary of war was authorized to turn over to the State of Michigan these lands for use as a State park, and for no other purpose; and it was provided that, whenever the State ceased to use the land for that purpose, it should revert to the United States. The State has no other right to the land." (Emphasis supplied)

The legislature has provided for the board of commissioners of Mackinac Island State Park, pursuant to the provisions of Act 355, P.A. 1927, as amended, being C.L. 1948 § 318.61 et seq. M.S.A. 1958 Rev. Vol. § 13.971 et seq. Section 1 of this act provides as follows:

"Pursuant to the turning over to the state of Michigan, for use as a state park, and for no other purpose, the military reservation, lands and buildings of the national park on Mackinac Island, subject to a reversion to the United States whenever the State ceases to use the lands for the purpose aforesaid, by the secretary of war, under the authorization of an act of congress, such lands and buildings shall be

used as a state park and shall be known as the Mackinac Island state park." (Emphasis supplied)

The powers of the Mackinac Island State Park Commission are set forth in Sec. 3 of the act, as amended by Act 59, P.A. 1959 and Act 109, P.A. 1960, as follows:

"The Mackinac Island state park shall be under the control and management of said Mackinac Island state park commission, and the majority of same shall constitute a quorum for the transaction of business. The commissioners shall have power to lay out, manage and maintain said park and preserve the old fort, and to make and enforce bylaws, rules and regulations necessary to carry out the purposes thereof, not inconsistent with the laws of the state; to effect leases, and to fix prices for rentals or privileges upon the property of said park; to sell or lease as personal property buildings or structures acquired by the commission in settlement of delinquent land rentals, and any such sales or leases heretofore executed or made are hereby ratified; and to employ a superintendent and such persons as may be needed. All rules and regulations of the commission shall be made in accordance with the provisions of Act No. 88 of the Public Acts of 1943, as amended, being sections 24.71 to 24.82 of the Compiled Laws of 1948, and subject to Act No. 197 of the Public Acts of 1952, as amended, being sections 24.101 and 24.110 of the Compiled Laws of 1948. The rules and regulations of the commission shall apply to all roads situated on Mackinac Island state park lands. The commission shall make no rule permitting the use of motor vehicles except motor vehicles owned by the state or any political subdivision or by a public utility and used in the exercise of its franchise but the commission is authorized to provide by rule for the issuance of temporary permits for the operation of motor vehicles over any roads situated on state park lands. The commission may grant permits for the use of lands for the expansion of existing cemeteries, under such terms and conditions as the commission shall prescribe. The commissioners shall also have power to grant privileges and franchise for waterworks, sewerage, transportation and lighting, for a period not to exceed 30 years. The commission shall prescribe by regulation the maximum number of horse drawn vehicles for hire that may be licensed by the commission for operation within the park. It is hereby provided that the sheriff of the county of Mackinac, upon the application of said commission, shall appoint 1 or more persons, to be by said commission designated, and who shall be employees, as provided in this act, as deputy sheriffs in and for said county, but who shall receive no fees or emoluments for services as deputy sheriffs. Said commissioners shall have the power to fix the compensation of the persons employed by them, but no debt or obligation shall be created by them exceeding the amount of moneys at their disposal at the time. All moneys received from rentals or privileges shall be paid promptly into the state treasury to be credited to the general fund and to be disbursed as appropriated by the legislature. The Mackinac Island state park commission is hereby

authorized, in consideration of the furnishing of fire protection, street service, sewerage service and other public service agreed upon, to remit such reasonable rentals as the commission shall determine from leases of property acquired by the state under the general tax law and deeded to the commission, to the several tax assessing units in which such property is situated as provided in the general tax law, in proportion to the delinquent taxes and special assessments of such units cancelled against such description of land. Said commissioners shall make to the governor an annual report and statement of receipts and expenditures, and such recommendations and suggestions as may seem to them proper."

Consideration must also be given to the provisions of Act 201, P.A. 1958, M.S.A. 1961 Cum. Supp § 13.1005(1) et seq. Section 1 thereof provides as follows:

"The Mackinac Island state park commission, hereinafter sometimes called 'the commission', is hereby authorized and empowered, in addition to the powers already conferred on it by law, to exercise the following powers, rights and privileges:

(a) To acquire, construct, develop, improve, better, extend, repair, maintain, use and operate all property, real or personal, necessary to the exercise of the powers, rights, privileges and functions conferred upon it by law and this act including, without limiting the generality of the foregoing, the power to acquire, construct, develop, improve, better, extend, restore, reconstruct, renovate, refurbish, repair, equip, furnish, maintain, use and operate, and to provide landscaping, driveways, streets and walkways for, buildings, structures, areas (any and all) and facilities of all kinds which in the judgment of the commission will increase the beauty and utility of said state park facilities and provide recreational, historical or other facilities for the benefit and enjoyment of the public, or which are necessary or convenient to the exercise of the powers of the commission.

(b) To employ consulting architects, engineers, museum technicians, landscape architects, supervisors, managers, lawyers, fiscal agents, and other agents and employees as it may deem necessary, and to fix their compensation.

(c) To enlist the guidance, assistance and cooperation of the Michigan historical commission.

(d) To make such charges for admission to the facilities under its jurisdiction, to make such other charges for the use of any such facilities, including fees or charges to be imposed on concessionaires, and to charge such rentals for the lease or use of any of its facilities as in the judgment of the commission may seem proper and as will assure the prompt and full carrying out of all covenants contained in the proceedings authorizing any bonds hereunder."

The control of the Mackinac Island State Park is vested by the legislature in the Mackinac Island State Park Commission, through the provisions of Act 355, P.A. 1927, and in Section 1 of the act the legislature has ordered

that the lands granted to the state for use as a state park and for no other purpose subject to reversion to the United States whenever the state ceases to use the lands for state park purposes, shall be used as a state park.

The grant of powers upon the commission, as set forth in Act 355, P.A. 1927, supra, and Act 201, P.A. 1958, supra, must be read in the light of Section 1 of Act 355, P.A. 1927, supra, that the lands were granted to the state for use as a state park and for no other purpose, subject to loss of the lands to the United States whenever the state ceased to use the lands for a state park.

Act 201, P.A. 1958, supra, specifies the improvements which the Commission may construct and acquire. The powers that are enumerated do not include either specifically or by implication the power to construct and acquire an approved airport.¹ Since the legislature has in these statutes listed the powers of the Mackinac Island State Park Commission with respect to the construction of improvements, the conclusion must follow that the power to construct and acquire an approved airport was withheld. *Sebewaing Industries, Inc., v. Village of Sebewaing*, 337 Mich. 530 (1953). The power to construct and acquire an approved airport with an airstrip of 3,500 feet upon a forty acre tract of park land, as is presently contemplated, cannot be implied from the provisions of Act 355, P.A. 1927, supra, in view of the command of the legislature in Section 1 of the Act that the lands be used as a state park as prescribed by the grant of the United States, subject to reversion of the lands to the grantor for use other than a state park.

In the year 1927, at the very same legislative session when the legislature passed Act 355, P.A. 1927, supra, the legislature also enacted Act 329, P.A. 1927, conferring authority upon the state administrative board to establish landing fields and airports upon state owned lands. The law is well settled that when the legislature enacts two statutes at the same legislative session, it is to be assumed that the legislature had in the process of framing and passing the statutes full knowledge of the provisions of each act. *Reichert v. Peoples State Bank for Savings*, 265 Mich. 668 (1934). Thus, it is wholly untenable to contend that the legislature intended to confer power by implication to construct and acquire an approved airport upon the commission.

When the legislature enacted the Aeronautics Code in 1945, being Act 327, P.A. 1945, as amended, C.L. 1948 § 259.1 et seq; M.S.A. 1960 Rev. Vol. § 10.101 et seq., it repealed Act 329, P.A. 1927. In the interval since the repeal of Act 329, P.A. 1927, there are no subsequent amendments to Act 355, P.A. 1927 that are significant to the question at hand.

Therefore, it is my opinion that the Mackinac Island State Park Com-

¹ The phrase "approved airport" is used in this opinion to indicate an airport facility that must not only be approved by the Michigan Department of Aeronautics under Sec. 86 of Act 327, P.A. 1945, being C.L. 1948 § 259.86; M.S.A. 1960 Rev. Vol. § 10.186, but a facility that also is subject to approval by the Administrator of the Federal Aviation Agency pursuant to 49 U.S.C.A. 1108, in order to qualify for federal funds to pay for a portion of the cost of the airport facility.

mission is without statutory authority to construct and acquire an approved airport.

Since your second and third questions are related, they will be considered together.

What the Mackinac Island State Park Commission is powerless to do directly it may not do indirectly through lease to the City of Mackinac Island. *Attorney General, ex rel. Eaves v. State Bridge Commission*, 277 Mich. 373 (1936).

I find no statutory authority in the Commission that would allow a 25 year lease for approved airport purposes to the City of Mackinac Island of state park lands.

Therefore, it is my opinion that the Mackinac Island State Park Commission is without authority to lease forty acres to the City of Mackinac Island for the purpose of constructing an approved airport.

Since you have made inquiry relative to the effect of such a proposed lease upon possible reverter of state park lands on Mackinac Island to the United States, consideration of your second question shall be made notwithstanding my ruling that the Commission is without power to lease park lands to the City of Mackinac Island.

The Mackinac Island State Park Commission contemplates the lease of approximately forty acres of state park land under its jurisdiction to the City of Mackinac Island for a term of 25 years for the purpose of constructing an approved airport to consist of an airstrip approximately 3,500 feet in length. The improvement is to be financed jointly by the City of Mackinac Island through the sale of bonds in the amount of \$38,500.00 with a similar amount to be granted by the Michigan Aeronautics Commission, plus an additional grant of \$77,000.00 from the Federal Aeronautics Administration.

Approximately forty acres of park lands would be leased by the Commission for a period of twenty-five years for airport purposes. During the term of the lease state park land would be under the exclusive jurisdiction of the City of Mackinac Island.

The gift of the Mackinac Island park and military reservation lands was made upon explicit condition that the lands be used for a state park, subject to reversion to the United States if the state ceased to use the lands for state park purposes. The Michigan Supreme Court in *Kerrigan v. Poole*, supra, has examined this gift of lands and has ruled that the state has no other right to the lands. The lands must be used for state park purpose and for no other purpose.

A lease of state park lands for the period of twenty-five years to the City of Mackinac Island for airport purposes clearly must be held to constitute a non-state park use since the exclusive jurisdiction over the lands would vest in the City of Mackinac Island for the term of the lease.

It must follow that such a lease of state park lands located on Mackinac Island to the City of Mackinac Island would constitute the use of lands for a non-state park purpose and would subject the land to reversion to the United States in accordance with grant of the Secretary of War given pur-

suant to 28 U.S. Statutes at Large, page 946, supra, and Act 222, P.A. 1895, supra.

History has recorded that the biplane of the Wright Brothers rose from the ground for the first time on December 13, 1903 at Kitty Hawk, North Carolina. Aeroplanes were described as a comparatively recent invention by the court in *Platt v. Erie County Agricultural Society*, 149 N.Y.S. 520, decided in 1914.

It is untenable, therefore, to hold that the Congress of the United States in authorizing grant of the lands to the state of Michigan for a state park and for no other purpose considered an airport to be within contemplation of the phrase "state park." *Bernstein v. City of Pittsburgh* (Penn. 1951) 77 A 2d 452.

Therefore, it is my opinion that a lease by the Commission of forty acres of state park lands on Mackinac Island to the City of Mackinac Island for a period of twenty-five years for the purpose of operating an approved airport would violate the terms of the grant of land and would subject all of the park and military reservation lands to reversion to the United States because the state of Michigan would cease to use the lands as a state park.

FRANK J. KELLEY,
Attorney General.

63118.2

CITIES: Ordinances Creating a Human Relations Committee.

Ordinances creating a Human Relations Committee which has as its primary purpose education, counseling, conciliation, mediation, etc., are within the authority of a city since they do not seek to create or enforce these rights.

CONSTITUTIONAL LAW:

Such municipal ordinances conferring authority upon a human relations committee to conduct investigations is not in violation of the Michigan Constitution of 1963.

No. 4211

November 18, 1963.

Honorable Paul C. Younger
State Senator
609 Prudden Building
Lansing, Michigan

In your letter of August 16, 1963, you have requested an opinion of this office in regards to certain questions which have been rephrased in the following manner:

1. Does the Ordinance establishing the Human Relations Committee adopted by the City of Lansing violate the provisions of the Revised Constitution of 1963?
2. If the Ordinance gave the Human Relations Committee the power to initiate investigations and make investigations on their own