631216.2

CITIES: Property acquired under public use deed may be leased to a private corporation.

City of Lake City, a fourth class city, has authority to lease property conveyed to it under a public use deed from the Conservation Department to a private non-profit corporation for public ski and golf facilities.

No. 4241 December 16, 1963.

Mr. Gerald E. Eddy, Director
Michigan Department of Conservation
Mason Building
Lansing, Michigan

In your letter of inquiry to this office you request advice as to whether or not under the provisions of Act 223, P.A. 1909, as amended,[1] the Conservation Department could deed certain land to a grantee city which thereupon would lease the land to a non-profit corporation for the establishment of a public ski area and golf course. You indicate that this arrangement is necessary to finance the project and that such operation would be under the corporate Board of Directors and not the City.

The question of the authority of grantees of public use deeds from the Conservation Department to lease the lands to private institutions or corporations has been the subject of several prior Opinions from this office. On June 5, 1947, Opinion No. 425, O.A.G. 1947-48, p. 348, held that the Mackinac Island State Park Commission was without authority to lease the Island House either to individuals or to public or private corporations or associations. Shortly afterwards on June 30, 1947, in conformity with Opinion No. 425, this office ruled[2] that the Conservation Department had no authority to transfer jurisdiction over lands under the control of the Conservation Commission for leasing property to the Michigan Society for Epileptic Children, Inc., a private eleemosynary corporation. In the latter Opinion, while recognizing that such association would promote the welfare of children suffering from that certain disease, it was determined that, not being a public agency, it would not serve a public purpose and, therefore, would be without the purview of the Act.

On October 22, 1947, Opinion No. 425 was expressly overruled by Opinion No. 626, p. 500, wherein it was pointed out that at the time Opinion No. 425 was written the Attorney General was not aware of an act recently enacted prior to Opinion No. 425 whereby the Park Commission was given specific authority to remit the payment of reasonable rentals in lieu of cancelled taxes created by property being exempt as State owned. Opinion No. 626 revoked not only Opinion No. 425 but also Opinion No. 384, which was based upon Opinion No. 425.

---

1 C.L. '48, Sec. 211.461, M.S.A. 1960 Rev. Vol. Sec. 7.681. This Act provides that the Director of Conservation is authorized to sell to governmental units State lands under the control of the Conservation Commission at such price as shall be fixed by the Conservation Commission, subject to reversion to the State if the lands are not used for public purposes.

2 O.A.G. 1947-48, No. 384, p. 323.

Lake City is a fourth class city. Its powers are defined under Act 215, P.A. 1895,[3] as amended. Section 1 of Chapter 20[4] provides:

> "Sec. 1. Any city may acquire, purchase and erect all such public buildings as may be required for the use of the corporation and may purchase, acquire, appropriate and own such real estate as may be necessary for public grounds, parks, markets, public buildings and other purposes necessary or convenient for the public good and the execution of the powers conferred in this act; and such buildings and grounds, or any part thereof, may be sold, leased and disposed of as occasion may require."

The above section authorizes the City of Lake City to acquire grounds and parks for public purposes and authorizes the leasing of them or any part thereof.

Provided the general public will have the unqualified use of the premises and facilities, it would appear that this would be in furtherance of public purposes. The term "public purpose," as explained by Justice Cooley in *The People ex rel. The Detroit and Howell Railroad Co. v. The Township Board of Salem,* 20 Mich. 452, 475, cited with approval by the Court in *City of Traverse City v. Township of Blair,* 190 Mich. 313, 319, is not to be construed or applied in any narrow or illiberal sense, or in any sense which would preclude the Legislature from taking broad views of State interest, necessity or policy. To erect ski and golfing facilities would be in the interest of the people of the City of Lake City as well as the general public.

It is the opinion of the Attorney General that the leasing of such property by the City of Lake City for the operation of a ski area and golf course is authorized under the laws of the State of Michigan.

FRANK J. KELLEY,
Attorney General.

---

3 C.L. '48 and C.L.S., Sec. 81.1 et seq., M.S.A. 1949 Rev. Vol. and Cum. Supp. Sec. 5.1591 et seq.

4 C.L. '48, Sec. 100.1, M.S.A. Rev. Vol. Sec. 5.1785.