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**CONSERVATION, DEPT. OF, State Lands, Zoning, Township Ordinances.**

Townships may not zone State lands against use by trailers under Act 184, Public Acts of 1943 as amended. The Department of Conservation has paramount authority over use and occupancy of State lands.

No. 4494

June 13, 1966.

Dr. Ralph A. MacMullan, Director  
Department of Conservation  
Stevens T. Mason Building  
Lansing, Michigan 48926

Your letter of October 5, 1965 asks whether or not trailer coaches may be parked upon undeveloped State-owned lands administered by the Department of Conservation. This inquiry was prompted by an incident which occurred in Gerrish Township, Roscommon County, involving a Mr. Spittler who parked a trailer coach on State-owned lands in that Township.

It appears that he was awakened at about 7 a.m. by two sheriff deputies and ordered to vacate the premises as they alleged he was in violation of a township zoning ordinance prohibiting the occupancy of trailer coaches at a location other than a trailer park. You state that the Gerrish Township ordinance exempts trailer coaches located on State lands but that many townships have enacted zoning ordinances under Act 184, Public Acts of 1943 prohibiting use of trailers whether or not on State land and in some instances requiring parking permits and fees.

Our attention is directed to the zoning ordinance of Lyon Township. Examination of that zoning ordinance indicates that it has been enacted under Act 184, Public Acts of 1943 as amended. Article III of that ordinance provides that trailer coaches may not be used or occupied on any lot or parcel of land not licensed as a trailer coach park and in zoning districts 1 and 2. Article IV permits trailers in districts 3 and 4 upon permit from the Township Board.

You are concerned with the foregoing type of zoning regulation because of the effect it can have on recreational aspects of some 4.2 million acres of State land. Your letter indicates that this kind of zoning ordinance is in direct conflict with the Department's policy of use and occupancy of such land.

Examination of Act 184, Public Acts of 1943, as amended, indicates that it provides for the establishment in the unincorporated portions of organized townships of zoning districts within which the proper use of land and natural resources may be encouraged or regulated. The authority granted under this Act extends to regulation of tents and trailer coaches.

Under Section 1<sup>1</sup> zoning districts may be established and the Act provides:

“\* \* \* For each such district, provisions may also be adopted designating or limiting the location, the height, number of stories, and size of dwellings, buildings and structures that may hereafter be erected or

<sup>1</sup> M.S.A. § 5.2963(1), C.L. '48, § 125.271.

altered, including tents and trailer coaches, and the specific uses for which dwellings, buildings and structures including tents and trailer coaches may hereafter be erected or altered; the area of yards, courts, and other open spaces, and the sanitary, safety and protective measures that shall be required for such dwellings, buildings, and structures, including tents and trailer coaches; and the maximum number of families which may be housed in buildings, dwellings and structures including tents and trailer coaches hereafter erected or altered. All such provisions shall be uniform for each class of land or buildings, dwellings and structures, including tents and trailer coaches, throughout each district. \* \* \*

Examination of the entire Act does not disclose any language indicating that it is to apply to State-owned land.

We held in Opinion No. 2242, issued December 1, 1955<sup>2</sup> that zoning ordinances adopted by townships were not applicable to the land purchased by the Conservation Department for a fishing site. In so holding we said (page 694):

“The general rule that municipal ordinances are not applicable to state owned property is succinctly stated in 62 Corpus Juris Secundum at page 319 under Municipal Corporations:

“Property of the state is exempt from municipal regulation in the absence of waiver on the part of the state and of its right to regulate its own property; and such waiver will not be presumed. The municipality cannot regulate or control any property which the state has authorized another body or power to control. \* \* \*

“This same principle is restated in 82 Corpus Juris Secundum at page 554 under Statutes:

“The government, whether federal or state, and its agencies are not ordinarily to be considered as within the purview of a statute, however general and comprehensive the language of act may be, unless intention to include them is clearly manifest, as where they are expressly named therein, or included by necessary implication.

“This general doctrine applies, or applies with special force, to statutes by which prerogatives, rights, titles, or interests of the government would be divested or diminished, or to statutes under which liabilities would be imposed on the government. \* \* \*

Attention was also directed to the cases of *Miller v. Manistee Board of Road Commissioners*, 297 Mich. 487; *Mead v. Michigan Public Service Commission*, 303 Mich. 168; and *People ex rel. Auditor General v. Ingalls*, 238 Mich. 423. Other cases were cited concerning the application of statutes to State activities. These authorities are pertinent in the consideration of the present question.

In this instance we also believe that consideration should be given to Act 17, Public Acts of 1921 as amended. Section 3<sup>3</sup> of that Act indicates that:

<sup>2</sup> O.A.G., Vol. 1, 1955, page 692.

<sup>3</sup> M.S.A. 1958 Rev. Vol. § 13.3, C.L.S. 1956 § 299.3.

"It is hereby made the duty of the conservation department to protect and conserve the natural resources of the state of Michigan; to provide and develop facilities for outdoor recreation; \* \* \*"

Section 3(a)<sup>4</sup> provides that the Commission

"\* \* \* shall make such rules and regulations for protection of the lands and property under its control against wrongful use or occupancy as will insure the carrying out of the intent of this act to protect the same from depredations and to preserve such lands and property from molestation, spoilation, destruction or any other improper use or occupancy thereof. \* \* \*"

Our examination of the Department rules and regulations<sup>5</sup> indicates the following were promulgated and adopted under the authority of Act 17, Public Acts of 1921 as amended:

"It shall be unlawful:

"1. To enter, use, or to occupy state lands for any purpose when said lands are posted against such entry, use, or occupancy, as determined by the Director of Conservation.

"2. To camp for more than 20 days without written permission of an authorized representative of the Department of Conservation.

"3. To anchor or leave boats unattended overnight at designated public fishing sites unless the owner's name and address, in legible letters, is affixed to the boat.

"4. To store or leave boats, fish shanties, camping equipment, or other property for more than 20 days without the written permission of an authorized representative of the Department of Conservation.

"5. To leave unburied refuse and rubbish, including tin cans, bottles, and fish offal, or to deposit the same in streams or lakes. Garbage pits or other receptacles must be used where available.

"6. To build a fire without proper provision to prevent spreading, or to leave said fire without extinguishing same.

"7. To remove, destroy, mutilate, or deface posters, notices, signs, or markers of the Department of Conservation, or of any other agency of government.

"8. To post, place, or erect signs, to place or distribute advertising material, to erect a fence or barrier, to construct or occupy improvements, or to enclose state lands, without the written permission of an authorized representative of the Department of Conservation.

"9. To use state lands for a commercial purpose without the written permission of an authorized representative of the Department of Conservation.

"10. To graze state lands without the written permission of an authorized representative of the Department of Conservation.

"These rules and regulations shall be in force and effect until May 1, 1971."

<sup>4</sup> M.S.A. 1958 Rev. Vol. § 13.4, C.L.S. 1956 § 299.3a.

<sup>5</sup> Rule 299.331, 1960 A.A.C.S. pp. 1441, 1442.

The rules provide that in the event of a violation the penalty shall be that for a misdemeanor. The Department has also promulgated and formally adopted rules and regulations governing State parks and recreation areas.<sup>6</sup> Camping in State parks is generally under permit. Our examination of the land rules and regulations indicate they allow occupancy for any purpose except such as are prohibited by posting. The rules provide for camping for a period of less than 20 days and for more than 20 days by written permission. Permits are also given for parking of trailers in State parks and recreation areas under policy statements applicable to them.

The foregoing rules were all adopted prior to the enactment of Act 380, Public Acts of 1965 which went into effect on July 23, 1965 and is known as the "Executive organization act of 1965."<sup>7</sup> By Section 252 of Act 380, *supra*, the Department of Conservation as created under Section 1 of Act 17, Public Acts of 1921 as amended was transferred by a Type I transfer to a newly created Department of Conservation. Under date of November 5, 1965 I issued my Opinion No. 4485 in which it was concluded that the legislature by the enactment of Act 380 and the creation of a Commission of Conservation as prescribed in Section 254 of that Act had abolished the Commission of Conservation created by Section 1 of Act 17, Public Acts of 1921, *supra*. This result does not have the effect of abrogating the foregoing rules and any other effective rules promulgated by the former Commission of Conservation because of the provisions of Section 501 of Act 380 which reads as follows:

"All rules, regulations and orders of departments, boards, commissions or other agencies lawfully adopted prior to the effective date or any provision of this act shall continue to be effective until revised, amended or repealed."

The rule-making power of the Department of Conservation created by Act 380 is now vested in the head of that Department which by Section 251 of the Act is designated as the Commission of Conservation. This is made clear by Section 9 of Act 380 which in part provides:

"The head of each principal department, \* \* \* may promulgate such rules and regulations as may be necessary to carry out the functions now or hereafter vested in them \* \* \*."

In addition to all that has been considered we must also note our Opinion No. 3339, issued August 14, 1959<sup>8</sup> where we held that trailer coaches used for dwelling purposes, if situated on State property, were exempt from obtaining local permit under Act 172, Public Acts of 1958, on the basis that the State was not within the purview of the statute. The same reasons control here in concluding that the State is not within the scope of Act 184, Public Acts of 1943 as to zoning.

It is our opinion that the State, namely the Department of Conservation, has the authority to make rules and regulations governing use and occupancy of its lands. If townships were permitted to regulate State lands it would

<sup>6</sup> Rule 299.321, 1960 A.A.C.S. pp. 1440, 1441.

<sup>7</sup> M.S.A. 1965 Cum. Supp. § 3.29(1) et seq.

<sup>8</sup> O.A.G. 1959-60, Vol. 1, page 159.

amount to an interference with State authority. The State permits camping on State lands whether in a tent, sleeping bag or trailer. Therefore, the township cannot under guise of zoning limit camping on State lands contrary to the policy of the Department.

We therefore hold that the Lyon Township zoning ordinance, Roscommon County, does not apply to trailers located on State lands of whatever character for the reason that the Township cannot prohibit that which the State permits.

FRANK J. KELLEY,  
*Attorney General.*

660615.1

**CIVIL SERVICE:** Employees of local unit, establishment of system for.

The board of supervisors of a county or the legislative body of other local units is authorized by Section 6 of Article XI of the Constitution to adopt an ordinance or resolution establishing a merit system for the employees of the county or other local unit. Such constitutional provision is self-executing. Unless the charter of the county or other local unit authorizes the legislative body to establish a merit system for its employees without vote of the electors, such ordinance or resolution will not become effective until approved by the electorate. Calling of an election upon this issue may not be required by the filing of an initiatory petition.

No. 4534

June 13, 1966.

Honorable F. Charles Raap  
State Representative  
The Capitol  
Lansing, Michigan

You have requested my opinion upon two questions:

"No. 1—Can the County Board of Supervisors, by a majority vote, put the questions of Civil Service for that county to a vote of the electorate?"

"No. 2—Could any interested party, by initiatory petition, signed by a number of people of that county, make the county put the question of Civil Service for that county to a vote of the electorate? If the answer is yes, what percentage of the county would be necessary to initiate such a petition and in what form?"

Section 6 of Article XI of the Constitution provides:

"By ordinance or resolution of its governing body which shall not take effect until approved by a majority of the electors voting thereon, unless otherwise provided by charter, each county, township, city, village, school district and other governmental unit or authority may establish, modify or discontinue a merit system for its employees other than teachers under contract or tenure. The state civil service