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MOBILE HOMES: Mobile home park act

WORDS AND PHRASES: "Mobile home park," "Trailer coach park,"
"Continual"

A parcel of land under the control of one person is subject to the mobile home park act where three or more mobile home units are permanently located on the site for use as rental units to fishermen and tourists for short periods of time.

Opinion No. 4993

April 26, 1976.

Honorable Charles H. Varnum
State Representative
The Capitol
Lansing, Michigan 48926

You have requested my opinion as to whether the operation of a "development in which mobile units will be permanently located on a site for use as rental cottages" requires licensure under the "Mobile Home Park Act," 1959 PA 243, as amended; MCLA 125.1001 *et seq*; MSA 5.278(31) *et seq*.

1959 PA 243, *supra*, § 21, provides in relevant part:

"No person shall maintain, conduct or operate a trailer coach park within this state without an annual license therefor from the commissioner. . . ." MCLA 125.1021; MSA 5.278(51).

The focal point for inquiry is the question of whether an arrangement such as contemplated in the situation you pose constitutes the maintenance, conduct or operation of a trailer coach park so as to give rise to the necessity of licensure under 1959 PA 243, as amended.

1959 PA 243, *supra*, §2, provides:

"As used in this act:

* * *

"(c) 'Mobile home park', 'trailer coach park' or 'park' means any parcel or tract of land under the control of any person, upon which 3 or more occupied trailer coaches are harbored on a continual or nonrecreational basis, or which is offered to the public for that purpose, regardless of whether a charge is made therefor, together with any building, structure, enclosure, street, equipment or facility used or intended for use incident to the harboring or occupancy of trailer coaches; except as provided by section 91." MCLA 125.1002(c); MSA 5.278(32) (c).

From examination of the letter attached to your request for my opinion, the following facts, relevant to the definition of a mobile home park, are operative:

(1) the developer will retain "control" over the tract of land in question; and

(2) "3 or more occupied trailer coaches" will be harbored on the tract of land in question

The attachment also asserts that these "resort cottages" will be used solely for recreational purposes. Assuming for analysis that the use of these trailer coaches will be exclusively recreational in nature, that point in and of itself does not resolve the question. The language employed by the legislature in 1959 PA 243, §2(c), *infra*, is, in relevant part, as follows:

"'Mobile home park', 'trailer coach park' or 'park' means any parcel or tract of land . . . upon which . . . are harbored on a continual *or* nonrecreational basis. . . ." MCLA 125.1002(c); MSA 5.278(32) (c). [Emphasis supplied.]

Resolution of the instant problem requires examination and definition of the words "continual" and "or."

In the case of *Fowler v United Equitable Insurance Co*, 200 Kan 632; 438 P2d 46 (1968), the Supreme Court of Kansas had to interpret the word "continually" as found in a hospitalization insurance policy. In that case, the Court considered the distinction between the words "continual," "continually," "continuous" and "continuously" stating:

"As defined in Webster's Third New International Dictionary, Unabridged (1967), 'continual' means 'proceeding without stopping, interruption, or intermission: recurring in steady and rapid succession: repeated at intervals with brief, perhaps regular intermissions in time.' 'Continually' is defined as not only unceasingly continuously in time: without intermission but means 'in regular or repeated succession: very often.' On the other hand, the word 'continuous' is defined as 'characterized by uninterrupted extension in time or sequence: continuing without intermission or recurring regularly after minute interruptions.' 'Continual' implies 'a close prolonged succession or recurrence' whereas 'continuous' implies 'an uninterrupted flow or spatial extension.' (Webster's Seventh New Collegiate Dictionary [1963]). It would appear from these definitions that the term 'continually confined' is somewhat more flexible in its meaning and application than 'continuously confined,' and is not necessarily restricted to confinement that is increasing and uninterrupted." 438 P2d 46, 49. [Emphasis supplied.]

Also, in *Wolfe v State*, 127 Tex Crim 213; 75 SW2d 677, 678 (1934), the Court of Criminal Appeals of Texas was called upon to interpret the word "continuous." In doing so, the Court contrasted "continuous" with "continual," stating:

"The same authority [Webster's International Dictionary] states that continuous is a stronger word than continual, and denotes that the continuity of union of parts is absolute and uninterrupted, as a continuous sheet of ice, a continuous flow of water or argument. It is stated further that continual, in most cases, marks a close and unbroken succession of things rather than absolute continuity." 75 SW2d 677, 678

The use of mobile homes as "resort cottages" to be rented to the public on an availability basis appears to fit within the definition of "continual" as contained in Section 2(c) of 1959 PA 243, as amended. The projected

development is to be a business enterprise not a spasmodic permissive letting of sites to an idle traveler. Furthermore, it is my opinion that the legislature's use of the word "or" between the words "continual" and "nonrecreational" was intended to constitute the disjunctive sense of the word rather than the conjunctive.

In 1A Sutherland Statutory Construction, § 21.14, p 90-91, it is stated:

"Where two or more requirements are provided in a section and it is the legislative intent that all of the requirements must be fulfilled in order to comply with the statute, the conjunctive 'and' should be used.¹ Where a failure to comply with any requirement imposes liability, the disjunctive 'or' should be used."

Footnote #1 referenced in the above-quoted language from Sutherland reads as follows:

"¹ When the term 'or' is used it is presumed to be used in the disjunctive sense, unless the legislative intent is clearly contrary." 1A Sutherland Statutory Construction, § 21.14, Footnote #1, p 91.

My opinion is further influenced by the legislative history. 1959 PA 243, as amended by 1970 PA 172; MCLA 125.1001 *et seq*; MSA 5.278(31) *et seq*, which amended the definition of "mobile home park" to include the words "continual or nonrecreational basis." On the same day that 1970 PA 172 was approved, 1970 PA 171; MCLA 325.651 *et seq*; MSA 14.447(121) *et seq*, was also approved. 1970 PA 171 is an act to provide for licensing and regulation of campgrounds, *inter alia*. "Campground" is defined in § 1(a) of 1970 PA 171 as follows:

"'Campground' means any parcel or tract of land under the control of any person wherein sites are offered for the use of the public or members of an organization, either free of charge or for a fee, for the establishment of temporary living quarters for 5 or more *recreational* units." MCLA 325.651(a); MSA 14.447(121)(a). [Emphasis supplied.]

Section 1(f) of 1970 PA 171 defines "recreational unit" as follows:

"'Recreational unit' means a tent or vehicular-type structure, primarily designed as temporary living quarters for recreational, camping or travel use, which either has its own motive power or is mounted on or drawn by another vehicle which is self-powered. A tent means a collapsible shelter of canvas or other fabric stretched and sustained by poles and used for camping outdoors. Recreational unit shall include, but shall not be limited to, the following:

"(1) Travel trailer which is a vehicular portable structure, mounted on wheels, of such a size or weight as not to require special highway movement permits when drawn by a stock passenger automobile, primarily designed and constructed to provide temporary living quarters for recreational, camping or travel use.

"(2) Camping trailer, which is a vehicular portable structure mounted on wheels and constructed with collapsible partial side walls of fabric, plastic or other pliable material which fold for towing by

another vehicle and unfold at the campsite to provide temporary living quarters for recreational, camping or travel use.

“(3) Motor home, which is a vehicular structure built on a self-propelled motor vehicle chassis, primarily designed to provide temporary living quarters for recreational, camping, or travel use.

“(4) Truck camper which is a portable structure, designed to be loaded onto, or affixed to, the bed or chassis of a truck, constructed to provide temporary living quarters for recreational, camping or travel use. Truck campers are of two basic types:

“(i) Slide-in camper, which is a portable structure designed to be loaded onto, and unloaded from, the bed of a pickup truck, constructed to provide temporary living quarters for recreational, camping, or travel use; and

“(ii) Chassis-mount camper, which is a portable structure designed to be affixed to a truck chassis, and constructed to provide temporary living quarters for recreational, travel or camping use.” MCLA 325.651(f); MSA 14.447(121)(f)

As can be seen, 1970 PA 171, deals with equipment and facilities having the characteristics of mobility and temporary use.

The legislature, on the same day, provided for trailer parks of continual use and trailer parks of nonrecreational use in 1970 PA 172, and for the mobile and temporary campground in 1970 PA 171. The intent of the legislature to regulate the whole field of trailer parks and campgrounds is evident.

A development of permanently sited mobile homes thus would fall within the parameters of 1959 PA 243, as amended by 1970 PA 172.

For the foregoing reasons, it is my opinion that a development such as that proposed in the instant situation must be licensed under 1959 PA 243, *supra*.

FRANK J. KELLEY,
Attorney General.

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BANKING: Deposit of state money

CONSTITUTIONAL LAW: Deposit of state money in banks

SCHOOL DISTRICTS: Funds on deposit in banks

COMMUNITY COLLEGES: Funds on deposit in banks

WORDS AND PHRASES: “state money”

Funds disbursed by the State Treasurer to local school and community college districts, after disbursement, are no longer state monies within the purview of Const 1963, art 9, § 20.