City parks; commercial interests charged fee for use

Number: INFORMAL

Date: August 26, 1996

Mr. Richard H. Roth
Lighthouse Point City Attorney
Post Office Box 5100
Lighthouse, Florida 33064

RE: MUNICIPALITIES--PARKS AND RECREATION--USER FEES--charging user fees to commercial interests using city park.

Dear Mr. Roth:

On behalf of the City of Lighthouse Point you have asked whether the city can charge a corporation for the use of its public park when that use is part of the commercial operation of the corporation for a profit.

According to your letter the City of Lighthouse Point owns and operates the Dan Witt Park which is located within the city limits and includes baseball fields, a soccer field, basketball courts and recreational equipment. A private school located in Lighthouse Point, which has no recreational facilities at the school complex, has begun bussing its students at hourly intervals to the park to use it for their recreational programs. This has placed a burden on the park facilities. In light of this burdensome use of city facilities for private commercial purposes, you have asked whether the city may charge the school for its use of the park.

It is important to note initially that land held by a municipality for park purposes is held for the benefit of the people of the state at large and not only for the benefit of local inhabitants.[1] However, recognizing that this is the case, this office has over the years issued a number of opinions relating to the use of parks and recreational facilities and the imposition of fees for such use.[2]

In Attorney General's Opinion 76-124 this office concluded that a municipality seeking to impose higher fees on nonresidents using municipal recreational facilities would have to show that the differential reflected, and was substantially related to, all economic factors. Additionally, a definite financial burden on the municipality in park maintenance costs clearly justifying a higher fee for nonresidents would have to be shown. This opinion also recognizes that

"[A] municipality may make all regulations with regard to the control and management of its public parks as are necessary to preserve the public peace and safety, to protect the property from injury, and to secure to the public the common enjoyment thereof."

Moreover, as an aspect of this regulatory authority, it is generally recognized that a municipality may charge a fee for individual use which is reasonable related to the expense incurred in operating and maintaining a public park.[3]

The situation you describe involves a commercial use of public property rather than a distinction between resident use and nonresident use. Therefore, a number of the constitutional considerations which are discussed in earlier opinions, including applicability of the Equal Protection Clause and the Privileges and Immunities Clause of the Fourteenth Amendment of the United States Constitution, would not be implicated.[4]

In evaluating policies for the control and management of city park property the City of Lighthouse Point may wish to consider imposing a users fee on park property and providing that the receipts from such a fee would be directed to the maintenance and upkeep of the park.[5] User fees are charges based upon the proprietary right of the governing body permitting the use of the instrumentality involved. These fees are unlike taxes in that they need not be authorized by general law.[6]

Further, the amount of any such fee should be justified in proportion to the use made of the property. Thus, a commercial user such as you have described would bear a larger burden in terms of the amount assessed for using city park property based upon increased maintenance and operation costs to the city.

I trust that these informal comments may be of assistance to you in considering options for resolving the City of Lighthouse Point's concerns regarding the use of city parks.

Sincerely,

Gerry Hammond
Assistant Attorney General

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[1] *See* 64 C.J.S. *Municipal Corporations*, s. 1818b, and 38 Fla. Jur.2d *Parks and Recreation Centers* s. 10., Ops. Att'y Gen. Fla. 74-279 (1974), 87-58 (1987).

[2] *See, e.g.,* Ops. Att'y Gen. Fla. 74-279 (1974), 75-84 (1975), 76-124 (1976), 87-58 (1987).

[3] *See* Op. Att'y Gen. Fla. 76-124 (1976).

[4] *See, e.g.,* Ops. Att'y Gen. Fla. 74-279 (1974), 76-124 (1976), and 87-58 (1987). *And see City of Maitland v. Orlando Bassmasters Association of Orlando, Florida, Inc.,* 431 So. 2d 178 (Fla. 5th DCA 1983).

[5] *Cf. City of New Smyrna Beach v. Board of Trustees of Internal Improvement Trust Fund,* 543 So. 2d 824, 828 (Fla. 5th DCA 1989) "Since there is no constitutional prohibition against the City imposing reasonable user fees for access to the beach provided that the revenue received is used solely for the maintenance, operation and improvement of the beach . . . we conclude that the City, under its home rule powers, had the authority to impose a reasonable fee for the use of the beach within its municipal boundaries[.]"

[6] *See State v. City of Port Orange*, 650 So. 2d 1 (Fla. 1994).