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ATTORNEY GENERAL
STATE OF ILLINOIS



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I - 93-027

STATE MATTERS:
Development of Resort on
Public Property at Kinkaid Lake

Mr. Brent Manning
Director
Illinois Department of Conservation
524 South Second Street
Springfield, Illinois 62701-1787

Dear Mr. Manning:

I have your recent letter wherein you inquire whether a proposal for the development of a mixed use recreational resort area adjacent to Kinkaid Lake, which is located in Jackson County, Illinois, is consistent with the purposes for which the property in question was acquired, as set forth in section 1 of the Big Kinkaid Creek Reservoir Act (Ill. Rev. Stat. 1991, ch. 19, par. 1131; 615 ILCS 80/1 (West 1992)). Because of the nature of your inquiry, and the need for an expedited response, I will comment informally upon the issues raised by your question.

As early as 1963, the General Assembly appropriated funds to the Department of Public Works and Buildings for an engineering study and report concerning the development of a dam and reservoir on Big Kinkaid Creek, in Jackson County. (Laws 1963, p. 3486.) In 1965, the General Assembly authorized the Department of Public Works and Buildings to cooperate and enter into agreements with the Kinkaid-Reeds Creek Conservancy

District for the construction, operation and maintenance of a multi-purpose reservoir on Big Kinkaid Creek, and appropriated funds to the Department for the acquisition of land for, and the construction of, the reservoir. (Laws 1965, p. 3064.) The purposes for which the reservoir was to be constructed included "water supply, recreation, wildlife, flood control, and other water resources phases compatible with the economic rehabilitation, development and improvement of the area". (Laws 1965, p. 3064; see also Laws 1967, p. 3662.)

In 1971, the General Assembly enacted "AN ACT authorizing the Department of Public Works and Buildings to make and perform agreements and to acquire lands and rights of way in connection with the construction and development of a multi-purpose reservoir on Big Kinkaid Creek in Jackson County and making an appropriation therefor" (Public Act 77-459). Section 1 of Public Act 77-459 provided:

"The Department of Public Works and Buildings may independently engage in, or may make agreements with any agency of the United States, any municipality or political subdivision of this State or any public or private corporation, person or association for, the formulation of plans, acquisition of rights of way, and the construction, operation and maintenance of any flood control, drainage, levee, water supply and water storage, including regulation, sale, distribution and use, and other water resource improvements and facilities in connection with the development of Big Kinkaid Dam and Reservoir Project. The Department on behalf of the State of Illinois, shall have jurisdiction and supervision over any and all phases of developments and improvements relating to such project and full authority and control over any and all lands acquired in connection with the development of the Big Kinkaid Creek Project and may, in the discretion of the Department, grant easements, lease, sell, transfer or convey, exchange, develop, or otherwise utilize such lands in the interest of the State of Illinois insofar as the same is not inconsistent or in conflict with the purpose for which acquired by the Department."

In 1979, the Act was amended to reflect the creation of the Department of Transportation as a successor agency to

the Department of Public Works and Buildings (see Public Act 81-840, effective September 19, 1979). A limitation of 50 years upon the authority of the Department to lease property acquired for the project was added to section 1 in 1980 (see Public Act 81-1509, effective September 26, 1980), and, in 1990, the Act was given the short title of "the Big Kinkaid Creek Reservoir Act". (See Public Act 86-1324, effective September 6, 1990.) Section 1 of the Big Kinkaid Creek Reservoir Act, as currently in force and effect, provides:

"The Department of Transportation as successor to the Department of Public Works and Buildings may independently engage in, or may make agreements with any agency of the United States, any municipality or political subdivision of this State or any public or private corporation, person or association for, the formulation of plans, acquisition of rights of way, and the construction, operation and maintenance of a dam and multi-purpose reservoir on Big Kinkaid Creek in Jackson County, together with the development and maintenance of appurtenant use areas devoted to recreation; access roads to and around such reservoir; flood control; drainage; levees; water supply, including storage regulation, sale, distribution and uses thereof; and other water resource improvements, facilities and uses compatible with the continued economic rehabilitation, development and improvement of the area. The Department on behalf of the State of Illinois, shall have jurisdiction and supervision over any and all phases of developments and improvements relating to such project and full authority and control over any and all lands acquired in connection with the development of the Big Kinkaid Creek Project and may, in the discretion of the Department, grant easements, lease for a period not to exceed 50 years, sell, transfer or convey, exchange such lands in the interest of the State of Illinois insofar as the same is not inconsistent or in conflict with the purpose for which acquired by the Department."

In accordance with the provisions of section 1 of the Act, an agreement was executed on June 16, 1981, by and between the Department of Transportation, the Department of Conservation and the Kinkaid-Reeds Creek Conservancy District relating

to the development of the reservoir and adjacent lands. Under the agreement, the Department of Transportation transferred jurisdiction for the management of the majority of the State-owned land at the reservoir to the Department of Conservation. The District was granted the authority to purchase those lands within 40 years from the date of the agreement. Paragraph 16 of the agreement, however, provided that:

"No property shall be conveyed from the State to the DISTRICT without a specific reverter clause that provides [that] should the DISTRICT cease to use the property so conveyed according to the original purposes for which the property was acquired, title to the property shall revert and revest in fee simple absolute in the State of Illinois."

It is my understanding that at least some, but not all, of the property heretofore conveyed by the Department of Transportation to the District has been conveyed subject to a reverter, as provided in the 1981 agreement. I also note that there is no requirement in section 1 of the Big Kinkaid Creek Reservoir Act that any subsequent conveyance of property acquired for the project be made subject to a reverter; that requirement arises only out of the terms of the 1981 agreement, and the policies of the Departments of Transportation and Conservation. The effect of the reverters contained in past conveyances and which appear to be required by the agreement for prospective conveyances to the District is central to your inquiry.

The District has received a proposal for the development of a "mixed use recreational resort area" on lands adjacent to Kinkaid Lake. The development would encompass the construction of resort townhouses and condominiums, residential townhouses and single family residences, and recreation areas to serve the development. It is anticipated that the development will also spur the growth of businesses in the area, as well as other recreational uses. The estimated economic impact of the proposed development upon the area will be as much as \$700,000,000 over the next 20 years. According to the information at our disposal, it appears that in order to accommodate the development, the District desires to purchase additional property from the Department of Transportation which, together with property previously purchased by the District, will be leased to the developer for development in accordance with the proposal.

You have suggested that the proposed development is prohibited by the terms of the 1981 agreement, because the

"privatization" of the lands in question would trigger the reverters in the deeds pursuant to which necessary conveyances of land to the District have been and will be made. In addition to raising the issue of whether the proposed use is consistent with the provisions of the Big Kinkaid Creek Reservoir Act, resolution of your inquiry also requires consideration of the issue of whether the proposed use is consistent with article VIII, section 1(a) of the Illinois Constitution of Illinois.

From its very inception, as evidenced by the terms of the various legislative enactments relating thereto, the construction and development of Kinkaid Lake has been envisioned as serving multiple purposes, including: water supply, recreation, wildlife and flood control. All of those uses, however, have been expressly required to be "compatible with the economic rehabilitation, development and improvement of the area". Consequently, it is clear that economic development has been a principal legislative objective of the construction and operation of Kinkaid Lake.

There has been no suggestion that the proposed development will not further the economic development of the Kinkaid Lake area. Moreover, the development plan clearly capitalizes upon the recreational uses of the Lake; indeed, without the availability of the recreational opportunities afforded by Kinkaid Lake, it is unlikely that such a development would be undertaken.

Therefore, it appears that the proposed development is generally consistent with the purposes for which the General Assembly has authorized the construction and maintenance of Kinkaid Lake, and the acquisition of land adjacent to the Lake. The development may fairly be characterized as an "appurtenant use area devoted to recreation" which will be compatible with "the continued economic rehabilitation, development and improvement of the area". The Department has been granted the express authority to enter into agreements with political subdivisions of the State (such as the Kinkaid-Reeds Creek Conservancy District) for the development of such uses. Consequently, it does not appear that the use in the proposed development of property which was originally acquired by the Departments of Public Works and Buildings or Transportation, which has been or will be conveyed to the Kinkaid-Reeds Creek Conservancy District, would be violative of the provisions of the 1981 agreement or would constitute a basis upon which the land would revert to the Department, in accordance with the deeds of conveyance containing reverters.

It appears to be the position of the Department of Conservation that devotion of lands originally acquired by the State to a use which may not be available to the public generally is necessarily inconsistent with the purposes for which the land was acquired. This position is apparently based upon the provisions of article VIII, section 1(a) of the Constitution, which provide:

"Public funds, property or credit shall be used only for public purposes."

Reference to the Illinois Supreme Court's decision in People ex rel. City of Urbana v. Paley (1977), 68 Ill. 2d 62, however, compels the conclusion that such a strict construction of article VIII, section 1(a) is inappropriate.

In People ex rel. City of Urbana v. Paley, the defendant, the mayor of the city, refused to sign general obligation bonds issued to finance the redevelopment of downtown Urbana, arguing that the proposed commercial renewal project would result in the use of public funds for a private purpose. The court, citing People ex rel. City of Salem v. McMacklin (1972), 53 Ill. 2d 347, stated that the fact that a project provides an impetus to economic development satisfies the requirement of a public purpose, under article VIII, section 1(a). Therefore, even though Urbana's redevelopment plan contemplated the sale or lease of property acquired with bond funds to private commercial interests, the court stated, at page 76:

" * * *

* * * It is apparent that the city of Urbana intends to undertake the redevelopment in question primarily for the purpose of revitalizing an economically stagnant downtown area. The purpose of the project is therefore clearly and predominantly a public purpose, and the benefit reaped by private developers is merely an inevitable incident thereto. Consequently, on the basis of McMacklin and the other authorities cited above, the mayor's objection to the private benefit which will result from the proposed redevelopment is without merit.

* * *

It is clear that the Supreme Court's analysis of article VIII, section 1(a) of the Constitution is equally

applicable to the development proposal in question. In the analysis, it is immaterial whether the project promotes initial economic development or subsequent economic redevelopment-- either purpose is a valid public purpose, which will support either the expenditure of public funds or the use of public property. That the development will incidentally benefit private interests does not detract from the public purpose served by the development.

Therefore, because the proposed development is designed primarily to promote the economic development of the Kinkaid Lake area, the mere fact that public property may be developed commercially by private interests is not violative of article VIII, section 1(a) of the Constitution, since the private benefit is incidental to the public purpose served by the development.

In conclusion, it does not appear that the proposed development, if undertaken in accordance with the proposal we have reviewed, would cause property which was conveyed to the Kinkaid-Reed's Creek Conservancy District subject to a reverter, as specified in the 1981 three-party agreement, to revert to the State of Illinois. Further, the proposal would appear to serve a public purpose, that being the economic development of the Kinkaid Lake area, which is consistent with the purposes for which the General Assembly authorized the construction and maintenance of the Lake, and the acquisition of land therefor.

This is not an official opinion of the Attorney General. If we may be of further assistance, please advise.

Very truly yours,



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Chief, Opinions Division

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