

LETTER OPINION
2001-L-34

August 31, 2001

Mr. James O. Johnson
Mercer County State's Attorney
PO Box 39
Stanton, ND 58571

Dear Mr. Johnson:

Thank you for your letter concerning the operation of the Lake Sakakawea State Park marina. You advise that members of the public rent slips for their boats from Lake Sak, Inc., owned and operated by Kit Henegar (Henegar). Henegar operates the marina under a lease from the North Dakota Parks and Recreation Department (Parks and Recreation Dept.). The Parks and Recreation Dept. leases the marina property in question from the U.S. Army Corps of Engineers (Corps). You advise that some slip renters contract with service providers to inspect and service their boats. You relate that Henegar has been trying to prevent these service providers from entering the premises and if they do, he calls upon park rangers to evict them for trespassing.

You specifically ask whether Henegar has the right to restrict access to the marina to only slip renters or if those renters can extend permission to others to inspect and service their boats.

The Parks and Recreation Dept. is required to promote the full development of outdoor recreation areas. N.D.C.C. § 55-08-01.1. It is also required to lease property under its control for improved management of recreational areas, N.D.C.C. § 55-08-01.3(5), and is authorized to provide special services in recreation areas and recreational facilities for use by the public. N.D.C.C. § 55-08-05.

The marina operation is essentially governed by the Lake Sakakawea State Park Third-Party Lease Agreement dated April 2, 1991, and its addendums (Parks and Recreation Dept. Lease) between the Parks and Recreation Dept. and Henegar. The purpose of the Parks and Recreation Dept. Lease is "to improve recreational services to the general public who use Lake Sakakawea State Park through the marina concessions." Parks and Recreation Dept. Lease, para 1. The Parks and Recreation Dept. Lease "is subject to the primary lease" from the Corps to Parks and Recreation Dept. (Corps

Lease). See second paragraph of the preamble in the Parks and Recreation Dept. Lease and Corps Lease, para. 9.

General rules for construction of contracts apply to a lease. Vanderhoof v. Gravel Products, Inc. 404 N.W.2d 485, 491 (N.D. 1987). A contract is to be interpreted as a whole with the intention of the parties drawn from the entire contract, not isolated clauses. Id. at 491; N.D.C.C. § 9-07-06. If unambiguous, the intent of the parties is to be ascertained from the contract alone. N.D.C.C. §§ 9-07-02, 9-07-04; First Nat'l Bank & Trust Co. v. Scherr, 435 N.W.2d 704 (N.D. 1989). Provisions should be given effect consistent with the main purpose of the contract. Vanderhoof at 491. Furthermore, several contracts made a part of one transaction are to be read together. N.D.C.C. § 9-07-07.

Paragraph 8(E) of the Parks and Recreation Dept. Lease grants business rights to sell items within Lake Sakakawea State Park, "it being the intention that Henegar shall be the principal concessionaire in the marina area." While Henegar is to provide boat servicing for a fee, a percentage of which is paid to the Parks and Recreation Dept., there is no indication that Henegar's boat servicing is to be exclusive. Parks and Recreation Dept. Lease, paras. 5(D) and 6(A). Likewise, there are no provisions in the Corps Lease limiting boat servicing to Henegar to the exclusion of other service providers. Paragraph 9 in the Parks and Recreation Dept. Lease provides that charges for "servicing of boats and motors. . . shall be competitive to similar, comparable area commercial enterprises offering similar, comparable services." The requirement that rate charges be competitive obviously contemplates a choice of services.

According to the most recent addendum to the Parks and Recreation Dept. Lease dated May 7, 2001, Henegar was to "install security gates on all slip systems so that there will be a transfer of liability to the slip renter." Henegar has advised marina users in an Information Sheet that Henegar "is transferring visitor liability to you, the slip renter. . . . For visitors to gain entrance to the slips, you as a renter, must open the gate for them. Your visitors must follow the same rules and regulations as stipulated in your contract." The Boat Space Rental Agreement that Henegar has with renters (Henegar Agreement) provides that a tenant may make "reasonable and customary use . . . of the docks and facilities." Henegar Agreement, para. 5. The Henegar Agreement specifically provides that a renter "may work on his own boat." Henegar Agreement, para. 12. The only limitation that a renter agrees to is that Henegar may "require any outside mechanic, craftsman or any other persons performing any work on TENANT'S boat while in or on the premises of [Henegar] to first provide [Henegar] or his yard manager with a standard certificate of workman's compensation and liability insurance coverage." Henegar Agreement, para. 12. The Henegar Agreement and the Information Sheet contemplate that the renter may allow service providers entrance to a slip.

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When the leases are read together, considering that their purpose is to provide recreational services to and use of the marina by the public, it is my opinion that service providers may be given access to the slips by slip renters to service renters' boats.

Sincerely,

Wayne Stenehjem
Attorney General

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