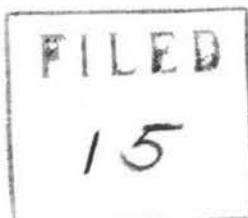


INMATES OF THE PENITENTIARY: Labor of inmates of the Missouri State  
STATE PARKS: Penitentiary may be used in improving  
LABOR OF INMATES: the parks belonging to this state.



October 15, 1957

Honorable James D. Carter  
Director  
Department of Corrections  
Jefferson City, Missouri

Dear Colonel Carter:

This will acknowledge receipt of your opinion request of September 12, 1957, which reads as follows:

"The Department of Corrections is very desirous for an opinion on whether or not inmates of the Missouri State Penitentiary can be used in conjunction with State Park work.

"The nature of this work would be clearing underbrush, building fences and any other labor required to beautify our State parks. We are contemplating a camp setup to house inmates and they will be used in improving and beautifying State owned property only.

"Section 22 of House Bill 377 grants this permission to the Department; also, the Revised Statutes of 1955, Section 216.335 permits the Department to employ inmates for this type project.

"It is respectfully requested that a legal opinion be sent to this office so that we may lay the groundwork and proceed with our project."

The question arises in view of the provisions contained in Section 216.335, RSMo Cum. Supp. 1955. Section 22, House Bill No. 377, 68th General Assembly, is the same as the statute (Section 216.335, supra) referred to, and reads as follows:

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"The division may use the labor of inmates not otherwise employed on improving any of the public grounds belonging to the State, in securing supplies for the institution, for the protection of state property from changes, or washes in the Missouri River, or for any other reasonable purposes that the division deems advisable."

In paraphrasing the quoted section, it is clear that the labor of inmates may be used in improving any of the public grounds belonging to the State. Since the question here is whether or not the labor of inmates may be used with respect to State parks, the question arises as to whether or not State parks are included within the term "public grounds belonging to the state." No cases from this State have been found where a question has arisen in connection with parks under a statute providing for certain duties and/or liabilities in connection with public grounds belonging to the State or a municipality. In other words, no cases from this State have been found where the term "public grounds" has been interpreted in connection with State parks. However, there are several cases on this subject decided in other jurisdictions. In all of the cases found, the courts have construed the term "public grounds" to include parks. In one case, *City of Cleveland v. Ferrando*, 150 N.E. 747, 114 O.St. 207, there was a statute imposing a duty upon municipalities to keep the public grounds free from nuisance. The question arose in that case as to whether or not a park owned and controlled by the city came within the meaning of the term "public grounds" as used in the statute there involved. The court held that it did. For the same result, see *Gaines v. Village of Wyoming*, 72 N.E.2d 369, 147 O.St. 491; *Gottesman v. City of Cleveland*, 52 N.E.2d 644, 142 O. St. 410; *King v. Sheppard*, Tex. Civ. App., 157 S.W.2d 682; *Lloyd v. City of Great Falls*, 86 P.2d 395, 107 Mont. 442. As aforementioned, in none of the cases where the term "public grounds" has been construed has there been an exclusion of parks from the meaning of said term.

The only remaining question is whether or not the statute is to be interpreted literally. We believe in this case that it is to be so construed. In the case of *State v. Sestric*, 216 S.W. 2d 152, 1.c. 154 the court stated that:

"\* \* \*Where statutes are plain, unambiguous and simple, there is no room for 'construction' and they must be applied by the courts as they are written by the legislature. \* \* \*"

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Also in this connection, see the case of State ex rel. Cobb v. Thompson, 5 S.W.2d 57, in which the court stated the rule to be as follows, l.c. 59:

"A statute is not to be read as if open to construction as a matter of course. It is only in the case of ambiguous statutes of uncertain meaning that the rules of construction can have any application. Where the language of a statute is plain and unambiguous and its meaning clear and unmistakable, there is no room for construction, and the courts are not permitted to search for its meaning beyond the statute itself."  
(Citations omitted)

In view of the above quoted rule, we believe that the section in question is not open for construction and that the same is to be interpreted literally, as written.

In view of the foregoing, it is concluded that the term "public grounds belonging to this state" includes within its meaning State parks and that labor of inmates may be used in improving the same.

#### CONCLUSION

It is, therefore, the conclusion of this office that labor of the inmates of the Missouri State Penitentiary may be used in improving the parks belonging to this State.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Harold L. Henry.

Very truly yours,

John M. Dalton  
Attorney General

HLH:hw