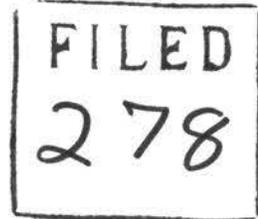


August 21, 1974

OPINION LETTER NO. 278
Answer by letter-Rothschild

Mr. James Wilson, Director
Department of Natural Resources
12th Floor Jefferson Building
Jefferson City, Missouri 65101



Dear Mr. Wilson:

This is in response to your request for an opinion on the following questions:

"1. In whose name is title now vested for land held, prior to the enactment of the Omnibus State Reorganization Act of 1974, in the name of the State Park Board?

"2. In whose name will title be held for land acquired in the future by the Department of Natural Resources?"

Section 15.10 of C.C.S.H.C.S.S.C.S.S.B. No. 1, First Extraordinary Session, 77th General Assembly, (hereinafter referred to as Senate Bill No. 1) states, in part, as follows:

"The fee title to all real property now owned or hereafter acquired by the state of Missouri, or any department, division, commission, board or agency of state government, other than real property owned or possessed by the state highway commission, conservation commission, state park board, and the university of Missouri, shall on the effective date of this act vest in the governor. The governor may not convey or otherwise transfer the title to or other

Mr. James Wilson

interest in such real property, unless conveyance or transfer is first authorized by an act of the general assembly. . . ." (Emphasis added).

Section 10.3 of Senate Bill No. 1 states, in part:

". . . The State Park Board, Chapter 253 RSMo is transferred to the Department of Natural Resources by Type I transfer."

Section 1.7.(1)(a) defines the Type I transfer as follows:

"Under this act a type I transfer is the transfer to the new department or division of all the authority, powers, duties, functions, records, personnel, property, matters pending, and all other pertinent vestiges of the existing department, division, agency, board, commission, unit, or program to the director of the designated department or division for assimilation and assignment within the department or division as he shall determine, to provide maximum efficiency, economy of operation and optimum service. All rules, orders and related matter of such transferred operations shall be made under direction of the director of the new department."

Section 253.040, RSMo, relating to the State Park Board's authority to acquire real property, states, as follows:

"1. The board is hereby authorized to accept or acquire by purchase, lease, donation, agreement or eminent domain, any lands, or rights in lands, sites, objects or facilities which in its opinion should be held, preserved, improved and maintained for park or parkway purposes. The board is authorized to improve, maintain, operate and regulate any such lands, sites, objects or facilities when such action would promote the park program and the general welfare. The board is further authorized to accept gifts, bequests or contributions of money or other real or personal property to be expended for any of the purposes of sections 253.010 to 253.100; except that any

Mr. James Wilson

contributions of money to the state park board shall be deposited with the state treasurer to the credit of the state park earnings fund and expended upon authorization of the state park board for the purposes of sections 253.010 to 253.100 and for no other purposes.

"2. In the event the right of eminent domain be exercised, it shall be exercised in the same manner as now or hereafter provided for the exercise of eminent domain by the state highway commission."

From the above-quoted provisions of law, it is clear that the State Park Board had the authority to acquire and hold title to real property prior to the creation of the Department of Natural Resources, as provided in Senate Bill No. 1. Furthermore, it is clear that the authority of the State Park Board to acquire real property was transferred to the Department of Natural Resources.

What may not be clear, however, is the provision of Section 15.10 of Senate Bill No. 1 which expressly excludes real property held by the State Park Board from the application of such section which requires title to all state property (other than those excepted) to vest in the governor. The State Park Board's authority has succeeded to the Department of Natural Resources and the question becomes whether the legislature intended the property held by a successor agency to the State Park Board also to be excluded from the requirements of Section 15.10.

Keeping in mind the nature of a Type I transfer, it is our view that the legislature intended that the Department of Natural Resources, as successor to the authority of the State Park Board, be exempt from the provisions of Section 15.10 of Senate Bill No. 1. The legislature, in one part of Senate Bill No. 1, authorized the creation of the Department of Natural Resources and transferred all authority of the State Park Board to it (Sections 10.1, 10.3), and, in another part, still referred to the State Park Board (Section 15.10). It is our view that the legislature, in Section 15.10, included any successor agency to the State Park Board. Therefore, the Department of Natural Resources may hold real property that previously was held in the name of the State Park Board, in its own name.

We believe, also, that it is clear from this conclusion, that the Department of Natural Resources may hold title to property it acquires, under its authority as successor to the authority of the State Park Board, in its own name.

Mr. James Wilson

Therefore, it is our view that (1) real property held by the State Park Board, prior to creation of the Department of Natural Resources, is now held in the name of the Department of Natural Resources and, (2) real property acquired in the future by the Department of Natural Resources, as successor to the authority of the State Park Board, will be held in the name of the Department of Natural Resources.

Very truly yours,

JOHN C. DANFORTH
Attorney General