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State of California

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Attorney General

OPINION	:	No. 07-905
	:	
of	:	December 31, 2008
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THE HONORABLE CURREN D. PRICE, JR., MEMBER OF THE CALIFORNIA ASSEMBLY has requested an opinion on the following question:

May a county enter into a joint-use agreement with a school district under which the county would lease a portion of a county park (a baseball field) to the district for its exclusive recreational use during non-school hours for three months of the year, four hours each day?

CONCLUSION

A county may enter into a joint-use agreement with a school district under which the county would lease a portion of a county park (a baseball field) to the district for its exclusive recreational use during non-school hours for three months of the year, four hours each day.

ANALYSIS

We are asked whether, under the Public Park Preservation Act of 1971 [Act],¹ a county may enter into a joint agreement with a school district to lease the baseball field portion of a public park to a school district during non-school hours for three months of the year, four hours a day, to stage baseball games for school children.

The Act provides that a county shall not acquire real property that is in use as a public park for any non-park purpose, unless it compensates the entity operating the park sufficiently to enable that entity to replace the park land and the facilities located on it.² The Act is intended to preserve space for public parks by providing for an adequate replacement when park land is removed from public use.

The provisions of the Act apply when a public agency does both of two things: (1) “acquire[s] (by purchase, exchange, condemnation, or otherwise)” real property that is in use as a public park; and (2) uses that property for a non-park purpose.³ The primary question here is whether reserving a field in a public park exclusively for one school district’s baseball games is or is not a “park purpose.”

In an earlier opinion, we considered whether park land could be leased by a city to a school district for the purpose of constructing a school, as well as a library, media center, gymnasium, swimming pool, day care center, and other community recreational

¹ Pub. Res. Code § 5400 *et seq.*

² Public Resources Code section 5401(a) provides:

No city, city and county, county, public district, or agency of the state, including any division, department or agency of the state government, or public utility, shall acquire (by purchase, exchange, condemnation, or otherwise) any real property, which property is in use as a public park at the time of such acquisition, for the purpose of utilizing such property for any nonpark purpose, unless the acquiring entity pays or transfers to the legislative body of the entity operating the park sufficient compensation or land, or both, as required by the provisions of this chapter to enable the operating entity to replace the park land and the facilities thereon.

See Pub. Res. Code § 5405 (prescribing amount of compensation required).

³ *See Save Mile Square Park Com. v. County of Orange*, 92 Cal. App. 4th 1142, 1147 (2001) (“Section 5401 [of the Act] applies only if the land acquired is being used as a public park *and* is thereafter put to a nonpark use.”).

facilities. We concluded that the land could not be leased for constructing of a school because, “to the extent that the existing park property would be converted to the exclusive use of the school, it would be unavailable to the general public for park and recreation purposes.”⁴ We concluded, however, that the land could be leased for constructing the other proposed facilities, as long as those facilities were used primarily for public recreation and enjoyment, rather than for mandatory public education.⁵

Other purposes that have been found to be consistent with park and recreational uses include hotels, restaurants, museums, art galleries, zoological and botanical gardens, playgrounds, conservatories, and libraries,⁶ as well as the use of park facilities for police athletic training.⁷ Even the complete transformation of an open-space, multi-use park to a public golf course has been upheld as a legitimate park purpose.⁸ The common feature of all of these park uses is that the facilities are set aside for public recreation and enjoyment. The deciding factor is not whether a facility is open to all members of the public at all times, but whether the use to which it is put is public leisure or recreation as opposed to education, governance, or other public business. We have no hesitancy, then, in concluding that the use of a baseball field by a school district to stage baseball games is an appropriate park use.

As we noted earlier, the Act applies only when a public agency *both* acquires real property that is in use as a public park *and* uses that property for a non-park purpose. Because we conclude that the use of a park’s baseball field for schoolchildren’s baseball games is a “park purpose,” we need not and do not reach any conclusion as to whether giving a school district exclusive use of the field during non-school hours for three months of the year amounts to an “acquisition” within the meaning of the Act.⁹ In this connection, we note that the proposed agreement would not entirely foreclose use of the ball fields by other members of the public. Instead, the arrangement is a way of

⁴ 78 Ops.Cal.Atty.Gen. 181, 184 (1995); *see also San Vicente Nursery Sch. v. Co. of Los Angeles*, 147 Cal. App. 2d 79, 87 (1956) (devoting land to exclusive use of private nursery school for seven years was not a park purpose).

⁵ *Id.* at 181-185, 189.

⁶ *See Spires v. City of Los Angeles*, 150 Cal. 64, 66 (1906).

⁷ *See Simons v. City of Los Angeles*, 63 Cal. App. 3d 455 (1976).

⁸ *See Save Mile Square Park Com.*, 92 Cal. App. 4th at 1142.

⁹ *Cf.* 78 Ops.Cal.Atty.Gen. at 188 n. 5 (55-year lease might reasonably be considered “acquisition” for purposes of the Act).

managing the use of an amenity which, by its very nature, is meant to be taken in turns by various groups.¹⁰ Except that the school district's use of the park is secured through a lease agreement, the arrangement differs little from the kinds of reservation systems that are commonly employed by park districts throughout the state, by which individuals and groups reserve designated areas of parks for events such as picnics, weddings, or camping.¹¹

Boards of supervisors “have the discretion to decide what kind of park best satisfies the needs of [their] citizens—unless, of course, they fasten upon a plan for something beyond the pale of a park.”¹² At some point, of course, it is possible that the practice of leasing park land to serve the exclusive recreational needs of school children might so intrude upon the use of that land by the general public as to go “beyond the pale of a park.” That point has not been reached here.

Accordingly, we conclude that a county may enter into a joint-use agreement with a school district under which the county would lease a portion of a county park (a baseball field) to the district for its exclusive recreational use during non-school hours for three months of the year, four hours each day.

¹⁰ Education Code section 10900(b), authorizes “public corporations or districts having powers to provide recreation, cities, counties, cities and counties, and school districts to organize, promote, and conduct programs of community recreation as will contribute to the attainment of general educational and recreational objectives for children and adults of the state.” Section 10902 authorizes the governing bodies of public authorities, which, as defined by section 10901, include county boards of supervisors and school district governing boards, to: (a) organize, promote and conduct programs of community recreation; (b) establish systems of playgrounds and recreation, and; (c) acquire, construct, improve, maintain and operate recreation centers within or without the territorial limits of the public authority. *See also*, Govt. Code § 25353, authorizing boards of supervisors to acquire and manage park property.

¹¹ *See, e.g.*, www.parks.lacounty.gov (allowing reservations and rental permits); www.sacparks.net (same).

¹² *Save Square Mile Park Com.* 92 Cal. App. 4th at 1147.