

Opinion No. 3

Public Parks—Montana State College Experimental Farm—Huntley Branch Station — Title to Public Parks.

HELD: The director of the agricultural experiment station of the

OPINIONS OF THE ATTORNEY GENERAL

Montana State College has the authority to make reasonable regulations concerning the maintenance, operation, and public use of the park area within the Huntley Branch station under the provisions of Section 2 of Chapter 195, Laws of 1947.

February 14, 1955.

President Roland R. Renne
Montana State College
Bozeman, Montana

Dear Dr. Renne:

I have been asked to submit my official opinion on the following question:

Does the director of the Agricultural Experiment Station of the Montana State College, located at Huntley, Montana, have authority to make reasonable regulations concerning the maintenance, operation, and public use, of the public park area situated within the Huntley Branch Station.

In considering this question it is first necessary to review the following background information:

In 1907 the Federal Government filed plats for six townsites in the Huntley Project area, including a plat for the townsite of Osborn. The Osborn plat set aside the area in question as a "public park". Although the townsite never became a town, the people in the Huntley area have used the public park area for various recreational uses since 1907. In 1928 President Calvin Coolidge withdrew most of the Osborn townsite "for the use of the Department of Agriculture as an agricultural field station." This order encompassed land partially surrounding the public park reservation but did not include the park itself. After that date the Department of Agriculture operated an experimental station on the community as a park. When members of the community attempted to obtain title to the park before constructing a community center in 1926 the Federal Government stated that it had lost title to the land since it had been designated as a "public park" and had been dedicated to that purpose through its public use as such, by the people.

Following a policy initiated by the U. S. Department of Agriculture, the 1947 legislature enacted Chapter 195, Laws of 1947, authorizing the State Board of Examiners to accept title to the Huntley Branch Station for use by the Montana State College as an experimental farm. In 1950 Congress issued a patent placing title to most of the area surrounding the public park area in the State of Montana for use as an experimental station. Since that date the park has been maintained by personnel working on the experimental farm.

The Federal Government has consistently maintained that once the townsite plat is filed and area designated for public use has been placed in such use, the property then becomes dedicated to such public use. See 10 L.D. 375, 34 L.D. 679, and 52 L.D. 558. In the latter case the Federal Government was asked to give title to lots and alleys established by townsite plat in the townsite of Pompeys Pillar, to individuals who had purchased adjoining lots. The decision stated:

"Where the owner of real property lays out a town upon it and divides the land into lots and blocks, intersected by streets and alleys, and sells any of the lots with reference to such plan, he thereby dedicates the streets and alleys to the use of the public."

Paramount authority to regulate and control the use of public park lands rests with the legislature of the state concerned. This question is discussed at length in an annotation in 88 A.L.R. 228, wherein it is stated:

"Thus, it has been said by the Supreme Court of the United States in *Trenton v. New Jersey* (1923), 262 U.S. 182, 67 L.Ed. 937, 43 S.Ct. 534, 29 A.L.R. 1471, that, in the absence of State constitutional provisions safeguarding it to them, **municipalities have no inherent right of self-government which is beyond the legislative control of the state.**" (emphasis supplied).

The same general rule is set forth in 39 Am. Jur., Section 14, page 811, as follows:

"Within constitutional limitations, the use of parks, squares, and playgrounds is subject to reasonable regulation by the public authority in the public interest. As regards local authority over parks, etc., it has been declared that a municipality in which a square or park, acquired by common-law dedication, is located has, by virtue of its corporate authority, power to regulate the public use of it; and that within the limits of the purposes and uses for which the dedication is made, the authority of the local corporate authorities is unlimited, against which no mere private right can be set up. **The power of local control, is subject, however, to the paramount authority of the state.**" (emphasis supplied).

The intent of our state legislature with respect to all the area comprising the experiment station is clearly expressed in Chapter 195, Laws of 1947. Section 2 of that act states:

"That said Huntley Branch Station, after transfer to state ownership, shall be operated under the general supervision of the director of the agricultural experiment station of Montana State College of the University of Montana, for the purpose of conducting researches pertaining to agricultural problems of south central Montana." (emphasis supplied).

The state legislature did not limit the mandate concerning supervision of this project to just the land comprising the federal experiment station, but rather stated plainly that the supervision was to extend throughout the "Huntley Branch Station". The federal patent almost totally surrounds the park area in question, and the federal employees at the experiment station maintained the park area from 1928 until 1950. Since that time maintenance has been performed by the state employees operating the experimental station.

It is therefore my opinion that the director of the agricultural experiment station of the Montana State College, has the authority to make reasonable regulations concerning the maintenance, operation, and pub-

lic use of the park area within the Huntley Branch Station under the provisions of Section 2, Chapter 195, Laws of 1947.

Very truly yours,
ARNOLD H. OLSEN,
Attorney General.