CITY OF HARTFORD

INTERDEPARTMENTAL MEMORANDUM

OPINION NO. 09-04

TO: PLANNING AND ECONOMIC DEVELOPMENT AND PUBLIC WORKS, PARKS AND ENVIRONMENT COMMITTEES OF THE COURT OF COMMON COUNCIL

FROM: BEN BARE, Assistant Corporation Counsel for JOHN ROSE, JR., Corporation Counsel

DATE: April 16, 2009 JRJr. 4/16/09 TBB

SUBJECT: Request for Legal Opinion Regarding Issues Concerning:

WHETHER THE EBONY HORSEWOMEN'S PROPOSED DEVELOPMENT OF A PART OF KENEY PARK AS AN EQUESTRIAN CENTER AND ASSOCIATED FACILITIES IS LEGALLY ALLOWABLE AS AN ACCEPTABLE USE OF A PUBLIC PARK

I. THE ISSUE

The Council's Planning and Economic Development and Public Works, Parks and Environment Committee's have asked me to opine concerning the lawfulness of the development and use of a part of Keney Park as a privately operated equestrian center and associated facilities.

For purposes of addressing the issue, I reviewed the City Charter, the Municipal Code, the Connecticut General Statutes, a title search of Keney Park, the Will of Henry Keney, and relevant state case law from Connecticut and several other states, all referenced hereafter.

II. THE RELEVANT CHARTER, MUNICIPAL CODE AND CONNECTICUT GENERAL STATUTE PROVISIONS

Various provisions of the Charter, Municipal Code and the Connecticut General Statutes address the creation and maintenance of public parks, but none provide relevant provisions regarding the use of public parks in the context this Opinion is concerned with.

III. THE TITLE SEARCH OF KENEY PARK

The title search of Keney Park undertaken by Richard S. Johnson and completed on March 17, 2009 (the "Title Search") revealed some restrictions on the use of the land granted to the City for the purpose of the creation of Keney Park.

By way of preliminary clarification, it should be noted that the part of Keney Park which has been proposed for development by the Ebony Horsewomen is identified in the documents supporting the Title Search as the "First Tract" and as such, the First Tract is the only part of Keney Park which will be discussed in this Opinion.

The First Tract of Keney Park was deeded to the City via a Quitclaim Deed received for record by the City of Hartford on August 19, 1924 and recorded in the land records of the City of Hartford in Volume 562 at Page 437 (the "Deed"). In pertinent part, the Deed reads as follows:

....said first four pieces or parcels of land to be forever used as and for a public park "to be forever known and designated as the 'Keney Park', to be used and enjoyed by the citizens of Hartford under such reasonable rules and regulations as may be imposed by the municipal authorities of said City or by the commissions or other officers having in charge the public parks", according to the terms of said Will of Henry Keney, deceased,...

Outside of the language quoted above, the Deed contains no further clarification with respect to the specific uses to be allowed in Keney Park. So long as the First Tract is used as a "public park" the terms of the Deed are satisfied.

IV. THE WILL OF HENRY KENEY

A copy of the Will of Henry Keney (the "Will") was obtained at the Hartford Probate Court. Close examination of the Will provides no further guidance as to the particular uses contemplated for Keney Park. The Will contains language virtually identical to that quoted above and provides no further restrictions on uses allowed for Keney Park.

V. THE RELEVANT CASE LAW

The general rule is that when a parcel of land is deeded to a municipality for use as a public park, the municipality cannot use the property for any purpose inconsistent with the instrument passing title to the municipality unless some other use is specifically authorized or directed by the legislature.[1] The general rule would apply here where Keney Park was granted to the City by the Deed on the express condition that the land granted would be "forever used as and for a public park." With that clear, and no intervening state legislative use or directive in play, the only open issue concerns the definition of "public park."

Connecticut courts have consistently defined public parks as follows:

*The adaptation of public parks to serve in whole or part as places of recreation for those who frequent them is a natural incident to their public use; "in the common understanding, a park, in this country, is a place of ground in or near a city or town for ornament and as a place * * * for recreation and amusement, and it is usually laid out in walks, drives and recreation grounds."* (Epstein v. New Haven, 104 Conn. 283 at 284 (1926) quoting, South Park Commissioners v. Montgomery Ward & Co., 248 Ill. 299, 304 (21 Ann. Cas. 127).)

[1] See generally; Town of Winchester v. Cox, 129 Conn. 106 (1942), Roberts v. City of Palos Verdes Estates, 93 Cal. App. 2d 545 (2d Dist. 1949), Martin v. Town of Palm Beach, 643 So. 2d 112 (Fla. Dist. Ct. App. 4th Dist. 1994), Anderson v. Thomas, 166 La. 512 (1928), Abboud v. Lakeview, Inc., 237 Neb. 326 (1991), Williams v. City of New York, 248 N.Y. 616 (1928), White v. Township of Upper St. Clair, 799 A.2d 188 (Pa. Commw. Ct. 2002), State v. Superior Court of Washington for Mason County, 136 Wash. 87 (1925).

In addition to the general definition of "public park", Connecticut courts have examined some particular recreational uses as well and have upheld the following as acceptable public park uses: golf courses, tennis courts and an Olympic-size rowing course in addition to the more mainstream uses such as public beaches and general playground recreation areas.[2]

Other state courts have discussed acceptable uses for public parks as well and have upheld a multitude of various uses. Courts have upheld everything from the provision of swimming pools, tennis courts and golf courses to the use of some park property as a municipal airport as permissible.[3]

Extensive research did not reveal any cases where the use of part of a public park as an equestrian center and associated facilities was specifically at issue. However, given the liberal reading of recreational use given by Connecticut and other state courts it is reasonable to assume that the use of part of a public park for an equestrian center would be considered a valid recreational use of a public park so long as the use was open to the general public. In further support of this contention it should be noted that there are currently several equestrian centers operating in public parks across the United States and many of them are privately operated under some kind of agreement with the governmental entity which owns the park.[4]

VI. THE RESOLUTION OF THE ISSUE

Examination of the Deed and the Will clearly indicates that the First Tract is to be used by the City of Hartford as a public park, "to be used and enjoyed by the citizens of Hartford", but neither provides any further guidance as to which park uses would be allowed or forbidden. So long as the First Tract is used by the City as a public park for its citizens the terms of the Deed and the Will are satisfied. Review of applicable case law in Connecticut and in other states indicates that so long as uses are recreational in keeping with the definition of a public park and for the benefit of all the public, such uses are acceptable in the public park context. While the use of a part of a public park as a privately operated equestrian center and associated facilities has not been specifically questioned in Connecticut or in any other state surveyed it is the opinion of the Office of the Corporation Counsel that such a use would be consistent with the findings of Connecticut courts in similar circumstances.

---

[2] Borough of Fenwick v. Town of Old Saybrook, 133 Conn. 22 (1946) (tennis courts and golf course), Belford v. City of New Haven, 170 Conn. 46 (1975) (upholding lower courts finding that an Olympic-sized rowing course is a valid park use in dicta), Leydon v. Town of Greenwich, 57 Conn. App. 712 (2000) (public beach), Epstein v. New Haven, 104 Conn. 283 at 284 (1926)

[3] Roach v. City of Tuscumbia, 255 Ala. 478 (1950) (tennis courts on park property), Huff v. City of Macon, 117 Ga. 428 (1903) (agricultural use of park property), Sutcliffe Co. v. City of Louisville, 205 Ky. 718 (1924) (sale of golf equipment on park property), Nelson v. De Long, 213 Minn. 425 (1942) (boat dock on park property), Shields v. City of Philadelphia, 405 Pa. 600 (1962) (Little League baseball field), Bernstein v. City of Pittsburgh, 366 Pa. 200 (1951) (open air auditorium for light opera productions), Save Mile Square Park Committee v. County of Orange, 92 Cal. App. 4th 1142 (2001) (golf course), Clement v. O'Malley, 95 Ill. App. 3d 824 (1st Dist. 1981), judgment aff'd, 96 Ill. 2d 26 (1983) (golf course), Board of Park Com'rs of Ashland v. Shanklin, 304 Ky. 43 (1947) (stadium and athletic field), Aquamsi Land Co. v. City of Cape Girardeau, 346 Mo. 524 (1940) (stadium and athletic field), LeFevre v. Board of Com'rs of City of Brookings, 65 S.D. 190 (1937) (swimming pool)

[4] A partial listing includes: Huntington Central Park Equestrian Center, Huntington Beach, California; Rock Creek Horse Center, Washington, DC; Kentucky Horse Park, Lexington, Kentucky; Potomac Horse Center, North Potomac, Maryland; Wills Park Equestrian Center, Alpharetta, Georgia; Green Hill Park Equestrian Center, Salem, Virginia; Hansen Dam Equestrian Center, Lake View Terrace, California

It should be explicitly noted that this Opinion only answers the conceptual question of whether or not a part of Keney Park could be used for an equestrian center as a recreational use. It does not opine on the acceptability of any particular transactional structure which could bring the center into fruition and does not opine as to the extent of such use. Those are questions which will need to be raised and addressed as the transaction moves forward and details begin to solidify.