

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERALMIKE COX
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LANSING, MICHIGAN 48909

June 4, 2008

Don M. Schmidt
Attorney for the City of Benton Harbor
Miller, Canfield, Paddock and Stone, P.L.C.
277 South Rose Street
Kalamazoo, MI 49007

Dear Mr. Schmidt:

RE: City of Benton Harbor's Proposed Lease of a Portion of Jean Klock Park

The City of Benton Harbor ("City") has asked the Attorney General's Charitable Trust Section to consider whether a proposal by the City to lease a portion of Jean Klock Park ("Park") for use as part of a golf course to Harbor Shores Community Redevelopment Inc. ("Lessee"), a charitable Michigan nonprofit corporation, is consistent with the terms of the deed conveying the Park to the City. The City's proposal includes two agreements: the Park Improvement and Maintenance Agreement and the Harbor Shores Lease Agreement ("Agreements").

The land on which the Park is located is subject to restrictive conditions imposed by J. N. and Carrie Klock, who donated the land to the City in 1917. Through the deed conveying the property ("Deed"), the Klocks required the City and its assigns:

- To use the land for a bathing beach, park purposes, or other public purposes;
- To keep the property open for the use and benefit of the public, subject only to such rules and regulations as the City of Benton Harbor may make and adopt; and
- To prohibit the manufacture and distribution of alcoholic beverages on the property.

Both parties to the lease have explicitly acknowledged and affirmed their continuing obligation to obey these restrictions. The Lease Agreement states:

Harbor Shores and the City of Benton Harbor shall not use, allow, or cause the portion of the Leased Premises located on Jean Klock Park to violate the terms of the Deed, including, without limitation, that such portions of the Leased Premises shall be used for bathing beach, park purposes, or other public purposes; and at all times be open for the use and benefit of the public, subject only to such rules and regulations as the City of Benton Harbor may make and adopt. Harbor Shores shall not allow, suffer, or permit any intoxicating liquors or drinks to be manufactured, sold, or given away upon Jean Klock Park.

The parties having bound themselves to adhere to the conditions of use imposed by the Klocks, the Charitable Trust Section concludes that the Lease Agreement is consistent with the terms of the Deed.

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Other features of the Agreements merit comment.

By way of background, the City proposes to permit the leased area to be used as three holes of a public golf course that is planned to extend beyond the boundaries of the Park. The course is a prominent feature in an extensive development plan designed to stimulate the economy in City of Benton Harbor and Berrien County. Much of the plan, including construction of the golf course, will be supported by the work and resources of several charitable organizations in the community. The charitable assistance is expected to include an initial contribution of approximately \$18,000,000 by Lessee that will be used to finance construction of the course and park improvements. The parties hope and expect the project, including the use of the proposed leased portion of Jean Klock Park, to benefit the public. Surplus revenue from the golf course will be used exclusively to fund two community benefits programs, one for the City and its residents, and the other for City of Benton Harbor, St. Joseph, and Berrien County.

In our correspondence of September 14, 2007 (attached as an exhibit to this letter for your reference), we emphasized certain important components of the City's proposal as it related to the Park. These included: permitting public access to all areas of the park, including the public golf course; enhancing accessibility for the disabled to the Park areas, including the waterfront area; and providing for improvements and ongoing maintenance of the Park. We specifically addressed the City's proposal to establish a Golf Course Oversight Panel ("Panel"). We recommended that the Panel be able to: ensure public access to the golf course through the adoption of reasonable fee structures; encourage public use of the park land on which the course is located during the off-season; and ensure that the park remains open and inviting to all persons and, in specific, encourage park access by disabled persons to the greatest extent possible.

- - - The Agreements reflect the parties' consideration of our concerns. In addition to promising to comply with the terms of the Klocks' gift to the City, the parties have agreed to:


1. Create a Golf Course Oversight Panel with the following features:
 - a. It will be created by and act on behalf of the City;
 - b. The three voting members will consist of two City Commissioners and one additional City employee, all selected by the City;
 - c. It will be subject to Michigan's Open Meetings and Freedom of Information Act; and
 - d. It will have the authority to approve or reject proposed fee schedules, which must incorporate discounted rates for local residents.
2. Provide for off-season access to most of the leased area for recreational uses other than golf, including cross-country skiing;
3. Provide access to the course during the golfing season by school and youth programs;
4. Provide maintenance by the Lessee of the entire Park and additional parkland beyond the borders of the Park at no cost to the City; and
5. **Allow a range of remedies to the City, including termination of the lease, in the event of a violation of the agreement, which would include a violation of the terms of the Deed.**

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In conclusion, the Charitable Trust Section finds that the Agreements mandate obedience to, and are consistent with, the restrictions expressed by the Klocks in their Deed to the City. The Agreements do not change the conclusion expressed in our letter of September 14, 2007, that the City's proposal for the portion of Jean Klock Park under consideration is for a public purpose and subject to the rules and regulations of the City of Benton Harbor.

Note - This is a division-level communication from the Charitable Trust Section and is not a formal opinion of the Attorney General.

Sincerely yours,



Tracy A. Sonneborn
Assistant Attorney General
Consumer Protection Division
Charitable Trust Section