Agreement Extends Too Many Privileges

Court Denies Park Director's Right to Issue Range Permit

By WILLIAM JABINE

An arrangement by which the park commissioner of the City of New York planned to turn over a 30-acre tract in a public park to a private corporation for use as a golf driving range with accessory buildings and parking space for a term of 20 years has been ruled illegal by the Court of Appeals of New York, the state's highest judicial tribunal. The matter the Court decided was whether the proposed transaction was the issuance of a revocable permit, which was allowed under the city's charter, or whether it constituted the making of a lease, which the charter did not permit the park commissioner to make.

Legal Side of Golf

Three taxpayers sought an injunction to halt construction of the driving range. The trial court granted the injunction, and on an appeal to the Appellate Division of the Supreme Court, second department, the three plaintiffs were again successful. The city then appealed to the Court of Appeals.

Not A Revocable License

The high court, as stated above, affirmed the decisions of the lower courts barring the driving range from the park, which was situated in the Borough of Queens. The vote, however, was close, 4 to 3. One of the judges filed a dissenting opinion.

The majority stated its position as follows: "We agree with the Special Term and the Appellate Division in their affirmative answer to the only question presented: Was this a lease? We hold that as a matter of law and on its face it was a lease and not a mere revocable license or grant of a privilege or concession to do particular acts appropriate in a public park and subject to appropriate power in the commissioner to control the operation and revoke the grant at will.

Although the contract speaks of a 'license' and avoids use of the word 'lease' it contains many provisions typical of a lease and confers rights well beyond those of a licensee or holder of a temporary privilege. (Citation)

Some of these elements are: Exclusive use of a specifically bounded 30-acre area; a 20-year term; rental fixed at a percentage of gross receipts; and construction and repair by grantee at its own cost of extensive buildings, a large parking lot, fences, flood-lighting, etc. Since the property was a park impressed with a trust for the public it could not, without legislative sanction, be alienated or subjected to anything beyond a revocable permit. (Citations)

Difficult to Apply

"The difference between a license and a lease is plain enough although in borderline cases sometimes difficult to apply. But even if there were a doubt about it in a case like this, it would be our duty to deny the existence of the power. (Citation)

"But we entertain no such doubts about this arrangement. A document calling itself a 'license' is still a lease if it grants not merely a revocable right to be exercised over the grantor's land without possessing any interest therein, but the exclusive right to use and exercise that land. (Citation) The only possible support for the city's assertion that this is a license only is found in the provisions as to control by the commissioner and his right to revoke.

"The controls are as to prices, time of operation and choice of employees, etc., rather strict and detailed, but no more than would reasonably be demanded by a careful owner as against a lessee for such a business use and for so long a term.

"As to termination, the agreement (besides provision for revocability for viola-

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Range Permit Denied

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tions) is that the commissioner may 'terminate the license when, in his sole judgment, he deems that termination is necessary by operation of law, or he deems that the leased premises are required for a paramount park or other purpose.'

"These last-quoted eight words are not very specific, but we read them not as giving the commissioner any broad rights, but as limiting his power of termination to a situation where it can reasonably be said that the city needs the lands for a more important or pressing public need. This was not a revocable-at-pleasure clause such as discussed in McNamara v. Willcox, (73 App. Div. 451,452.77 N.Y.S. 294,295) nor does it meet the requirements of Gushee v. City of New York (42 App. Div. 37,58 N.Y.S. 967, supra) that the city in such grants must reserve the right to cancel whenever it decides in good faith to do so. This was rather, as said in Williams v. Hylan (223 App. Div. 48,128 N.E. 121, supra), a revocation clause of a kind common in ordinary commercial cases." (Miller v. City of New York, 255 N.Y.S. 2d 78)

Penn State Meetings

Pennsylvania State University has announced the following turf events to be held on the University Park, Pa. campus.

1965 Penn State Turfgrass Field Day, Sept. 15-16 (noon-to-noon).

1966 Penn State Turfgrass Conference, Feb. 21-24.