

**STATE OF TENNESSEE**  
OFFICE OF THE ATTORNEY GENERAL  
**ATTORNEY GENERAL**  
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NASHVILLE, TENNESSEE 37243-0497

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Opinion No. 00-130

Effect of Amended State Lands Acquisition Fund and the 2000 Appropriations Bill on the Operation of State Parks this Fiscal Year

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**QUESTION**

Does legislation amending the State Lands Acquisition Fund and/or certain language in this year's appropriations bill prevent the Department of Environment and Conservation from closing certain parks for the next fiscal year?

**ANSWER**

No. The legislation amending the State Lands Acquisition Fund simply makes those funds available for the Commissioner to use for the operation of state parks. The referenced language in the appropriations bill is a conditional appropriation which requires the earmarked sum to be spent only for the operation of the referenced parks. However, the language does not limit the Department's statutory authority to open, close or reduce staffing at the parks.

**ANALYSIS**

House Bill 2885 amended the language in Tenn. Code Ann. § 67-4-409(j)(2) by "inserting in item (A) the language 'the operation of state parks,' after the language 'state trails system.'" 2000 Tenn. Pub. Acts 998. This section addresses how funds from the State Lands Acquisition Fund may be spent. This amended language makes these funds available to the Commissioner of Environment and Conservation to use for the operation of state parks. However, there is no mandate in this section or any other that the Commissioner must use money from this Fund to operate state parks.

Additionally, the language you referenced from this year's appropriations bill does not prevent the Commissioner of Environment and Conservation from exercising his authority to close or reduce operations at state parks. However, the legislature has conditionally appropriated money to the Department that may be spent only if the condition of operating the referenced parks at their July 1999 level is met.

Tenn. Code Ann. § 11-3-103 places the duty of state park supervision and administration upon the Department of Environment and Conservation, in particular, through the division of parks and recreation. Pursuant to this statute the Department is responsible for the day-to-day operations of the state parks and any associated spending decisions.

Item 125 of this year's enacted appropriations bill states as follows:

From the funds appropriated to the Department of Environment and Conservation by the provisions of this act, a sum sufficient is earmarked to keep open all state parks that were open on January 1, 1999, and proposed to be closed or operated at a reduced level of services or access, at the level of operation of such parks in effect on July 1, 1999.

2000 Tenn. Pub. Acts 994, § 10, Item 125.

The appropriations bill is designed solely to appropriate funds for the operation of state government. Tenn. Code Ann. § 9-4-5108(c) prevents the appropriations bill from containing items of general legislation. This Office has opined in the past that “provisions of the appropriations bill that attempt to alter general law are invalid because they introduce a second subject into the Act in violation of the second subject rule found in Article II, Section 17 of the Tennessee Constitution.” Op. Tenn. Atty. Gen. No. 99-198 (Sept. 28, 1999) (copy attached). It is, however, a rule of statutory construction that statutes should be construed so as to render them constitutional if possible. *Canale v. Stevenson*, 224 Tenn. 578, 458 S.W.2d 797 (Tenn. 1970); *Mitchell v. Mitchell*, 594 S.W.2d 699 (Tenn. 1980). Further, it is always to be presumed that the Legislature acted in good faith and within constitutional limits in making an appropriation. *State v. Thomason*, 142 Tenn. 527, 221 S.W. 491 (Tenn. 1919). Since the Department is granted the authority to operate the parks by the general law, specifically, Tenn. Code Ann. § 11-3-103, Item 125 should not be interpreted as an attempt to amend the general law by directing the Department to keep certain parks open. Such an interpretation would render Item 125 unconstitutional, as well as in violation of Tenn. Code Ann. § 9-4-5108(c).

Item 125 is, then, a conditional appropriation. Conditional appropriations are generally recognized as a plenary power of the legislature. *See Advisory Opinion No. 331*, 582 So.2d 1115 (Ala. 1991); *State v. Carruthers*, 107 N.M. 439, 759 P.2d 1380 (N.M. 1988). This Office has opined in the past that a limited, contingent or conditional appropriation does not preclude it from being a lawful appropriation. Op. Tenn. Atty. Gen. 81-558 (Oct. 9, 1981). The legislature can make items of appropriation dependent upon future events or conditions, with the appropriation being without efficacy until the happening of the event or fulfillment of the condition. *Id.*; *State v. Carruthers*, 107 N.M. at 444.

Item 125 earmarks funds to keep the referenced parks open and operational at the July 1, 1999 level. If the Department, in the exercise of its statutory authority to supervise and administer the state park system, chooses not to operate these parks at the July 1, 1999 level, the condition attached to the

appropriation will fail and the Department will lose the earmarked funds. As stated above, however, Item 125 may not be interpreted as requiring the Department to operate these parks at the July 1, 1999 level, because to do so would render the item illegal and unconstitutional.

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