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March 24, 1977

FILE NO. S-1220

STATE MATTERS:  
Negotiation Or Bidding  
Of Concession Leases By  
the Department of Conservation

Honorable George Ryan  
Minority Leader  
Illinois House of Representatives  
300 State Capitol Building  
Springfield, Illinois 62706

Dear Representative Ryan:

This is in response to your predecessor's letter regarding the concession lease practices of the Department of Conservation. The letter states the four following questions:

1. What authority does the Department have to negotiate or bid leases for these facilities?
2. Does the Department have authority to negotiate some leases while bidding others?

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3. Does the Department have the authority to request bids 18 months in advance of the termination of the present lease?
4. Is the awarding of the lease contracts subject to the Illinois Purchasing Act or similar Acts?

It is my opinion that the Department of Conservation has the authority, either to negotiate concession leases of property under its jurisdiction or to award such leases by competitive bidding. The use of either method is an incident of the Department's power to grant such leases, and the choice of either method is within the Department's discretion as particular circumstances may dictate. The Department has the authority to request bids 18 months in advance of the termination of a current lease if such procedure is reasonable and necessary in light of the particular circumstances concerning the lease. The Illinois Purchasing Act (Ill. Rev. Stat. 1975, ch. 127, pars. 132.1 et seq.) does not require concession leases of property to be granted by competitive bidding.

The Department of Conservation derives its power to enter into concession leases from section 63a14 of The Civil Administrative Code (Ill. Rev. Stat. 1975, ch. 127, par. 63a14)

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which provides:

"§ 63a14. To lease concessions on any property under the jurisdiction of The Department of Conservation for a period not exceeding 10 years. All such leases, for whatever period, shall be made subject to the written approval of the Governor."

It is well established that an express grant of power to an administrative agency includes the grant of power to do all that is reasonably necessary to execute the expressly granted power. (Owens v. Green (1948), 400 Ill. 380, 399.) It therefore follows that the Department has the authority to use any reasonable and necessary method to award concession leases. Such methods as negotiation and competitive bidding are certainly acceptable under this rule.

In the absence of a statutory provision, competitive bidding is not an essential prerequisite to the validity of contracts by and with public bodies. (Bohleber v. Carmi Township Hospital (1975), 30 Ill. App. 3d 969, 974.) Because there are no statutes which require concession leases of property under the jurisdiction of the Department to be awarded by competitive bidding, the Department of Conservation is under no such restraint when entering into such leases and may therefore choose between the alternative methods of

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bidding or negotiating as reason and necessity may dictate.

Although a concession lease is a contract made by the Department of Conservation on behalf of the State, the Illinois Purchasing Act (Ill. Rev. Stat. 1975, ch. 127, par. 132.1 et seq.) does not apply to the awarding of such leases. Section 4 of the Act (Ill. Rev. Stat. 1975, ch. 127, par. 132.4) provides in part:

" \* \* \* No purchases, contracts, or other obligation or expenditure of funds, except as hereinafter provided, shall be entered into, or made by any State agency, unless and until an advertisement for bids therefor shall have been published at least 3 times, the first and last of which publications shall be at least 10 days apart, in the official newspaper of the State of Illinois. \* \* \* "

Pursuant to section 6 of the Act (Ill. Rev. Stat. 1975, ch. 127, par. 132.6), the purchasing rules and regulations of any agency which are to be promulgated pursuant to section 5 of the Act (Ill. Rev. Stat. 1975, ch. 127, par. 132.5) shall provide:

" \* \* \*

a. That all purchases, contracts and expenditure of funds shall be awarded to the lowest responsible bidder considering conformity with specifications, terms of delivery, quality and serviceability except as provided in para-

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graphs e., f. and g. of this Section.

\* \* \*

"

This statutory language reveals that the Illinois Purchasing Act is intended to promote economy in the State's business dealings and to maximize its financial resources with regard to the purchase of goods and services. If these concessions were to be granted to the lowest responsible bidder as is required by the Act, it is plain that the policy of the Act would not be achieved. Furthermore, a concession lease is more in the nature of a grant of a privilege rather than a procurement or purchase of goods or services. It is the latter type of business dealing which is included within the scope of the Act.

Finally, you ask whether the Department has authority to request bids 18 months in advance of the termination of a current lease. As explained above, the Department is authorized to do all that is reasonably necessary to carry out its expressly granted power to enter into concession leases. This includes the power either to negotiate such leases or to award them by competitive bidding. Due to a lack of factual information, I am unable to say whether the

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requirement of bidding 18 months in advance is unreasonable or unnecessary. It may well be that this time period is reasonably necessary in some instances but not in others. Such a determination is really factual rather than legal, and it would therefore be inappropriate for me to provide a categorical answer to this question.

Very truly yours,

A T T O R N E Y   G E N E R A L