

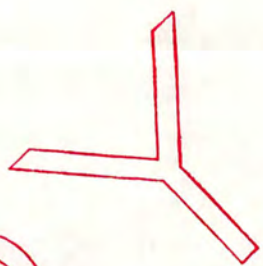
CITY OF ATLANTA
DEPARTMENT OF LAW
1114 WILLIAM-OLIVER BUILDING
ATLANTA, GEORGIA 30303

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March 24, 1967

Personal and Confidential

Mr. Jack C. Delius
General Manager of
Parks and Recreation
City Hall Annex
Atlanta, Georgia



Dear Jack:

This letter is in response to your recent inquiry posing the following question:

"Can the City of Atlanta lease certain lands and buildings including, but not limited to, the Cyclorama in Grant Park?"

Before I can go into the opinion, I am of the opinion that there are four basic categories into which this situation could fall:

- (1) Lease to a public entity for a public purpose;
- (2) Lease to a private entity for a private purpose;
- (3) Lease to a public entity for a private purpose;
and
- (4) Lease to a private entity for a public purpose.

I leave it to your good judgment to determine into which of the above categories this specific situation you make reference to would fall.

As you know, the City of Atlanta was recently given the power to alienate interest in parks' property. This bill,

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passed during the 1967 Session of the Georgia Assembly, is known as House Bill No. 299. I enclose herewith a copy of said House Bill for your further perusal. Please bear in mind that this opinion is predicated upon the Governor signing this Bill into law. Absent the Governor's approval of this Bill, the answer to the question posed by you is in the negative.

Let us assume for the purpose of this opinion that the Governor shall sign this Bill into law. The general rules applicable to this situation can be stated as follows:

- (1) "As a general rule, a city may not lease a public park to the exclusion of the right of public enjoyment, or contrary to the purposes of the dedication of the land. Nor may the legislature authorize a municipality to lease land dedicated as a public park, square or common. So also, legislative power to authorize a city to lease a part of a park, where the public right to the free use of the land leased is not prevented, has been recognized. And a lease of state lands devoted to park purposes may be sustained as consistent with the dedication of the land to public use. The authority of a municipality to enter into a valid lease of park lands is sometimes expressly authorized by statute. The validity of a lease by the city has been sustained where it will result in a furtherance of the public use. The validity of a lease by the inhabitants of a town of 'common land' not granted into private ownership nor needed for public purposes has also been sustained.

"As regards the income from a lease of lands acquired for a public park, the rule has been declared that such income must be devoted to public uses."

39 Am Jur 810, 811.

- (2) "When land is dedicated for a special and limited use, use for any other purpose is unauthorized. Whether a particular use amounts to a diversion from that for which the dedication was made depends on the circumstances of the dedication and the intention of the dedicator, and is therefore largely a question of fact. In any case, however, such use is authorized as is fairly within the terms of the dedication and reasonably serves to fit the property for enjoyment by the public in the manner contemplated. The dedicator is presumed to have intended the property to be used by the public, within the limitations of the dedication, in such way as will be most convenient and comfortable and according to not only the properties and usages known at the time of the dedication, but also to those justified by lapse of time and change of conditions."

23 Am Jur^v 57, 58.

- (3) "The municipal use and control of public parks may be subject to restrictions contained in the grant of the land therefor. Where a donation or dedication of a tract of land is made to a municipal corporation solely for a public park, the municipality cannot use it for purposes inconsistent with the purposes of such grant."

Vol. 10, McQuillin on The Law of Municipal Corporations, 172.

The Georgia law with respect to the general problem comports with the general law and can be summarized as follows:

"Property dedicated to a public use may by the dedicatee be put to all customary uses within the definition of the use. Any use which is inconsistent, or which substantially and materially interferes, with the use of the property for the particular purpose to which it was dedicated, will constitute a misuser or diversion; and while under the general rule a misuser or diversion of the property for any purpose other than the one designated will not work a reversion of the property freed from the easement to the owner of the dominant fee, equity will, on the petition of proper parties, enjoin such misuser or diversion."

Brown v. City of East Point,
148 Ga. 85, hn. 3.

Now to answer the specific question posed by you.

Under the Bill itself, we can, for a period not to exceed four years and for a valuable consideration, lease the subject property with the following reservations:

- (1) We can lease to a public entity for public use not inconsistent with the original dedication;
- (2) We cannot lease to a private entity for a private use because of the inconsistency;
- (3) We cannot lease to a public entity for a private use because of the inconsistency;
and
- (4) We can lease to a private entity for a public use not inconsistent with the dedication.

The dedication in this instance is that which Mr. Gress originally set forth in the deed of gift whereby the Cyclorama

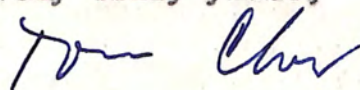
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was to be opened to the general public.

Also, this opinion presupposes that should the lease be made to a public entity, the public entity would be authorized by law to enter into a lease such as you may, from time to time, envisage.

Trusting that this answer your inquiry, I remain

Very truly yours,



Thomas F. Choyce

TFC:jc
Encl. 1

cc: Hon. Ivan Allen, Jr., Mayor ✓
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