

GENERAL CITY LAW § 20(2), (7).

Land acquired by a city, dedicated for park purposes and improved and utilized for park purposes, is impressed with a public trust and may not be used for other than park purposes without the express approval of the State Legislature.

March 10, 1997

Sheila Meck Hyde, Esq.
City Attorney
City of Dunkirk
City Hall
Dunkirk, NY 14048

Informal Opinion
No. 97-10

Dear Ms. Hyde:

You have asked whether your city is authorized to sell a parcel of land, which the common council has dedicated as a park, to a private individual for residence purposes without an act of the State Legislature. If it can do so, you request guidance as to the required procedure for sale.

You informed us that in 1940 the city received title to a number of real property lots through tax foreclosure proceedings. The lots were never sold but instead were combined with other lots and, through action of the city council, the combined lots were dedicated for park purposes. The land is used as a park and has various park improvements.

Under General City Law § 20(2), the rights of a city in various public improvements, including parks, are declared to be inalienable, except as provided by subdivision 7 of section 20. Subdivision 7 authorizes a city to establish, construct, maintain and operate markets, parks, playgrounds and public places, and upon the discontinuance of that use, to sell and convey the land. The courts have held, however, that subdivision 7 does not affect the inalienability of parks as provided in subdivision 2 of the General City Law. Matter of Central Parkway, 140 Misc 727 (Sup Ct Schenectady Co 1931); see also, 1979 Op Atty Gen (Inf) 184. The State retains complete authority over the city as to the alienation of park lands. Id. Park land held by a city is impressed with a public trust and may not be sold without authorization by the State Legislature. Id.; see also, Aldrich v City of New York, 208 Misc 930 (NY Sup Ct 1955), affd, 2 AD2d 760 (2d Dept 1956). As a general matter, the direct and specific

approval of the State Legislature, plainly conferred, would be required to use dedicated park areas for other than park purposes. Matter of Ackerman v Steisel, 104 AD2d 940, 941 (2d Dept 1984), affd, 66 NY2d 833 (1985).

We conclude that land acquired by a city, dedicated for park purposes and improved and utilized as a park, is impressed with a public trust and may not be used for other than park purposes or alienated without the express approval of the State Legislature.

The Attorney General renders formal opinions only to officers and departments of State government. This perforce is an informal and unofficial expression of the views of this office.

Very truly yours,

JAMES D. COLE
Assistant Attorney General
in Charge of Opinions