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OPINION NO. 95-11

TO: David Pearson, Councilmember, Mesquite District

FROM: Stephen M. Kemp, City Attorney

DATE: December 27, 1995

SUBJECT: Provision of Municipal Services to County Regional Parks Annexed into the City

QUESTION:

What is the obligation of the City to provide services within a county regional park after it has been annexed by the City.

OPINION:

For purposes of this opinion, the following background information is set forth. The City of Peoria is currently contemplating annexing an area into the incorporated limits of the city containing a county regional park and a lake, specifically the Lake Pleasant Regional Park (Regional Park).

Currently, within the Regional Park, Maricopa County provides a variety of services. These include:

1. Water and wastewater utility services
2. Park operation and maintenance
3. Roadway operation and maintenance
4. Park ranger
5. Waterway and boating law enforcement

6. On land law enforcement services.

Additionally, Maricopa County (County) has entered into an agreement with the United States Bureau of Reclamation (Bureau) to provide law enforcement services on the lake in exchange for certain fees being authorized to be charged by the County by the Bureau upon land owned by the Bureau and leased by the County.

The first question to be answered is: What is the effect of annexation by the City upon the existing county Regional Park. The answer is that the status of the park as a county park does not change. The County is authorized to acquire and or obtain access to property for park purposes through a cooperative agreement with the United States pursuant to A.R.S. §11-932; §11-933. The statute does not limit such county acquisitions for park purposes to unincorporated areas. Therefore, absent assignment of the Regional Park agreements and transfer of the Regional Park property, it remains a county park.

Based on the foregoing, upon annexation by the city, what will be the status of the existing water and wastewater utility systems operated by the county to provide services to county facilities. Counties are authorized to erect and furnish buildings pursuant to A.R.S. §11-251.8. Implied in this authority, pursuant to A.R.S. §11-251.30, §11-251.31 is the ability to provide water and waste water services to county facilities.¹ Therefore it must be concluded that the county will continue to operate the existing water and wastewater facilities in the Regional Park that provide services to county facilities.

As noted above, upon annexation, the Regional Park will continue under the jurisdiction of Maricopa County. As a county facility, it will continue to be the county's financial responsibility to provide for the Park's operation and maintenance. A.R.S. §11-933.

Under the operating agreement with the United States, the county has contractually obligated itself to provide operation and maintenance of the Regional Park. Annexation by the City does not change this contractual obligation.

At this time, the county has constructed roadways in the park to facilitate access and park operations. It is my understanding that these roadways are built to a park standard, not the general county highway and road standard. Such roadways would appear to

¹It should be noted that counties, except those between 300,000 and 600,000 in 1970 (Pima County) do not have the authority to operate wastewater utilities and counties do not have authorization to operate water utilities. Consequently this opinion does not address the ability of the county to furnish utility services to customers other than county operated facilities.

fall within the definition of public park in A.R.S. §11-931, which includes parkways, trails and recreational areas administered by a county, city or town. These roadways exist only to facilitate access to park facilities. No access is permitted outside the park. Accordingly, it would appear that they are part of the Regional Park that would continue to be administered by the county after annexation.²

The county is authorized to employ park ranger law enforcement officers (Park Rangers). A.R.S. §11-935.B.6. Such Park Rangers are given the power to enforce the provisions of Title 11 pertaining to parks, enforce county regulations pertaining to parks, preserving the park areas against damage and preserving the public health safety and welfare. In the case of the Regional Park, the park rangers would continue to enforce all county regulations governing operation of the Regional Park within the Regional Park, as well as preserving generally the public health, peace and safety within the Park.

It must be noted that both the county sheriff and the city police are designated law enforcement officers as well. Consequently, there will be overlap of law enforcement responsibilities. While Park Rangers may be the primary law enforcement responder within the county park, the City upon annexation would have back up responsibility if additional assistance were required.³ Additionally, Park Rangers may not be able to provide specialized law enforcement services (such as homicide or traffic investigation) that would need to be provided by another law enforcement agency.

The jurisdiction of law enforcement agencies within the regional park after annexation will be overlapping. Currently, the sheriff has jurisdiction to preserve the "public peace" throughout the county, both in incorporated and unincorporated areas. A.R.S. §11-441.A.3. It is only in unincorporated areas that the sheriff is mandated to provide such responsibilities. Ariz. Atty. Gen. Op I90-007.

At the same time, the city police have jurisdiction within the incorporated limits of the city pursuant to A.R.S. §9-240.B.13. and the Peoria City Charter, Article II, Section 3. Therefore

²Conversely, existing county roadways that are built to a county standard would become a city roadway upon annexation, unless an intergovernmental agreement is negotiated with the county to maintain county jurisdiction.

³Generally, as a matter of common practice, municipal police departments and county sheriff offices back up each other when existing staffing is not sufficient.

upon annexation of the park, law enforcement jurisdiction may be described as concurrent, with County Park Rangers, County Sheriff and City Police all having jurisdiction.

Within the park on land, the primary law enforcement entity within the Park will be Park Rangers, who are authorized by statute to maintain public order within the Park. To the extent that additional services may be needed, the Park Rangers may call upon any other law enforcement agency having jurisdiction for assistance.⁴

On the water, additional issues are raised. First, it must be noted that most of the "new Lake Pleasant" (Lake Pleasant after construction of the New Waddell Dam) is within and part of the Regional Park. As part of the regional park, it would be part of the Park Rangers responsibility to enforce county regulations on the water.

At the same time, most of the state statutes pertaining to watercraft operation contain criminal penalties. As such, after annexation there would be concurrent jurisdiction with the County Sheriff and City police department on the water. Generally, as with all incorporated areas, the city police are primarily responsible with the county sheriff having primary responsibility in unincorporated areas. Ariz. Atty. Gen. Op. I90-007.

This responsibility requires police officers to enforce the laws of this state. Obviously, this requirement is subject to available resources of the jurisdiction. To the extent that resources are available, City police would have to respond to calls for law enforcement services within the park, if park rangers required backup or additional support, including on the water.

As it pertains to Lake Pleasant, the matter is complicated by existence of the cooperative agreement between the County and the Bureau of Reclamation. Under that agreement, the county has contracted with the Bureau to provide on-water law enforcement services including:

- b. Personnel, administrative and equipment operation, maintenance and replacement costs associated with the exercise of police powers for the protection of public health, safety and welfare attributable to watercraft use.

⁴Under state statute that would include the City of Peoria Police Department, the Maricopa and Yavapai County Sheriff's Office and the Arizona Department of Public Safety.

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This contractual obligation remains a county obligation after annexation of the Regional Park. The City is not a party to the agreement and such cooperative agreements are permitted for county parks in incorporated cities as noted above. The county remains responsible to the Bureau and the Maricopa Water District for the provision of these services, despite annexation. The fact that the lake is within an incorporated area does not preclude continued county provision of these services.

Therefore it may be concluded as it pertains to law enforcement services within the Regional Park, basic law enforcement services on land consisting of enforcement of park regulations and maintaining the public peace is primarily a responsibility of the Park Rangers with the City Police being a law enforcement agency that would be required to provide back up services to the extent such services are available within city budgetary and financial constraints.

On the water, within the Regional Park, Maricopa County has contractually obligated itself to the Bureau and the Maricopa Water District to provide law enforcement services. Upon annexation, the City would also be required and legally authorized to provide such services to the extent resources are available. However, the City's provision of such services does not release the county from its obligations to provide law enforcement services under its agreement with the Bureau.

Finally, in light of the multiple responsibilities of differing governmental agencies in this area, consideration should be given to an intergovernmental agreement to outline these issues. If you should have any further questions, please do not hesitate to contact me.

cc: Honorable Mayor and Council