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FILE NOTE March 10, 2003

Agenda Title: IN THE MATTER OF ACCEPTING A BOATING FACILITIES GRANT FROM THE OREGON STATE MARINE BOARD FOR BOATING IMPROVEMENTS AT ARMITAGE PARK, APPROPRIATING \$25,000 IN FUND 216, AND DELEGATING AUTHORITY TO THE COUNTY ADMINISTRATOR TO SIGN THE COOPERATIVE AGREEMENT.

Agenda Date: March 19, 2003

From: Marc Kardell, Assistant County Counsel *MK*

The proposed IGA requires, in return for \$25,000.00 to pave an area in Armitage Park, that the County "*obtain the (Marine) Board's written approval for any user fees...(which) include, but are not limited to day use entrance, parking or launch fees*" for 20 years. So any such fee changes for Armitage Park would need to receive written approval of the Oregon State Marine Board for a period of 20 years, should this IGA be signed in it's present form.

The Marine Board has been asked to modify this language, see attached email, but does not respond to suggested changes in their standard language. I do not understand there to be legal reasons why such a modification ought not occur, rather the Marine Board's Director is concerned about spending money on legal fees that would detract from funds available for grants. It has also been argued to me that the Marine Board has never used this provision before, so the County should not be concerned by the language. The opposite may be the better argument, that if this language has never been enforced, it is a good candidate for change or removal.

Recommendation: In that staff does not want to lose this grant, nor provide disincentive for the Marine Board to offer the county future grants, should the Board of Commissioners not want to authorize signing of the proposed IGA due to this provision, the matter would need to be resolved at a level above that of the Executive Director of the Oregon State Marine Board.

KARDELL Marc H

From: KARDELL Marc H
Sent: Wednesday, February 05, 2003 9:41 AM
To: RISLEY Jake S
Subject: FW: Marine Board IGA

Jake, I mentioned to Rich the other day that their attorney, see below, asked that I email him a couple of options that the Marine Board might be interested in, and which would also be acceptable to us. He told me that he would forward those to the Director. Their attorney said that one of the reasons that the MB might want the language may have to do with federal pass through funds. That will explain some of the comments below. I have not heard back from him since my email late Wednesday. Let me know if you have more questions.

-----Original Message-----

From: KARDELL Marc H
Sent: Wednesday, January 29, 2003 4:34 PM
To: 'steve.shipsey@doj.state.or.us'
Subject: Marine Board IGA

I understand that the language dealing with fee approval is something that the Board may be interested in because the monies used may be pass through federal dollars, with certain strings attached. If that is the case, there are at least two ways to deal with this that would be preferable to seceding authority for 20 years on park entrance fees.

One possibility would be for the County to agree to indemnify the State (within the parameters of tort claims act and the Constitution) for any amounts determined to have been used contrary to federal (and/or state) law.

A second possibility would be if, following notice and an opportunity to be heard on a fee increase, the Board reasonably determines that the newly enacted fee was discriminatory, or contrary to applicable law, the County will be required to remit to the State the reasonable value of the improvement project as of the date of such finding, in an amount not to exceed the actual amount of the grant.

It is not uncommon for people to feel that certain "boilerplate" provisions are of little importance, in part because they are never utilized. However, I think you'd agree with me that such analysis does not pass muster as to allow a competent attorney to ignore the provision. Whatever the reason for the fee approval language, I think we can find, if I don't have it above, a more targeted and reasonable way of dealing with this, particularly on small projects.

If the current language is a "take it or leave it" proposition, I will pass that information on up the chain, but I'm not seeing how we'd avoid having this then go to our Board, which is supposed to have the final say over all our fees (waste management, planning, building, parks, health services, etc.). I'm hoping that we can put language together that meets the needs of your Board, while leaving local budgetary authority intact.

Let me know what else I might do to keep this matter moving forward.

Tracking: Recipient
RISLEY Jake S

Read
Read: 02/05/2003 10:06 AM