UNITED STATES
DEPARTMENT OF THE INTERIOR
Office of the Solicitor
Washington

17089

August 10, 1927

The Honorable,
The Secretary of the Interior.

Dear Mr. Secretary:

A memorandum from the Acting Director of the National Park Service transmitting a communication from the Superintendent of the Grand Canyon National Park has been referred to me with request for opinion on certain questions which have arisen in connection with the exaction of fees for the admission of automobiles into the park.

The regulations approved March 5, 1927, governing this matter provide:

> 5. Permits. - For entrance to the park on the south rim a permit shall be secured at the ranger station where the automobile enters, which will entitle the permittee to operate the particular automobile indicated in the permit over any or all of the roads on the south rim; provided, however, that residents of the park operating automobiles therein shall not be required to secure such permit. The permit is good for the entire season, expiring on December 31, of the year of issue, but is not transferable to any other vehicle than that to which originally issued. * * *
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> 6. Fees. - The fee for automobile or motorcycle permit is $1, payable in cash only. No charge, however, shall be made for such permit issued to residents of Coconino County entering the park in the conduct of their usual occupation or business.

The Acting Director states the regulations are liberally applied and that cars bearing Arizona licenses are permitted to enter the park without charge where the occupants are in pursuit of their usual occupation or business. He expresses the opinion, however, that further liberalization of the rules to permit the free entrance of cars bearing licenses from other States is not warranted.

From the papers submitted it appears that one Ed Hamilton is the owner of certain lands in the park, known as "Rowe's Well", situated in Sec. 33, T. 31 N., R. 2 E., G. & S.R.M., and that he maintains a general store and camp grounds thereon for the use and accommodation of tourists and motorists. It further appears that one F. P. Seiglitz, operating a car bearing a New Mexico license, and desiring to enter the park on alleged business with Mr. Hamilton, was charged the usual automobile entrance fee, resulting in a formal protest from Mr. Hamilton and demand for the return of the fee to Mr. Seiglitz on the ground in effect that the exaction thereof interferes with the use and enjoyment of his property and infringes his rights in the park under the act of February 26, 1919 (40 Stat. 1175), creating the same.

The Superintendent states that Mr. Seiglitz did not seriously object to the payment of the fee, and the formal demand for return thereof was made by Mr. Hamilton and not by Mr. Seiglitz; that at the time Mr. Hamilton made his verbal demand for refund, Mr. Seiglitz said it was a matter of no importance to him and if it were decided that the fee could be refunded, the park authorities had his permission to turn it over to the Red Cross.

The Acting Director states that the park authorities experience a further difficulty in the administration of the rule requiring the collection of a fee for automobiles at the entrance of the park, because of the promiscuous issuance by Mr. Hamilton of paper writings or instruments containing the elements of a lease for residental purposes, covering lots or cottages on his property in the park, these nominal leases being issued or distributed at points outside the park, apparently for the purpose of exempting the holders thereof from the payment of the usual fee at the park entrance. In this connection the Superintendent states:

> In almost every instance the tourist holding such a lease has paid his entrance fee without any protest as soon as the matter was explained to him by the ranger at the checking station, and upon being questioned it appears that in practically every case the tourist acknowledges that he has made no payment for the so-called lease. Upon being questioned, some have told us that the lease papers were handed out to them by business houses in Kingman and Williams. The proprietors of the store explaining that this would get them into the park free of charge.

He further states that the rental usually specified in the lease is $1 yearly.

Upon these facts two specific inquiries are presented:

> 1. Whether Mr. Hamilton has any legal grounds for his complaint against the collection of the automobile entrance fee from Mr. Seiglitz under the circumstances cited by the Superintendent.
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> 2. Whether the collection of the automobile entrance fee from holders of the nominal leases issued by Mr. Hamilton, under the circumstances of their issuance, may be legally insisted upon in view of the provision of the Act of Congress approved February 26, 1919, establishing the park, to the effect that nothing therein contained shall affect any valid existing claim, location, or entry under the land laws of the United States, whether for homestead, mineral, right of way, or any other purpose whatsoever, or shall affect the rights of any such claimant, locator, or entryman to the full use and enjoyment of his land * * *.

It appears that the roads and trails within the Grand Canyon National Park, aside from the Bright Angel trail which belongs to Coconino County, are owned by the Government and are under the paramount and primary control of Congress. The power to supervise, manage and control the several national parks and monuments, "and make and publish such rules and regulations as he may deem necessary or proper for the use and management thereof" has been delegated to

the Secretary of the Interior, under the act of August 25, 1916 (39 Stat. 535). It is difficult to conceive of any language which could confer upon an executive officer broader powers of control in the regulation of the use of national parks and other reservations within the purview of the act. The scope of this power was considered in a case arising in Colorado, Robbins v. United States (284 Fed. 39). In that proceeding the authority of the Secretary of the Interior to control and manage the roads within the Rocky Mountain National Park and make regulations concerning the use of automobiles therein was challenged on the ground, among others, that the control of the highways was vested in the State of Colorado. The case arose on injunction proceedings to restrain one Robbins from transporting passengers by automobile in the park without permission from the park authorities. With respect to the power of the Government to make the regulation there brought in question, the United States Circuit Court of Appeals said:

> But we are of the opinion that the power of the Government to regulate the traffic on those highways, as it has done by congressional enactment and rules thereby authorized, rests on the secure footing that it is a valid exercise of control over the property of the Government, even though it is of the nature of police power, and that it is sustained by section 3, art. 4, of the Federal Constitution, which entitles the Government to make all needful regulations respecting its territory and property.
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> Neither grants of rights of way on the public lands, accepted by user or statute, nor State ownership of highways derived from the Government or otherwise effect any abdication of such constitutional authority. Both the power of Congress to grant easements in favor of the public for travel and transportation and its power to legislate concerning territory and property are and must be consistently exercised, and the latter is accomplished by regulations to the end of devoting the adjacent domain owned by the Government to the lawful purposes and objects for which a national park is granted. We therefore hold that the regulations here involved can not be successfully assailed because of interference with private right to use the highways in the Rocky Mountain National Park. Camfield v. U.S., 167 U.S. 518, 17 Sup. Ct. 864, 42 L.Ed. 260; U.S. v. Gettysburg, 160 U.S. 668, 16 Sup. Ct. 427, 40 L. Ed. 576; Kansas v. Colorado, 206 U. S. 46, 27 Sup. Ct. 655, 51 L. Ed. 956; Light v. U.S., 220 U.S. 523, 31 Sup. Ct. 485, 55 L. Ed. 570; Curtin v. Benson, 222 U.S. 78, 32 Sup. Ct. 31, 56 L. Ed. 102; Utah Power & Light Co. v. U.S, 243 U.S. 389, 37 Sup. Ct. 387, 61 L. Ed. 791.

It is clear from the foregoing citation of authorities that the Federal Government has the power to regulate the use of its highways within the Grand Canyon National Park, and may exact a license fee for such use. Such being the case we recur to the first question submitted by the Acting Director, and in my opinion there is no legal basis for Mr. Hamilton's contention that the exaction of a license fee or toll charge from Mr. Seiglitz restricts or interferes with the use and enjoyment of his lands or infringes his property rights in the park. He has and may exercise all the attributes of ownership and all the rights pertaining to property. His right of access over the park roads is fully recognized. He exercises this right freely and without price. There is no

restriction upon the use of his own property and he may use it for any lawful purpose so long as such use does not interfere with or injure the park. So, it can not be plausibly argued that the requirement of a license from others for the privilege of using the park roads, no fee, toll or restriction being placed upon him, invades or abridges any right which he has in the use of his property. Obviously, it is not essential to the full use and enjoyment of his land that the general public or other persons who may have business with him should enjoy the same rights and privileges with respect to the use of the Government's property as are granted to him, or that they should be allowed without toll or charge and without obtaining the consent of the park authorities to travel over the roads provided and maintained by the Government. By virtue of the regulations the driving of motor vehicles over these roads is a privilege, and not a right inherent in all, and it is reasonable and proper that persons not within exempted classes, because of special or proprietary rights within the park, should submit to a reasonable exaction for the use of the improved roads over which their vehicles are driven, like persons passing over a turnpike, toll bridge or ferry. In the circumstances it is clear that Mr. Hamilton's contention is not well founded.

With regard to the second question submitted it will be noted that the regulations provide in substance that residents of the park and persons owning property therein shall not be required to secure a permit and shall have free access to the roads at all times for purposes of ingress and egress. This effectuates the manifest intent of the act creating the park, which provides by section 4 thereof--

> That nothing herein contained shall affect any valid existing claim, location, or entry under the land laws of the United States, whether for homestead, mineral, right of way, or any other purpose whatsoever, or shall affect the rights of any such claimant, locator, or entryman to the full use and enjoyment of his land.

Fom the facts submitted it fully appears that Mr. Hamilton's primary object and purpose in distributing these so-called leases, is to invite and induce tourists, campers and visitors who obtain them, to present themselves at the checking stations in the guise of tenants or lessees of his property, asserting the right of entrance to the park without payment of the regular license fee, thus seeking to evade the regulations and denude them of their utility, or force a concession agreeable to his wishes. Manifestly, any subterfuge employed for the purpose of evading the law or lawful regulations having the force of law, can not operate to permit one to do a thing not countenanced by such law or regulations. A permit or lease of the character referred to, handed out under the circumstances stated, would certainly not give the pretended or nominal lessee the status of an owner or resident as contemplated by the law and regulations. The status or real character of these tourists or transitory visitors is not altered by obtaining a permit from Mr. Hamilton to occupy his land during their sojourn in the park.

The holders of such permits or leases must be regarded, with respect to the right or privilege of entrance and travel in the park, as what they really are, and not what they pretend or assume to be. Clearly they may be distinguished from owners of property and bona fide residents within the park, and those who lease lands therein for the purpose of establishing a permanent residence and home, without any present intention of removing therefrom.

Congress has declared the policy of the law and fixed the principles which are to control in any given case; this policy and these principles are reflected in the regulations, and the park authorities are invested with the power to ascertain the facts and conditions to which they apply. Any doubt as to the applicability of the present rules to the situation could readily be remedied by appropriate amendment.

In the circumstances I think the holders of the nominal leases issued by Mr. Hamilton are not exempt from paying the regular automobile entrance fee.

Very truly yours,

(Signed) E. O. PATTERSON,

Solicitor.

Approved:

(Signed) E. C. FINNEY,

First Assistant Secretary.