

Appendix 8: Law Enforcement at Concession Campgrounds

Background

This paper clarifies the law enforcement responsibilities and responsibilities of concessionaires, state and local law enforcement agencies, and the Forest Service (FS) at concession campgrounds. The paper is based on a December 15, 1993, memorandum issued by the Office of the General Counsel (OGC) and an April 26, 1996, letter issued by Region 5 on the same subject. This paper has been reviewed and approved by OGC.

Roles and Responsibilities

Concessionaires

In responding to violations of Federal, state, and local laws, ordinances, and regulations, concessionaires have the same authority as a private citizen. Concessionaires generally cannot enforce Federal, state, or local laws or regulations, including 36 CFR Part 261, Prohibitions on National Forest System (NFS) lands. Concessionaires should be knowledgeable of applicable Federal, state, and local laws and regulations, including 36 CFR Part 261, and should report violations of these laws and regulations to the appropriate law enforcement authorities.

Concessionaires may enhance public safety at concession campgrounds in a number of ways. For example, they may hire a private security firm, hire off-duty state or local law enforcement personnel, or enter into a cooperative agreement with the county for additional patrols.

Under the terms of the campground concession permit, the authorized officer may allow or require a concessionaire to establish certain restrictions on conduct, or rules of use. For instance, the concessionaire may establish a rule of use that limits the number of vehicles per campground site, establishes a limit on the length of stay, or prohibits washing food at a water hydrant. The rules of use may be incorporated in the concessionaire's operations-and-maintenance

plan, and the concessionaire may be held accountable for ensuing compliance under the terms of the special-use permit.

Conduct that violates rules of use may also violate Federal, state, or local laws. When such conduct occurs, the concessionaire should report those violations to the appropriate law enforcement authority. For example, violation of a rule of use may constitute a disturbance of the peace in violation of state law, or disorderly conduct in violation of FS regulations at 36 CFR 261.4

To minimize confusion between criminally enforceable Federal, state, and local laws and concessionaire-established rules of use, each should be posted separately within the campground.

State and Local Law Enforcement Agencies

Generally, state and local law enforcement agencies have authority to enforce applicable state and local laws, ordinances, and regulations on NFS lands. Under 16 U.S.C. 480, states retain their civil and criminal jurisdiction over persons on the National Forests. Thus crimes involving persons and their property are generally the primary responsibility of state and local law enforcement authorities.

Where a concessionaire has established rules of use, there is no authority for a state or local law enforcement agency to take enforcement action, unless the conduct giving rise to the violation of a rule of use also constitutes a violation of state or local law.

There is no authority for the FS to allow state and local law enforcement personnel to enforce Federal laws and regulations, including 36 CFR Part 261. Some conduct may be prosecuted under Federal or state law because the conduct violates both. State and local law enforcement officers may enforce only state and local law.

Forest Service

The FS retains all its authorities and responsibilities for enforcing Federal laws and regulations related to administration of NFS lands. The role and responsibilities of the FS do not change simply because the FS has issued a special-use permit to a concessionaire. FS personnel should continue to enforce all Federal laws and regulations related to the administration of NFS lands within concessionaire-operated campgrounds.

FS personnel should not assume, however, that all laws and regulations applicable to facilities operated by the FS are also applicable to sites operated by concessionaires.

For example, as a matter of policy the FS does not interpret failure to pay a camping fee charged by a concessionaire to be a violation of 36 CFR 261.15 because the camping fee charged by the concessionaire is not an admission or recreation use fee for "a site, facility...or service furnished by the United States." The agency construes "furnished by the United States" to mean "owned and operated by the United States." Therefore the FS would not cite someone for failure to pay a camping fee at a concession campground, because the site is operated by a concessionaire, rather than the FS, and the concessionaire, rather than the FS, retains the campground fees.

The regulations at 36 CFR Part 261, Subpart A, apply at both FS and concessionaire-operated campgrounds. In contrast, orders issued under 36 CFR Part 251, Subpart B, may or may not apply at concession campgrounds. A Subpart B order must clearly state the area to which it applies 36 CFR 261.50(c)(1). If the order is Forestwide, it applies to all campgrounds, including concession campgrounds within that Forest. Operating Plans for concession campground permits should be consistent with any orders that apply. A concessionaire may not allow an activity prohibited by an order. A concessionaire's rule of use may be stricter than an order, however.

The Regional Forester or Forest Supervisor may exempt concession campgrounds from an order, and may want to exempt them to place more of the responsibility for the site on the

concessionaire. Rules of use, rather than the order, would then govern. This approach is consistent with one of the purposes of the campground concession program, which is to reduce expenditure of limited FS resources on administering developed recreation sites. When issuing a Subpart B order, the Regional Forester or Forest Supervisor should consider whether the order should apply at concession campgrounds.

If concession campgrounds are exempted from a Subpart B order, the rules of use established by concessionaires may differ from the restrictions contained in the order that apply elsewhere. For example, the restriction established by an order on the number of vehicles allowed per campsite at an FS-operated campground may differ from the same type of restriction adopted as a rule of use at a concession campground. FS personnel should ensure that they enforce only those Subpart B orders that apply to concession campgrounds.

36 CFR Part 261, Subpart C regulations should be handled the same way as Subpart B orders. Subpart C regulations are issued by the Chief or Regional Forester to prohibit acts or omissions in all or any part of an area over which the Chief or Regional Forester has jurisdiction.

FS law enforcement personnel should cooperate with state and local agencies to the extent authorized by FS policy (FSM 5360) and state and Federal law, such as 16 U.S.C. 559g(c), which authorizes acceptance of a law enforcement designation from states, and 16 U.S.C. 553, which authorizes the FS to aid in the enforcement of state laws in certain respects.

Prospectuses and permits for concession campgrounds should clearly describe the respective responsibilities of FS law enforcement personnel, local law enforcement authorities, and concessionaires.

Summary

Crimes involving persons and property are generally violations of state law. State and local law enforcement agencies have jurisdiction to enforce state laws at concession campgrounds.

FS personnel have the responsibility to enforce Federal laws and regulations related to the administration of NFS lands. Concessionaires may establish and enforce rules of use that are subordinate to Federal, state, and local laws and regulations. Rules of use are not enforceable by Federal, state, or local law enforcement authorities unless violations of rules of use constitute violations of Federal, state, or local laws.

Concessionaires should contact Federal, state, and local law enforcement authorities to address criminal violations under their respective jurisdictions. Concessionaires may also consider hiring a private security firm or contracting with off-duty state or local law enforcement personnel to address day-to-day public-safety concerns at concession campgrounds.