

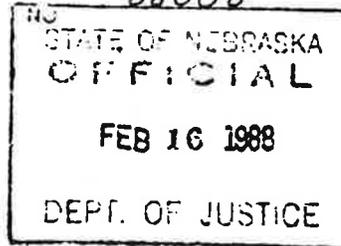
DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

TELEPHONE 402/471-2682 • STATE CAPITOL • LINCOLN, NEBRASKA 68509

ROBERT M. SPIRE
Attorney General
A. EUGENE CRUMP
Deputy Attorney General

#88008



DATE: February 16, 1988

SUBJECT: Conservation Easements

REQUESTED BY: Eugene T. Mahoney, Director, Nebraska Game and Parks Commission

WRITTEN BY: Robert M. Spire, Attorney General; Linda L. Willard, Assistant Attorney General

You have asked whether the Game and Parks Commission has the authority to accept easements on portions of privately owned farm and ranch land by grant (no cost) from the Farmers Home Administration or U.S. Fish & Wildlife Service, and secondly, whether the Commission would have the authority to legally enforce the conditions of said easement. Our response to both of these questions is yes, the Commission does have the authority to so act.

Neb.Rev.Stat. §§81-815.26 et seq. (Reissue 1981) empowers the Commission to acquire land with the consent of the Legislature and to enter into long-term leases or other agreements relative to real estate for park purposes. Pursuant to Neb.Rev.Stat. §§76-2,111 et seq. (Reissue 1986), the Nebraska Game and Parks Commission, as a governmental body empowered to hold an interest in real property under the laws of this state, could accept an easement on property privately held. Prior to acceptance of any easement, the acquisition must first be referred to the local planning commission as set out in Neb.Rev.Stat. §76-2,112(4).

If the acquisition involves additional state costs such as cost for maintenance, the acquisition must be approved by the Governor and the Legislature since the Commission would not have the authority to legally bind the state for the additional cost.

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Mr. Eugene T. Mahoney
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The conditions or strictures set out in an easement would be enforceable through the courts. The Commission, through the Attorney General's Office, could seek a court order to force the grantor of the easement to comply with the written terms of the easement.

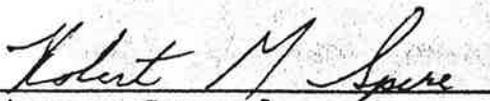
Sincerely,

ROBERT M. SPIRE
Attorney General


Linda L. Willard
Assistant Attorney General

LLW:bmh

APPROVED BY:


Robert M. Spire
Attorney General