

1975 WL 29341 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

December 29, 1975

*1 Mr. J. W. Lawrence
Assistant Director
South Carolina Department of Parks, Recreation and Tourism
Box 113
Edgar A. Brown Building
1205 Pendleton Street
Columbia, SC 29201

Dear Bill:

You have requested an opinion regarding privately leased lots at Hunting Island State Park. As you state in your letter, the PRT Commission would like to cancel these leases which allow private individuals to lease cottages at Hunting Island State Park for fifty dollars per annum or, alternatively, to adjust the terms of the existing leases.

Hunting Island State Park was established by statute in 1940. See §§ 51-241, CODE OF LAWS OF SOUTH CAROLINA (1962). Section 51-242 provides, in part:

The Commission may set aside such portion of the island as it shall deem proper as a residential area. It may divide this area into building lots and may lease the lots for such terms of years, for such annual rentals and upon such conditions and covenants as the Commission may determine. . . .

The copy of such a lease for property at the park, which was sent to this Office as representative of the Park leases specifically states that '[t]his lease is made pursuant to the provisions of Section 3284-5 of the 1942 Code [§§ 51-241 et seq. of the 1962 Code] and Amendment thereto, . . .'. The lease further provides the lessee 'with the option of renewing the said lease for successive ten year periods, provided that written notice be given the Lessor by Lessee within sixty (60) days prior to the expiration of the period herein specified or of each successive renewal period; . . .'

Where the lease, such as here, specifically gives the option to renew the lease to the lessee, the lessor has no inherent right to terminate the lease. The lease can be terminated only for cause, i.e., for failure to give notice of intention to exercise the option of renewal or for a breach of the covenants or conditions of the lease as provided in paragraph sixteen thereof.

As to questions concerning adjusting the terms of the lease, it seems clear that the Commission can alter the rental fee. The lease, as stated supra, is made pursuant to § 51-242, which gives the Commission the authority to determine the annual rentals. [The provisions of this section was made applicable to the PRT Commission by § 51-76, CODE OF LAWS OF SOUTH CAROLINA (1962) (as amended).] The right to increase the rental fee for the renewal of a lease has been repeatedly upheld by the courts. 50 Am.Jur.2d, Landlord Tenant §§ 1165, et seq.; 208 S.C. 433, 38 S.E.2d 495 (1946). Absent agreement of the lessee, the Commission may not alter the renewal period of ten years, since it is specifically provided for in the lease.

If there are further questions regarding the leases, please do not hesitate to contact me.

Sincerely,

M. Elizabeth Crum

Assistant Attorney General

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