

December 1, 1998

George M. Bald, Commissioner
Department of Resources and Economic Development
172 Pembroke Road
P.O. Box 1856
Concord, New Hampshire 03302-1856

Re: State Employee Discounts at Mount Sunapee Ski Area

Dear Commissioner Bald:

Former Commissioner Robb R. Thomson requested our opinion on whether section 19.17 of the collective bargaining agreement ("CBA") between the State and the State Employees Association entitles state employees to a 50% discount on the admission price to the Mount Sunapee Ski Area, which is now leased and operated by Okemo Mountain, Inc. ("Okemo"). For the reasons discussed below, it is our opinion that section 19.17 of the CBA does not apply to the admission price to Mount Sunapee Ski Area.

Section 19.17 of the CBA provides in pertinent part:

Any bargaining unit employee shall be entitled to a fifty-percent (50%) discount on the admission price of any state owned recreational area.

The State, acting through the Department of Resources and Economic Development ("DRED"), has leased to Okemo the land and improvements ("leased premises") comprising what is known as the Mount Sunapee Ski Area for a period of twenty (20) years. Pursuant to the lease, Okemo may not only "operate a commercial recreational facility (including all of its support

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activities)," but also make site improvements to the leased premises. See Lease and Operating Agreement at 6.

Okemo must bear the cost of all renovations and improvements under the lease. Site improvements built or installed by Okemo remain the real or personal property of Okemo during the lease term. Id. Upon the termination of the lease, title to all site improvements vest in the State. Id.

During the term of the lease, Okemo, not the State, owns all site improvements, including but not limited to new lifts, newly constructed or renovated lodges or other facilities, and snowmobiling and other ski trail improvements. Since the leased premises in question are not fully "state-owned" during the term of the lease, section 19.17 of the CBA does not apply.

We note that DRED has long interpreted section 19.17 of the CBA to mean State owned and operated. DRED has applied this interpretation uniformly over a number of CBAs to various recreational areas, including the Seacoast Science Center at Odionne State Park, the Mount Washington Observatory Museum, the Wentworth-Coolidge Mansion, and others. However, we do not reach the issue of whether this interpretation is applicable here, since your question may be answered on the unique factual circumstances of this lease.

In conclusion, section 19.17 of the CBA does not entitle state employees to a 50% discount to Mount Sunapee Ski Area because the State does not fully own the land and facilities comprising it during the term of the lease.

I trust the foregoing responds to your inquiry. Please do not hesitate to contact me if you have questions or require further assistance with this matter.

Very truly yours,

Suzan M. Lehmann
Assistant Attorney General

/sml