

your question turns on whether or not the questioned parking lot used in connection with an auditorium can be considered a recreational facility or a necessary adjunct to, or appurtenance of, such auditorium. Since the statute may be reasonably construed to embrace such auditorium within the park and recreational purposes of the district provided for by the statute within the term "recreational hall," under the rule of liberal construction mandated by §24, Ch. 69-1287, *supra*, I am of the opinion that the parking area would be incidental to the authorized purposes of the district, and a necessary adjunct to, and appurtenance of, such auditorium.

"Recreational facility" has been defined to include such diverse areas as public parks, parkways, playgrounds, playfields, swimming pools, public baths, bathing places, and gymnasiums. Appeal of Municipal Authority of Borough of West View, 113 A.2d 307 (Pa. 1955). So long as a facility is used for *public recreational purposes* it would qualify as a *recreational facility*. See, State v. Village of North Palm Beach, 133 So.2d 641 (Fla. 1961). Such purposes include, *inter alia*, games, sports, plays, and dances performed by or for the residents of the district. Bear v. Board of Education of North Summit School Dist., 16 P.2d 900 (Utah 1932). Since the above activities would normally take place within an auditorium, the auditorium itself would be a recreational facility within the meaning of Ch. 70-796, *supra*. Further, §13, Ch. 69-1287, *supra*, specifically states that the property the trustees may acquire includes a "recreational hall." Since both a recreational hall and an auditorium are buildings in which the public gathers for recreational purposes, they could be considered one and the same and therefore the acquisition and operation of an auditorium is an authorized function and purpose of the district.

Since the parking area is to be used in connection with the auditorium, its acquisition would, of course, be subject to the referendum requirements of Ch. 70-796, *supra*, if the value of such property is in excess of ten thousand dollars. The acquisition of such a parking area by the trustees is proper if the parking lot is considered an appurtenance of the auditorium, *i.e.*, an area necessary and essential to the full enjoyment and use of the auditorium. See 6 C.J.S. *Appurtenance* pp. 133 and 136.

As a general rule, land can never be an appurtenance to other land. This principle has been followed in a number of Florida cases. South Venice Corp. v. Caspersen, 229 So.2d 652 (2 D.C.A. Fla., 1969); Brickell v. Trammel, 82 So. 221 (Fla. 1919); Rivas v. Sollary, 18 Fla. 122 (1881). See also, 23 Am.Jur.2d *Deeds* §258. However, when adjacent land is used with a building and is necessary to the building's functions, it is then considered to be appurtenant to the structure. Black v. Ervin, 176 N.E.2d 142 (2 D.C.A. Ind., 1961); Webber v. Austin, 121 A. 673 (Me. 1923). Assuming, therefore, that the lot is adjacent to the auditorium, it is necessary or convenient for the full enjoyment of the auditorium, and that the trustees by official act have found and determined that the property is in fact necessary and convenient for the purposes of the district, the acquisition of such lot requires the approval of a majority of the qualified voters of the district only if the cost of such lot exceeds ten thousand dollars.

073-310—September 4, 1973

PAROLE

PRISONER MUST BE IN JAIL OR PRISON TO BE CONSIDERED FOR PAROLE

To: Armond R. Cross, Chairman, Florida Parole and Probation Commission,
Tallahassee

Prepared by: Reeves Bowen, Assistant Attorney General

QUESTION:

Is a state prisoner transferred to a privately operated facility, such as Spectrum House or Concept House, for treatment on account of his drug problem eligible for parole prior to the time that he is transferred back to the prison system?

SUMMARY:

A state prisoner who has been transferred to a privately operated facility, such as Spectrum House or Concept House, for the treatment of persons having drug problems is not eligible for consideration for parole so long as he is in such facility because the governing statute requires that he be confined in prison or jail in order to be eligible for parole consideration and because such a privately operated facility is neither a prison nor a jail.

I understand that some state prisoners with drug problems are transferred to such privately operated facilities as Spectrum House and Concept House for treatment under the authorization of §397.041(4), F. S., which reads as follows:

(4) Any person within the care or custody of any division of the department may be transferred for treatment to any program for hallucinogenic, barbiturate, or narcotic drug abuse problems approved by the department.

A prisoner's eligibility for parole is fixed by §947.16, F. S., which in pertinent part provides:

(1) Every person who has been, or who may hereafter be, convicted of a felony or who has been convicted of one or more misdemeanors and whose sentence or cumulative sentences total twelve months or more, *who is confined in a jail or prison in this state in execution of the judgment of the court*, and whose prison record is good, shall, unless otherwise provided by law, be eligible for consideration by the commission for parole. . . . (Emphasis supplied.)

Thus, in order to be eligible for parole consideration, a prisoner must be confined in a prison or jail in this state in execution of the judgment (sentence) of the court. Does a privately operated facility for the treatment of persons with drug problems constitute a "prison" or "jail"? I think not.

Volume 60 Am. Jur.2d *Penal and Correctional Institutions* §1, defines "prison" and "jail" as follows:

The words "penal institution" and "*prison*" are generic terms comprising *places maintained by public authority for the detention* of those confined under legal process, whether criminal or civil, and whether the imprisonment is for the purpose of insuring the production of the prisoner to answer in future legal proceedings, or whether it is for the purpose of punishment for an offense of which the prisoner has been duly convicted and for which he has been duly sentenced. . . . A "*jail*" is a *prison* appertaining to a county or municipality in which are confined for punishment persons convicted of misdemeanors committed in the county or municipality. . . . (Emphasis supplied.)

A privately operated treatment center for persons with drug problems is not a prison or a jail because it is not maintained by public authority and it is not maintained for detention purposes.

Therefore, a state prisoner who has been transferred to such a facility for treatment is not eligible for parole consideration so long as he is in such facility.