N. G. P. KRAUSZ AND L. G. LEMON

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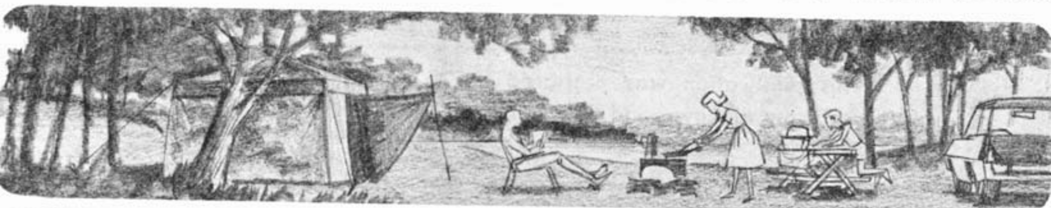
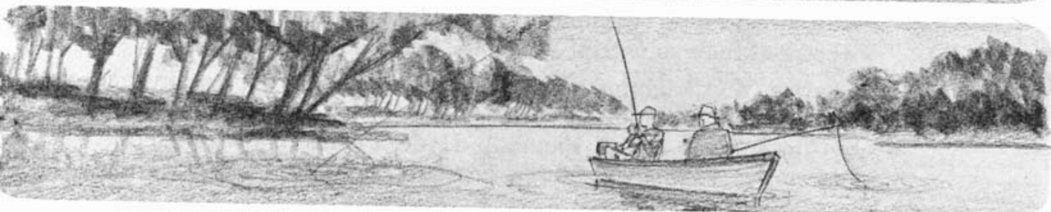
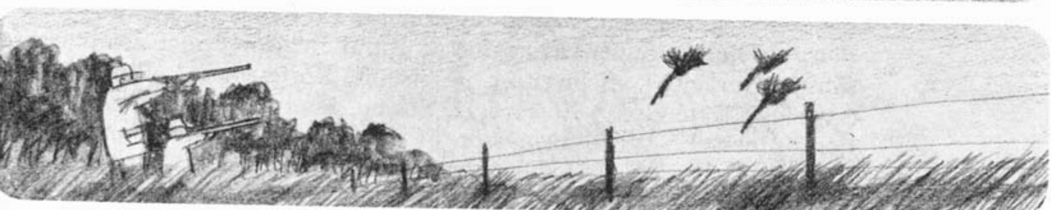
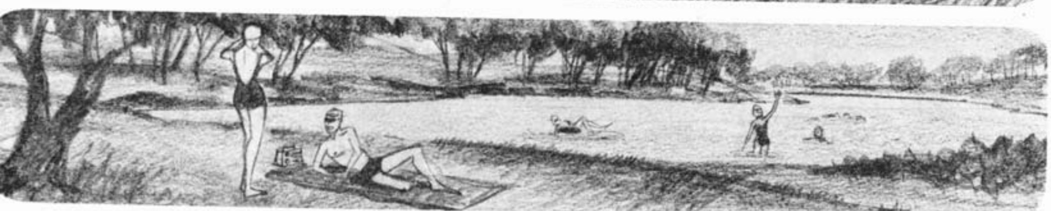
LAWS AND REGULATIONS CONCERNING RECREATION IN RURAL AREAS OF ILLINOIS









UNIVERSITY OF ILLINOIS · COLLEGE OF AGRICULTURE · COOPERATIVE EXTENSION SERVICE CIRCULAR 889

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INTRODUCTION

As a result of the expanding population, rising living standards, and increasing amounts of leisure time in the United States, there is a need for expanded recreation facilities. In addition to the fact that parks and other public facilities cannot meet the demand, many people prefer more secluded places in which to relax.

Commenting on recreation in rural areas, a Life magazine article said, "The city slicker who used to yell 'Hayseed!' at country folks has changed his tune. Nowadays he yearns to take his kids to the country to show them hayseed ways — and hope maybe some rural know-how rubs off on the poor bleached-out citified types. Realizing this, the farmer — no fool, he — is harvesting a new cash crop: urban dudes as paying guests."[1]*

The U.S. Department of Agriculture has pointed out four reasons why recreation enterprises on farms are desirable.

1. It offers a chance to provide additional income to farmers and associated businesses while enabling farmers to stay on their farms.

2. It can aid in diverting cropland to a more profitable use for the owner. Such land can later be returned to cultivation if necessary.

3. It provides an urgently needed service.

4. It helps stabilize the local economy and strengthen social institutions without removing land from private ownership or reducing the tax base.[2]

The opportunities seem especially alluring to many Illinois farmers because the state is highly urbanized and much of the land is suited for recreational development.

For such farmers, and any others interested or involved in recreation activities in rural areas, this circular presents information on (a) Illinois laws, court cases, and regulations that bear upon the establishment, maintenance, and operation of an income-producing farm recreation enterprise, (b) the laws on public recreation facilities in rural areas, and (c) sources of federal aid for recreation projects. State supervision, personal liability for injury, taxation, and other considerations are treated as they relate to recreation. However, the information is in no way intended as complete legal advice on any particular matter.

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* Footnotes, indicated by numbers, appear in the separate section beginning on page 30.

part I PRIVATELY OWNED RECREATION FACILITIES

ILLINOIS LAWS AND REGULATIONS

Hunting

Breeding and shooting preserves.[3] Any person who owns, or controls by lease or otherwise for at least five years, at least 320 acres but not more than 1,280 acres, in one continuous tract, may apply to the Illinois Department of Conservation for a game breeding and shooting license. (If the preserve is for hand-raised mallards, the tract may be smaller than 320 acres if the department approves.) The license, which costs $50 and expires on March 15 of each year, entitles the owner to propagate, preserve, and shoot (or authorize others to shoot) game birds, game animals, or migratory game birds in the licensed area in accordance with certain limitations.

The department is responsible for maintaining a "biological balance," and some of the released birds of certain species must not be shot. Specifically, hunters on the preserve can take only 80 percent of the quail, pheasants, or partridges released. All of the chukar (type of partridge), Coturnix (type of quail), wild turkeys, and mallards released may be taken. Except for Coturnix, all birds must be at least 12 weeks old and in full plumage before they can be released.

Landowners who intend to raise game animals should consult the conservation department for information regarding kinds of animals that may be raised in any given county, sources of supply, etc.

The hunting season on licensed preserves is a special one which runs from October 15 to March 15, inclusive. There is an exception for mallards, which may be released for shooting purposes at any time during the year. All persons hunting on the preserve must have a current Illinois hunting license.

Detailed records must be kept for the conservation department of of the number of birds or animals released, the number taken by hunters, and the names of those who hunt. Each bird or animal must be tagged with one or more irremovable tags, furnished by the department at 10 cents each. Game birds and animals may be obtained from the department or from other licensed breeders thereby authorized to sell live game.

If the raising of game birds or animals proves profitable, the

licensee may wish to raise them for breeding stock, for sale alive to other preserve licensees, or for sale to restaurants or gun clubs. Again, the conservation department licenses these activities.[4] When game birds, game animals, or migratory game birds are raised for sale alive, a license costing $10 must be procured from the department, and each bird or animal must be tagged. Each tag costs 10 cents. If the sale of dressed game for food is planned, much stricter state laws apply.

Wild duck and goose hunting areas.[5] Another law in Illinois allows a landowner to obtain a license to establish a hunting area for wild ducks or geese. The important difference from preserves is that the regular hunting season and daily limits on the number of birds taken are applicable. Also, a farmer licensed under this law ordinarily would not raise his own birds.

There are separate licenses for duck and goose areas, and the license fee varies with the number of blinds or pits provided. It is $10 when 5 or less are provided; $25 when the number is between 5 and 10; and $25 for each group of 10 or less thereafter. For example, if 22 blinds were provided, the fee would be $75. The construction, location, and use of blinds are carefully regulated by law.[6]

Wildlife habitat management areas.[7] The Illinois Wildlife Habitat Management Areas Act provides incidental recreational opportunities for landowners, but was primarily designed to provide the state with controlled areas on which game animals and birds may be released for natural propagation and growth. Anyone having control of 600 or more acres in one tract for at least five years is eligible to develop a wildlife habitat.

The owner must contract with the Department of Conservation, agreeing to set aside one-third of the area as a "no hunting" preserve, if the state requests, and to control hunting on the remainder. The state may agree to buy standing hay for wildlife cover and food, if it is agreeable to the farmer. The law contemplates that the farmer and the department will work out a mutually satisfactory contract which will not interfere with normal farming operations.

Water Sports

Swimming. Swimming pools constructed and operated primarily for public swimming must conform to regulations issued by the Illinois Department of Public Health.[8] Any person desiring to build and operate a pool must obtain a construction permit from the department,

install equipment that meets minimum sanitary requirements, and submit operating records as the department requests.

While it appears that this law does not apply to natural or artificial lakes, the public health department has authority to make recommendations for operation and maintenance of natural and semi-natural bathing places. The department can also close any bathing area when such action is considered necessary to prevent possible spread of infection or disease.[9] The swimming pool law does not require a license before opening a bathing beach to the public, but another law gives county boards of supervisors power to license and regulate businesses providing recreation.[10] Even though a license may not be required, safety and sanitation should be uppermost in the mind of anyone planning a venture into this area.

The department's Division of Sanitary Engineering has published a mimeographed statement of policy and recommendations pertaining to bathing beaches and natural swimming areas. In brief, it specifies that:

— Lakes and ponds are subject to varying degrees of contamination that cannot, by any present tests, be accurately determined.

— Rivers and streams are not satisfactory swimming areas because they are contaminated by any number of tile drains and often by sewers and septic tanks.

— Small ponds represent especially hazardous swimming areas as considerable pollution can occur when the waters are patronized by any appreciable number of bathers.

— A body of water is inadequate if less than 2 acres in size or if the total volume drops below 5 million gallons of water.

— Bathhouse facilities should be provided as follows: One toilet for each 80 swimmers of each sex expected at the time of maximum load, and one shower, provided with soap and not less than 90° F. water, for each 40 bathers.

— Pumping and chlorine-gas-feeding equipment is desirable even in a lake, although in such use it is obviously of rather limited utility.

Boating. Since passage of the Illinois Boat Registration and Safety Act,[11] boat rental services have been licensed by the Illinois Department of Conservation. Licenses must be obtained annually and displayed prominently in the place of business and on the boats. The cost is $5 for the business and 50 cents for each boat less than 16 feet in length (longer boats are subject to higher fees). The department

inspects the equipment of each licensed operator and determines boat capacities. The formula used to determine boat capacity is:

$$\frac{\text{cubic foot capacity}}{12} \times 150 \text{ equals pounds.}$$

If motorboats are rented, the operator must provide a life preserver for each person in the boat; running lights; suitable mufflers on the motor; a whistle, horn, or other warning device; and adequate fire extinguishers. Violators of the law are guilty of a misdemeanor.

Fishing. For recreation enterprises the "fee fishing pond" is promising. An owner, or person having control by lease, of a water area may apply to the Department of Conservation for a license to establish a fee fishing pond.[12]

The department has authority to inspect the area, ascertain the legal source and species of fish to be stocked in the pond, and determine the applicant's ability to properly supervise a fee fishing pond. It will issue a license upon receipt of the annual fee of $10 if it finds that (a) the pond will be operated in compliance with the Fish and Game Code, (b) the area is suitable for such a pond and will not be a menace to society, (c) the operation of the pond will not work a fraud upon persons using its facilities, and (d) the issuance of the license will be in the public interest.

Since the provisions of the Fish and Game Code apply to fee fishing ponds, daily catch and size limits are applicable to fish taken and fishermen at such ponds must have a valid fishing license. Also, the law governing fee fishing ponds requires the operator to help enforce the provisions of the Fish and Game Code by issuing "daily catch slips." Thus each fisherman reports his catch of any species of fish for which there are size or daily limits.

An alternative to fee fishing is to charge for general admission to the property and then allow patrons to fish, swim, boat, hike, picnic, etc. at their pleasure. The conservation department may stock such lakes and ponds and take measures to control rough fish, harmful weeds, and water diseases.[13] Open season limits, size limits, daily limits, and possession limits are applicable. Therefore, fishing licenses are required of all who fish in the lake or pond,[14] excepting the owners or tenants, their children if they reside on the premises, and all children under 16 years of age.[15]

In accordance with another law, the state licenses minnow dealers, charging a fee of $5. The purpose is to prevent the spreading of diseases that plague fish.[16]

PROPERTY LAW QUESTIONS AND ANSWERS

Zoning

Question: Can zoning be used to regulate the use of land for recreation enterprises?

Answer: Yes, and most counties with zoning rules have specified permitted uses, such as golf courses, gun clubs, and swimming pools. Usually these ordinances do not list camping and fishing, thereby placing such activities in question if done on a commercial basis.

Question: If there is county zoning, and a person is contemplating a specific land use which is not listed, what can he do?

Answer: There are several possibilities: (1) He can ask the zoning board of appeals to give an opinion on whether such use is permitted under the existing ordinance. (2) A variation may be requested if some recreation enterprises are permitted, but the one desired is not included. (3) A request can be made that the zoning ordinance be amended to include the enterprises wanted. (4) After exhausting these possibilities, the issue may be taken to the courts on the basis that the ordinance is void and unconstitutional as applied to a particular property.

Question: Can city zoning apply to rural areas?

Answer: Yes, zoning can be extended 1½ miles from the city boundaries, if action has been taken by the city council to make a comprehensive plan for the fringe area. However, if county zoning already is in effect, the city cannot extend its zoning.

Water Use

Question: Under what circumstances may a stream be obstructed to form a lake?

Answer: Navigable waters may not be obstructed without certain permits, but nonnavigable streams may be obstructed if there is no damage to the property of others. A stream is considered navigable if, in its natural state or with reasonable improvements, it is or can be used as a highway for commerce over which trade and travel may be conducted in the customary modes on water. The Illinois Department of Public Works and Buildings has jurisdiction over all the navigable waters of the state and publishes a list of these waters.[17] For example, the Mississippi, Wabash, Chicago, Illinois, and Des Plaines rivers are navigable, but the Sangamon is not. If the stream is nonnavigable, the

owner may divert it through an artificial watercourse and back to the original course.

Question: What are the rights of a riparian owner (one who owns land on the bank of a river or lake) to use a stream or lake for recreation?

Answer: The right to hunt, fish, swim, and use the area for other forms of recreation goes with ownership of the land under the water. If a landowner holds title to the bed of the stream or lake, he may use the water for recreation and exclude others from doing so. If he owns land only on one side of the water, he ordinarily owns the bed only to the center or thread. Persons who own land next to streams or lakes usually have title to them, except for meandered lakes. (Meandered means the lake was plotted by federal surveyors and described in the title "to the meander line," which is the edge of the lake or pond for all practical purposes.)

Question: What rights exist in meandered lakes?

Answer: The title of a riparian owner on a nonnavigable lake extends to the center of the lake. If the land of a single proprietor surrounds a lake, the entire lake belongs to that owner as a part of his land. The exception to the rule is where the lake has been meandered. In that case, the grant of land extends to the water's edge in its natural condition, and the state holds title to the bed. The public has a right to hunt, fish, and bathe in meandered lakes, but has no such rights in non-meandered or private artificial lakes.

Easements

Question: Can easements be used to transfer recreation rights?

Answer: Generally a license or lease arrangement is used for recreation facilities. However, an easement can be used, whereby a property owner can allow others to hunt, fish, and bathe on his property without giving up possession of the land. Or, he may pass the land by deed or will, but reserve rights (for himself or others) to hunt, fish, and bathe. Such a device may be suitable for a landowner who does not wish to develop a recreation enterprise himself but would like to have one established on the land.

Recreation easements generally benefit only the person or organization holding the rights. They are personal rights that the holder may not transfer to others unless the terms of the easement expressly grant such powers. However, the easement holder may grant licenses to others to use the property as long as the easement is in effect.[18]

Question: Can conditions and covenants (agreements between parties to do or not to do a particular act in connection with use of land) be placed in easements for the use of land for recreation?

Answer: Yes, conditions and covenants may be placed in hunting, fishing, and bathing easements through which the owner retains certain controls when property interests are transferred to another. Covenants are more widely used and most effective.[19] They can be used to benefit the easement holder as well as the landowner. For example, assume that an owner of lakeshore property sold a lot and gave the purchasers the privilege of bathing, boating, and fishing on certain property retained by the seller. If the deed contained a covenant by the seller not to decrease the desirability of the property for residences, the seller could not fill in part of the lake.

A written document is necessary to create these property interests.

ACCOMMODATIONS

Campgrounds and Picnic Areas

County boards of supervisors have authority to license operators and regulate the business of providing camping grounds for transients.[20] The boards are given the additional authority to prescribe reasonable rules for the prevention of fires, disease, and collapse of buildings.[21] Anyone planning to provide camping facilities should contact local governing authorities for any rules that may have been prescribed.

The Illinois Department of Public Health has authority to inspect recreation areas, picnic grounds, and campsites. It can also prescribe rules for construction and operation so that the facilities are properly built and maintained in a sanitary manner.[22] These rules apply only to camps used by organized groups of 10 or more.[23] However, for smaller camps, the rules do express a policy that drinking water be sanitary and wholesome, and that in other respects, a business be operated with health and cleanliness in mind.

Food and Drink

Counties have authority to regulate bowling alleys and billiard establishments[24] and to regulate dance halls and road houses,[25] but they do not have the comprehensive authority of municipalities to license all places for eating or amusement.

Restaurants are not licensed by the state, but regardless of the size

of the food business, the Illinois Sanitary Inspection Act applies.[26] Food must be prepared in clean surroundings, handled by clean workers, and served on clean utensils. The Illinois Department of Agriculture enforces the act by making inspections of all places that prepare or serve food.

Milk produced on a farm may be sold on the premises if all cows producing such milk have been tested for bovine tuberculosis and brucellosis and are free therefrom, and if the milk is free from sediment.[27] However, it is highly recommended that the Grade A milk requirements[28] also be met if milk is to be served to patrons on the farm.

Overnight Accommodation

The keeper of a public place of accommodation in Illinois is bound to accept and let rooms to transients on a "first come-first served" basis under the Illinois civil rights statute.[29] Breach of such obligation may result in a $1,000 fine, imprisonment of six months, or both. A "public place of accommodation" is not well defined, but there is some authority that furnishing board and room to a limited number of persons for a definite period of time (generally by the week or month) is not a public accommodation.

Illinois law limits the liability of larger hotels (those with 25 or more rooms) for lost or damaged property of guests. If the property is in the possession of the guest, and the hotel is at fault for the loss or damage, the hotel may be liable up to $250. If the guest gives property to the hotel for safekeeping, and it is lost or damaged, the hotel may be liable up to $500. Hotel liability can be higher only when there is a written agreement to that effect with the guest.[30]

Smaller hotels may be able to limit their liability by giving notice to guests that they will not be responsible above a set amount. The amount set must be reasonable, and courts may consider the law as applied to larger hotels as a guide to follow.[31]

At common law and by statutory law in Illinois, hotel keepers have a lien on the luggage and contents of all guests to assure payment of charges owed to the keeper. The statutory lien, however, applies only when a hotel has 25 or more rooms.[32]

The Illinois act regarding safety appliances — fire prevention, fire escape, and fire fighting devices — applies to all buildings in which 10 or more rooms are used to accommodate guests or others.[33]

The Illinois Sanitary Equipment Act applies to every business involved in accommodating travelers and vacationers, regardless of the number of spaces provided.[34] It requires clean rooms, showers, rest

rooms, sheets, and towels. Further, the sheet size must be at least 81 by 99 inches, and towels must be placed both in the sleeping rooms and rest rooms if central privies are in use.

LIABILITY FOR PERSONAL INJURY AND PROPERTY DAMAGE

General Explanation

For many years the law has permitted peaceful remedy for injuries one person inflicted on another, ending the violence of "an eye for an eye." This area of law is called *torts,* and its rules have grown more from the solutions of individual problems than from the wisdom of legislatures.

Questions of liability are generally resolved by considering the relation of the parties to one another (such as strangers, owner and invitee, or neighbors) and examining the conduct of each party, asking who is at fault. Parties in cases involving recreation businesses are usually the proprietor and the invitee or patron.

A summary of liability rules is as follows: The mere ownership of real property does not make owners liable for injuries sustained by persons who enter the premises by invitation of the owner. An invitee assumes normal, obvious, or ordinary risks that go with the use of the premises. A landowner is not required to take precautions against unusual and unexpected occurrences.

The basis of the owner's liability for injuries sustained by invitees on the premises rests upon the owner's superior knowledge of or ability to foresee the danger and upon his ability to prevent the accidents by taking reasonable precautions. Also, obligations may be imposed by written or implied contracts.

Court decisions indicate that owners of pools and lakes used for swimming have several specific duties. Included are (a) to provide depth markers, (b) to provide adequate supervision, (c) to keep and maintain rescue equipment and effect prompt rescues, (d) to rescue in a proper manner, and (e) to keep the bottom of the pool or lake clear of dangerous substances. Further, if diving facilities are provided, it is the duty of the owner to provide a reasonably safe springboard and depth of water, to control divers and give them notice and warning of danger, and to prevent obstructions in and below the water.[35]

One court case involved an action for damages because a child drowned in a lake to which he had been admitted after paying a charge.

The complaint alleged that the owner had not provided attendants to watch the child, that he failed to mark deep and dangerous places in the lake, and did not in any other manner warn the child of such dangers. The court held that if such were true, the plaintiff could recover damages because it is the duty of recreation area owners to make reasonable provision to guard against accidents that common knowledge and experience indicate may happen.[36]

A summary of this field of law in the United States has been reported as follows:

> It is said to be well settled that the owners of resorts to which people generally are expressly or by implication invited to come are legally bound to exercise ordinary care and prudence in the maintenance and management of such resorts to the end of making them reasonably safe for visitors, and that when the business is that of keeping or carrying on a bathing resort, the proprietors or owners thereof are not only required to exercise that same degree of care and prudence with respect to keeping the premises in a reasonably safe condition which the law imposes on keepers of public resorts generally for the protection of their patrons, but the law imposes upon them the additional duty, when the character and conditions of the resort are such that because of deep water or the rising of sudden storms or other causes the bathers may get into danger, of having in attendance some suitable person with the necessary appliances to effect rescues and save those who may meet with accidents, and that it is not only the duty of such owners to be so prepared to rescue those who may get into danger while bathing, but it is their duty to act with promptness and to make every reasonable effort to search for, and, if possible, recover those who are known to be missing.[37]

The duties the courts place upon an owner have increased in recent years, making it more probable that an owner will be found liable for injuries to swimmers. Although Illinois courts have insisted there is no liability without fault, and that the owner is not an insurer, the judgments indicate that the rules are losing their vitality.

The general rules that govern liability for swimming accidents also apply to camping, boating, and other recreation activities such as hunting. A landowner owes no duty to mere licensees (those using the area with the owner's permission) other than to refrain from wilfully or wantonly injuring them. However, in a recent leading case the court held that the landowner must also use ordinary care to protect a mere licensee from injury after the owner discovers that the licensee is in a place of danger.[38] This may mean that if an owner permits hunters to come upon his land, and he wants to protect himself from possible liability, he must warn them if there are other hunters in the area or if there are places of danger into which the hunters should not enter.

However, a trespassing hunter usually has no cause of action against a landowner for injuries.

The Illinois Fish and Game Code also imposes duties on hunters.[39] The Code prohibits the wanton or careless injury or destruction of an owner's real or personal property by any person hunting or trapping on the land. Although this statute does little more than state the decisions of courts on the subject of liability for property damage, it affords the landowner a clear statement by the legislature of the duty, owed him by hunters, on which to base a claim for property damage.

Some Special Situations — Questions and Answers

Question: Who is liable when one patron of a resort or recreation facility assaults another patron?

Answer: The owner or operator may be liable for bodily harm caused by accidental, negligent, or intentional harmful acts of third persons in certain situations. The owner or operator may be liable if, *by the exercise of reasonable care,* he could have discovered that such harmful acts were being done or about to be done and could have protected his patrons by controlling the conduct of third parties or by giving an adequate warning. For example, liability may be imposed when a fight is obviously brewing between two patrons and the management does nothing to effectively prevent a worsening of the situation, or where such overcrowding is permitted in a place that one could be injured by the pushing and jostling.

Question: Who is liable when an employee injures a patron?

Answer: Assuming that the employee is on the job, the operator of the facility is liable to any patron who suffers injury as the result of an intentional, wanton, malicious, or merely negligent act of the employee. Employees should be carefully chosen for their even temper in dealing with people as well as for their trustworthiness.

Question: What is the law on food poisoning?

Answer: In general, the rule is that if an invitee, patron, boarder, or any other person becomes sick from eating purchased food, the seller is liable in damages to the extent of the injury.[40] This is because one who sells food impliedly warrants that the food he serves is wholesome, and if sickness results there is a breach of warranty.

Question: What is the operator's responsibility in a parking area?

Answer: Any sizable recreation facility needs a special area for automobile parking. If one driver backs into another, the dispute

usually is between those drivers. It does not involve the parking lot owner unless the cause of the accident was the design of the lot, or the lot owner had assumed some responsibility.

Special precautions must be taken if the lot is not level. An Illinois court case covers this situation. At a private picnic grounds in operation next to a river, picnic tables were scattered through a woods and along the water. Patrons parked on a slightly rolling bluff and walked downhill to the timber and water. When one patron's small child played in another patron's car, he caused it to run over the bluff and down toward the timber. The car pinned a third patron against a tree and caused the loss of her legs. The owners of the recreation facility were held liable and paid $65,000 damages. The court said that logs or curbs should have been placed so parked cars would not be able to roll down the bluff.[41]

Attractive Nuisance Rules

Any discussion of liability in recreation activities requires mention of the rules concerning attractive nuisance. Usually such situations involve young children who trespass on another's property to play on or in something that attracts them. If an injury occurs and the owner should have foreseen the possibility of an injury, he may be held liable on the basis of attractive nuisance.

Two recent Illinois court cases illustrate how these rules have been extended to increase the possibility of liability.

In the first case, a lumber company delivered some boards to a construction site in Chicago. During the evening a child playing on the stack of lumber was seriously injured when some of the boards toppled on him. The company had no employees working on the site, it had never had any employees on the lot until its delivery men went there to leave the lumber, and it did not own the property. It had no knowledge or warning that there were children in the area or that the children had played at the construction site. The Illinois Supreme Court held that these facts did not prevent a jury from finding liability on the part of the lumber company under the attractive nuisance doctrine, although such an extension of the doctrine would have far-reaching effects.[42] The court said that the element of attraction is significant only insofar as it indicates that the trespass should be anticipated, and that the true basis of liability is the foreseeability of harm to a child.

The second case involved an artificial pond which a farmer had developed on his farm, some distance from the nearest highway. People

came to the pond to swim, some as licensees (having his permission) and some as trespassers. The farmer built a cabin, kept a boat and inner tubes, and provided a picnic table. A high school freshman, 16 years of age, swam there 15 times, seeing the farmer on several occasions. He was never told that he could or could not use the pond. One day while using the pond, he noticed a group of the farmer's friends arriving for a party, so he moved down the shore from the swimming area. He dived into the water, struck a stump hidden beneath 1½ feet of water and was severely injured.

The court held that the high school student was within the protection of the attractive nuisance doctrine, that the pond would constitute an attraction to him, and that liability could be imposed upon the farmer, even though his conduct was less than wanton and the boy was either a trespasser or a mere licensee.[43]

Liability Due to Breach of Statutory Duties

In some areas of common law the duty to act as a reasonably prudent man has been replaced by statutory duties which carefully indicate what a person must do to be free from negligence. The law on boat rental enterprises is an example.[44] All boats must be inspected and licensed by the Illinois Department of Conservation. The state determines the seaworthiness and maximum carrying capacity of each boat, and inspects and approves equipment.

If an owner rents a boat licensed by the state, the law presumes that a sinking, if such occurs, is caused by the users of the boat and not by the negligence of its owner. However, if an owner rents a boat not licensed by the state, and the boat sinks, the law would presume that the owner was negligent in sending the boat out onto the lake. If nothing more were known, the owner in the latter case probably would be liable for personal injury and property damage incurred by the boat's occupants. However, the presumption of negligence can be overcome. Evidence can be introduced in court that the conditions for a license were followed even though a license was not obtained, and therefore the absence of a license was not the cause of the accident.

Nuisance or Interference

Persons owning land adjoining a recreation facility have the right to enjoy their property without unreasonable interference from the operation of the facility. Disputes usually involve noise or light cast on another's premises, and liability is possible from such circumstances if the rights of others are invaded. The Illinois Supreme Court has

said: "When a business creates conditions which clearly render the appropriate enjoyment of surrounding property impossible, the rights of others are invaded; and equity will restrain the persistent pursuit of such injuries . . . but on the other hand, lawful and useful business may not be stopped on account of trifling or imaginary annoyances which do not constitute real injury."[45]

Before considerable sums are spent on recreation facilities for public use, serious consideration should be given to the rights of others. If those rights are infringed substantially, the court, instead of granting the neighbors a sum of money as damages, may order the business stopped completely.

Bailee Liability

The operator of a recreation enterprise is frequently called upon to act as bailee (one who takes charge of another person's goods) of property belonging to his customers. This is true when clothing of bathers is checked with attendants at a bathhouse, when camping equipment is left at the site while campers go elsewhere, and when an operator arranges to park patrons' cars, keep the keys, and exercise control over the cars. The bailee has a duty to protect against theft, and other loss of or injury to the bailed property. It is also his duty to deliver the articles back to the rightful owners.

Liability Insurance, Signs and Contracts

Liability insurance is advisable for owners and operators of recreation facilities. Although the amount of protection needed will vary, insurance of $100,000 per person and $200,000 per accident seems reasonable for most operations.

An interesting question is whether an owner or operator of a business can avoid liability through the use of signs or contracts. Many concerns have either posted "Use at Your Own Risk" signs or have statements printed on the backs of tickets declaring that the owners will not be responsible for any injuries which a patron may suffer while on the premises. An old Illinois case held that a prominent sign was a good limitation on liability, and this case has not been overruled.[46] Illinois seems to be following the rule, more fully developed in Massachusetts, that a sign, notice, or writing is a good limitation if the injured person actually saw it, knew what it meant, and actually assumed the risk, but that the mere presence of a sign, notice, or writing does not make it certain that liability can be avoided.

An Illinois appellate court has held that in cases where a positive duty is imposed by law one cannot exempt himself from negligence

by contract.[47] However, in a recent landlord-tenant case the court held that under the facts in question it was not against public policy or illegal for the landlord to limit his liability by contract.[48]

In summary, it seems that displaying a big sign in a prominent manner, posting many notices, or placing limiting words on each ticket offers some protection to the operator. But this will not serve conclusively to free an owner or operator of a recreation enterprise from liability for his own negligent conduct. Contracts that limit liability, whereby a patron understands and signs a statement in which he agrees to assume the risk himself, appear to be valid.

TAXES THAT MAY APPLY

Federal

Admissions tax. This is an excise tax on the amount paid for admission to any place.[49] The language of the statute is broad enough to cover any sale of permission to enter the premises of the seller. However, places that provide facilities for physical exercise are exempt from the admissions tax, unless dancing facilities are provided. This exemption is important to rural recreation enterprises that feature such activities as swimming, hunting, fishing, skiing, and skating.

In other rural recreation activities, such as camping and picnicking, the admissions tax applies unless the charge can properly be classed as a rental fee rather than an admissions fee. For example, if every campsite is rented for $2 a day, regardless of the number of people using it, there probably would be no tax imposed because the fee is for rental, not admission.

The rate of the tax is 1 cent on each 10 cents (or major fraction thereof) of admission payments in excess of $1. The first admission dollar received is in all cases tax free. On an admission charge of $2.50, there is a 15-cent tax.[50]

Amusement tax. The amusement tax is a special federal excise tax imposed on club dues. "Tennis, golf, boxing, boating, canoe, fishing, and hunting clubs, and all other organizations set up for the practice or promotion of athletics or sports, or athletic or sporting clubs or organizations, are within the meaning of the regulations. . . ."[51] The tax is 20 percent of any amounts paid as dues or membership fees to the club if they are in excess of $10 per year.[52]

Whether the amusement tax is applicable to a farm recreation business depends on two key words in the statute, "clubs" and "dues." For example, if a landowner gets together a group of men (instead of

serving the general public) who are interested in hunting, and each pays $100 annually and they develop their own private hunting club, it appears that the amusement tax would apply.

Income tax. If income is earned from a recreation enterprise on a farm, such income must be reported as regular business income on Form 1040, Schedule C, and a tax paid thereon. There is no proper category in which to enter such earnings as farm income on Form 1040, Schedule F. The expenses of operating such a business are deductible.

If the farmer-operator has employees to assist in the recreation enterprise, he must cooperate with the Internal Revenue Service in withholding income and FICA (social security) taxes.

State and Local

Local taxes. Illinois law provides that: "The corporate authorities of each municipality . . . may . . . tax, . . . all places for eating or amusement."[53] The law has been on the books in similar form for almost a century, and under it many cases have been decided as to whether or not a tax could be imposed in a given situation. In general, it seems that a municipality can impose a reasonable tax on any recreation enterprise. For such businesses located outside of municipalities, the counties' authority is not so broad. They can license, tax, and regulate only those places for eating and amusement which may be classed as dance halls or road houses.[54]

Sales taxes. Proprietors who serve food in restaurants or European plan hotels are engaged in the sale of tangible personal property at retail (within the meaning of that phrase as used in connection with the Illinois retailers occupation tax) and thus must pay sales taxes.[55] The term restaurant is used broadly, and sales such as soft drinks and snacks at a hunting shelter or beach stand are subject to the tax.

Vending machines can be used to provide refreshments to patrons without subjecting the owner of a recreation facility to sales tax liability. The owner of the goods sold through a vending machine is the person liable for the tax. Thus if one were to permit others to place candy machines on his premises, he would not be liable for the sales tax, as he would not own the things sold or profit directly from the sales.[56]

Operators of inns, motels, hotels, tourist homes or courts, lodging houses, rooming houses, and apartment houses must pay the Illinois hotel operators occupation tax.[57] The rate is 3 percent of 97 percent of the gross rental receipts, excluding rent from permanent residents. The formula allows a deduction for the retailers occupation tax, which must also be paid.

part II PUBLICLY OWNED RECREATION FACILITIES

ILLINOIS LAWS AND REGULATIONS

The following is a summary of Illinois laws that confer authority upon public tax-supported bodies to provide recreation facilities in rural areas.[58]

Park District[59]

Upon petition of 100 legal voters in a proposed district, no part of which is included in an existing park district, the circuit judge holds a hearing and, if the petition is correct, orders a referendum to determine whether a park district should be established.

If formed, a park district is governed by five elected commissioners and has broad authority, including the power of eminent domain, to acquire recreation facilities within the district. Park districts are authorized to construct and maintain a wide variety of recreation facilities such as armories, field houses, assembly rooms, gymnasiums, and golf courses, and to make and enforce reasonable rules, regulations, and admission charges for these facilities.

To carry out these powers, a park district can levy and collect taxes on all taxable property within the district at a rate not exceeding .10 percent[60] of the full, fair cash value of such property. This tax rate can be increased by .05 percent if approved in a special referendum. In addition to its power to levy and collect taxes for general purposes, the park district may plan, establish, and maintain recreation programs and, on approval of voters in the district, levy an additional property tax at the rate of .05 percent for such programs.

All districts may issue bonds up to 2½ percent of their assessed valuation. Voter approval is necessary unless the district has a population over 45,000.

Playground and Recreation Systems[61]

In every municipality (city, village, etc.) with a population of less than 500,000, upon petition signed by 10 percent of the electors, a referendum is held for authority to establish, maintain, and operate a recreation system within or beyond the corporate limits. The system

may be governed by the existing corporate authorities; by the school board, park board, or other existing body; jointly by the municipality and the park district board, if they are included in the system; or by an appointed recreation board.

The statute concerning such playground and recreation developments authorizes municipal officials to provide playground centers, buildings, pools, and salaried leaders and supervisors to conduct various programs. Additional land and buildings may be acquired, and a tax levied at a rate not to exceed .053 percent of the assessed value of all taxable property,[62] in addition to the regular corporate tax, if approved by referendum. If approved in a municipal election, municipal bonds may be issued by the corporate authorities for playground and recreation systems in the same manner as provided for other projects of the municipality.

Forest Preserve District[63]

Forest preserve districts are independent public authorities that may cross over any existing political boundaries except county lines. They can contain one or more forests and one or more cities, towns, or villages. To form such a district, 500 legal voters in the proposed area must submit a petition to the circuit court for an election.

If the district is approved, the chairman of the county board of supervisors (or commissioners) appoints a president and four commissioners to govern the district. Their general responsibility is to preserve scenic woodlands, but they have authority to make all improvements and construct all facilities necessary or desirable to make the forest preserve adequate for public use. In that connection the district may acquire lands within its boundaries by gift, grant, devise, purchase, or condemnation. The district may levy a tax of one-fourth mill, and may borrow money and issue bonds to acquire land.

Special Powers of Governmental Bodies

Municipalities, in addition to having authority relating to parks and playgrounds, can provide for the fun, amusement, and recreation of the general public in several other ways. In some cases they have authority to acquire land outside of the city limits.[64]

School districts, townships, and other political bodies also have some authority in the areas of recreation facilities and activities.[65] Schools can establish athletic fields, parks, and swimming facilities, and hire all necessary personnel to operate them. The land must be in the

district but need not adjoin a school. Townships can erect community buildings that may be used for amusement and entertainment by the general public and special groups. River conservancy districts may establish parks and recreation facilities along rivers if approved by referendum.

GOVERNMENTAL LIABILITY FOR PERSONAL INJURY AND PROPERTY DAMAGE

Many years ago, when kings could have almost unlimited powers, there was a saying among the English subjects that the king could "do no wrong." This meant that the government was not liable for the negligent acts of its officials and servants. In effect, the king could do wrong, but he did not have to pay for the injuries that resulted. This immunity was later extended to local governments in England, based chiefly on the fact that there were no corporate funds out of which the plaintiff could recover damages. The rules have been modified in the United States, but some of the vestiges remain.

The state of Illinois, municipalities, and "quasi-municipalities" (park districts, water districts, school districts, counties, etc.) may all own and operate recreation facilities and are potential defendants in tort suits arising from the operation of such facilities. Their liability status is discussed in the following sections.

State of Illinois

Under the Constitution of Illinois, the state cannot be made defendant in any lawsuit.[66] Therefore any injuries that occur on state recreation facilities, caused by negligence of the state or its employees, would likely go unsatisfied except for the Court of Claims Act.[67] If the court of claims finds that the state, but for its immunity, would be liable in the courts, it recommends to the General Assembly that money be appropriated to the claimant. There must be a finding of negligence, as the state is not an insurer against accidents which occur to patrons while they are using state facilities.

Municipalities and Quasi-municipalities

The status of the immunity doctrine for municipalities and quasi-municipalities is not clear at the present time. In order to understand the difficulties in the present state of the law, several phases of the history of governmental immunity in Illinois must be understood.

Early Illinois cases dealing with the immunity of municipal corporations distinguished the "proprietary functions" of the municipality from its "governmental functions." (Proprietary functions would include, for example, such things as the supplying of water, gas, and electricity, and the care of public buildings. Governmental functions would include such things as police and fire protection and public health.)

Immunity was extended for injuries arising out of the governmental functions but not the proprietary functions. This position has been taken by the majority of courts in the United States.

This distinction has not been applied to quasi-municipalities whose functions were said to be strictly of a governmental nature,[68] thus giving these units complete immunity from tort suits. However, an Illinois supreme court decision introduced an exception. It refused to apply the immunity doctrine when an injured plaintiff alleged that the quasi-municipality carried liability insurance that would meet the damages claimed.[69] The theory behind this exception is that the need for the immunity doctrine is to protect public property and funds, and if such property or funds will not be impaired by a tort judgment, the reason for the rule of immunity fails.

The second phase of the history of the immunity doctrine came in 1959 with the Illinois supreme court's holding in *Molitor v. Kaneland Community Unit District 302*.[70] The court abolished the immunity doctrine in connection with all school districts, because it "is unjust, unsupported by any valid reason, and has no rightful place in modern-day society." In order to avoid undue hardships on school districts that had relied on the immunity doctrine, the court made its abolition of the doctrine effective only to the plaintiff (Molitor) and to suits based on injuries occurring after the date of the decision, December 16, 1959.

The *Molitor* decision, although deciding only the issue of the immunity of a school district, used language which clearly evidenced dissatisfaction with the whole doctrine of governmental immunity with respect to both municipalities and quasi-municipalities.[71]

Immediately following the *Molitor* case, the Illinois Legislature enacted several laws that appeared to assure complete immunity to park districts,[72] counties,[73] and forest preserves,[74] and grant partial immunity to school districts.[75]

The Legislature took a different position concerning municipalities by passing legislation to abolish immunity in connection with certain of their governmental functions.[76]

The final phase of this history is concerned with the effect the court will give to these statutes. With respect to municipalities, it seems probable that the immunity doctrine has lost its force. The language used in the *Molitor* case supports this view, and the Legislature has not acted to prevent abolition of the doctrine as applied to municipalities, but has even encouraged it.

For quasi-municipalities, the status of the immunity doctrine is still questionable. The most reasonable view appears to be that the laws granting immunity make the grant regardless of the fact that a quasi-municipality carries liability insurance. The grant of immunity makes no reference to liability insurance, and the court in the *Molitor* case expressed a dissatisfaction with the insurance exception. If there is no law granting immunity to the particular quasi-municipality in question, an Illinois court could refuse to recognize the immunity doctrine on the authority of the *Molitor* case, and would probably do so regardless of whether or not the entity carried insurance.

part III FEDERAL AID IN RECREATION

The Farmers Home Administration, the Agricultural Stabilization and Conservation Service, the Soil Conservation Service, and the Secretary of Agriculture have varying degrees of authority to make available some form of aid — financial or technical — for recreation facilities owned by private persons or public entities.

FARMERS HOME ADMINISTRATION ACT

The different methods by which the federal government has extended agricultural credit were "revised and consolidated to provide for more effective credit service to farmers" by the Consolidated Farmers Home Administration Act of 1961.[77] The purposes for which credit could be extended were expanded by the Food and Agricultural Act of 1962[78] to include recreational uses and facilities.

Loans available to farmers are classified as *real estate* loans, *operating* loans, and *emergency* loans.

Real estate loans may be made or insured for "acquiring, enlarging, or improving farms, including farm building, land and water development, use, and conservation, *including recreational uses and facilities.*" Such loans to private persons are generally restricted to "family-type" farms, and presumably a loan for recreational uses of an individual would be so limited. However, loans may also be made or insured to associations, both private and public, to finance shifts in land use, including the development of recreation facilities.

FHA loans may be for a period up to 40 years, and the interest rates may vary up to a 5-percent maximum. The Secretary of Agriculture determines what security is required. Private loans go only to farmers who are (1) citizens with sufficient farming experience, and (2) owner-operators of family-size farms who are unable to obtain other reasonable and sufficient credit. In addition to financial aid, help is available in planning and conducting recreation businesses.

Operating loans may be made for financing land and water development, use, and conservation, *including recreational uses and facilities.* Among the specific uses to which the proceeds from operating loans may be directed, according to the regulations issued by the FHA are:

Purchase of equipment, animals, and birds, or facilities, and for operat-

ing expenses relating to the acquisition, development, and operation of recreation enterprises such as boating, fishing, swimming, picnicking, horseback riding, hunting, ski jumps, tennis courts, vacation cottages, camp grounds, and nature trails. . . .

Purchase of fish used to stock ponds, streams, or lakes under controlled conditions, and operating expenses relating to such enterprises.

The following real estate improvements . . . (2) Purchase, construction, alteration, repair, or relocation of facilities or buildings to be utilized in a recreation enterprise. (3) Land and water development, use, and conservation essential to the operation of the farm or recreation enterprise, such as fencing, land clearing, establishment and development of forest lands, establishment and improvements of permanent hay or pasture, drainage and irrigation facilities, construction of small lakes or ponds, basic applications of lime and fertilizer, and the development of farmstead, livestock, and irrigation water supply and equipment therefor.[79]

Regulations state that an operating loan is not available to a farmer who wants to convert or develop his entire farm into a recreation enterprise. The eligibility requirements for an operating loan are the same as those for a real estate loan. Loans may be made for terms up to 7 years (and renewable for up to 5 additional years) at an interest rate not to exceed 5 percent. The Secretary may participate in such loans (up to 80 percent) with "legally organized agricultural lending agencies." That is, part of the money may come from private and part from public sources to make up the loan.

Emergency loans are troubled by a technical defect in the act, making it questionable whether such loans for recreation facilities will be made under the authority given to FHA. A natural disaster must have created the need, and the loans would be used to rebuild or replace what was damaged or destroyed. Thus it seems doubtful that starting or expanding a facility would qualify.

LAND AND WATER CONSERVATION ACTS

In addition to the amendments in the Food and Agriculture Act of 1962, three other acts have been amended to extend aid into the field of recreational uses and facilities. The Bankhead-Jones Tenant Act[80] (providing for loans to state and local public agencies for land conservation and utilization programs) was amended to include the protection of fish and wildlife among its purposes.

The Watershed Protection and Flood Prevention Act[81] (providing for loans and technical assistance to state and local public agencies for flood prevention projects and the conservation, development, utilization, and disposal of water) was amended to include recreation developments as a proper purpose for such assistance.

The Soil Conservation and Domestic Allotment Act[82] (authorizing the Secretary of Agriculture to cooperate, enter into agreements with, and give financial aid to local governmental agencies or private parties to prevent soil erosion and preserve natural resources) was amended to include recreation resources within the purposes of such agreements.

Specifically, the Secretary is now authorized to enter into agreements with farmers and operators "providing for changes in cropping systems and land uses . . . for the purpose of conserving and developing soil, water, forest, wildlife, *and recreation resources.*"[83] The agreements may also provide for assistance in the form of payments, materials, and services in consideration for the obligations undertaken by the farmer in converting cropland into a conservation project. The Senate Report presented this illustration:

> For instance, the Secretary might assist farmers to divert their land from field crops to fish farming. The Secretary, through payments under section 16(e), could assist in the construction of ponds and other practices. . . . He (a farmer) might also obtain other assistance from the Secretary to aid him in his new operation, such as loans under the Consolidated Farmers Home Administration Act of 1961, if he was otherwise eligible.[84]

This particular aid program is administered through county agricultural stabilization and conservation committees. It requires a farmer who desires aid to enter a contract for a period up to 10 years, and to agree to build and conduct his business in accordance with federal specifications. Only land that has been held by the contracting party for more than 2 years before the contract is made is eligible.

In addition to the financial assistance available through ASCS, local soil conservation service offices will furnish technical assistance. A farm conservation plan must be developed by the farmer in cooperation with the soil conservation district. Farm advisers can usually provide information to interested parties, or supply the names of persons who can offer advice on the economic and other aspects of various recreation developments.

Some practices that Illinois ASCS offices may authorize for cost-sharing are ponds for boating, swimming, and fishing; grass and legume seedings; tree and shrub plantings; wildlife food plantings; erosion control measures; drainage; dams for wildlife; and earth grading and shaping, seeding, and drainage for such things as camping sites, tennis courts, ball fields, hiking and riding trails, deer shooting areas, and skiing developments. Limited fencing and fireplace construction might be permitted, but cost-sharing is not contemplated for such things as buildings, road construction, or the graveling of areas.

AREA REDEVELOPMENT

Whereas the federal aid laws discussed above have been of general application, the development acts have emphasized "depressed" or "disadvantaged" areas. The beginning of this emphasis was the Agricultural Development Act of 1955,[85] which provided for areas that are "at a disadvantage insofar as agricultural development is concerned." The assistance given was primarily educational, through the state agricultural college extension services, in the form of "intensive on-the-farm educational assistance," counseling, and various information aids. The purposes were to help the farm family (a) resolve its problems, (b) appraise its resources, both agricultural and nonagricultural, (c) determine employment opportunities for "underemployed" workers, and (d) change to a new farming venture (where advisable).

The above act was the legislative basis for the rural area development program which was started in 1956 on an experimental basis. This program was given a high priority by the federal administration, and in 1961 supplementary legislation, the Area Redevelopment Act,[86] was passed by Congress to provide financial assistance to communities, industries, enterprises, and individuals in areas needing redevelopment.

To determine whether a particular area is in need of redevelopment, the criteria used are (1) the rate of unemployment determined by the Secretary of Labor, or (2) a combination of several factors such as unemployment, number of low income families, and, in rural areas, "the extent to which 'rural redevelopment' projects have previously been located in any such area under programs administered by the Department of Agriculture. . . ."[87]

The financial assistance is in the form of loans and grants to public and nonprofit agencies for public facilities, and loans to applicants, either public or private, who have been approved by the agency (of the state or political subdivision where the project is located) that is directly concerned with problems of economic development. Such loans to private applicants may be to aid in financing any project, within a redevelopment area, for the purchase or development of land and facilities for industrial or commercial use. The ARA programs are administered through the Area Redevelopment Administration and the Illinois Board of Economic Development.

Although the 1961 act does not specifically refer to private farm recreation developments, such developments, according to administrative interpretation of the law, fall within the act's declaration of purpose. This declaration includes the statement that "federal assistance to communities, industries, enterprises, and individuals in areas needing

redevelopment should enable such areas to achieve lasting improvement and enhance the domestic prosperity by the establishment of stable and diversified local economics and improved local living conditions."[88] Further, the Department of Agriculture's Rural Areas Development Handbook (Agriculture Handbook 245) notes that "full use of land, water, and timber resources for agricultural production, *recreation,* and industrial development" are areas of importance under the act.

OTHER AID

Several services within the Department of Interior also provide assistance, in the form of technical information and advice, to persons who develop recreation facilities. Farmers and other private landowners can get funds through the Small Business Administration. The National Park Service, and the Bureau of Mines, Sport Fisheries and Wildlife, and Commercial Fisheries may be able to give advice and information concerning proposed commercial developments for recreation. The Bureau of Outdoor Recreation gives similar advice and information to states and political subdivisions, and promotes coordination of federal recreation programs.

The best way to learn if any or all of the federal aid programs are available in a certain county is to inquire at the office of the ASCS committee or the farm adviser of that county. Anyone seeking federal assistance should make this known to proper officials in the early stages of planning and be prepared to take the time, or employ capable workers, to handle the detailed administrative work necessary in these undertakings.

It is important that persons who enter a recreation enterprise with help from the federal government understand exactly what they can and cannot do under the particular program and contract. This should be understood *before* expending money or time.

Footnote References

NOTE: References to Illinois Revised Statutes pertain to 1963 issues.

[1] Life, April 26, 1963, p. 12.
[2] U.S. Dept. of Agriculture, Rural Recreation, p. 2, 1962.
[3] Ill. Rev. Stat., c. 61, ss. 209-209.07.
[4] Ill. Rev. Stat., c. 61, s. 205.
[5] Ill. Rev. Stat., c. 61, s. 191 (a-d).
[6] Ill. Rev. Stat., c. 61, s. 165.
[7] Ill. Rev. Stat., c. 61, ss. 218-239.
[8] Ill. Rev. Stat., c. 111½, ss. 88-94.

[9] Ill. Rev. Stat., c. 127, s. 55.06.
[10] Ill. Rev. Stat., c. 34, ss. 401, 421.
[11] Ill. Rev. Stat., c. 95½, s. 311 *et seq.*
[12] Ill. Rev. Stat., c. 56, s. 239 (b).
[13] Ill. Rev. Stat., c. 56, s. 144.01.
[14] Ill. Rev. Stat., c. 56, s. 180.
[15] Ill. Rev. Stat., c. 56, s. 225 (1) and (2).
[16] Ill. Rev. Stat., c. 56, ss. 229, 246.03, 246.04.
[17] Ill. Rev. Stat., c. 19, s. 52.
[18] Cribbet, The Law of Real Property, 766 *et seq.* (1962).
[19] Krausz, Summary and Comment on Illinois Laws Relating to Drainage and Flood Control, p. 23 (1962).
[20] Ill. Rev. Stat., c. 34, ss. 401, 421.
[21] Ill. Rev. Stat., c. 34, s. 422.
[22] Ill. Rev. Stat., c. 127, s. 55.04.
[23] Ill. Dept. of Public Health, Rules and Regulations for Recreational Camps, January 11, 1961.
[24] Ill. Rev. Stat., c. 34, s. 429.4.
[25] Ill. Rev. Stat., c. 34, s. 6301.
[26] Ill. Rev. Stat., c. 56½, ss. 67-79.
[27] Ill. Rev. Stat., c. 56½, s. 18a.
[28] The detailed and technical requirements for Grade A milk are set out in Ill. Rev. Stat., c. 56½, ss. 170-220.
[29] Ill. Rev. Stat., c. 38, ss. 13-1 to 13-4.
[30] Ill. Rev. Stat., c. 71, ss. 1-4.
[31] Palas v. Harvey Room Co., 211 Ill. App. 580 (1918).
[32] Ill. Rev. Stat., c. 71, ss. 1-4.
[33] Ill. Rev. Stat., c. 71, ss. 5-13.
[34] Ill. Rev. Stat., c. 71, ss. 14-20.
[35] *Annot.,* 48 A.L.R. 2d 104.
[36] Decatur Amusement Park Co. v. Porter, 137 Ill. App. 448 (1907).
[37] *Annot.,* 8 A.L.R. 2d 1254, 1315.
[38] Prosser, The Law of Torts, 2d ed., p. 436 (1955).
[39] Ill. Rev. Stat., c. 61, s. 180.
[40] Ill. Rev. Stat., c. 26, s. 2-314(1) (Uniform Commercial Code).
[41] Marguardt v. Cernocky, 18 Ill. App. 2d 135 (1958).
[42] Kahn v. James Burton Co. *et al.,* 5 Ill. 2d 614 (1955).
[43] Skaggs v. Junis, 27 Ill. App. 2d 251 (1960).
[44] Ill. Rev. Stat., c. 95½, s. 311 *et seq.*
[45] Klumpp v. Rhoads, 362 Ill. 412 (1936). See *Annot.,* 5 A.L.R. 2d 705.
[46] Bass v. Reitdorf, 25 Ill. App. 650 (1900).
[47] Cerny Pickas & Co. v. C. R. Jahn Co., 347 Ill. App. 379 (1952).
[48] Book Prod. Industries v. Blue Star Auto Sales, 33 Ill. App. 2d 22 (1961).
[49] Int. Rev. Code of 1954, s. 4231 *et seq.*
[50] Int. Rev. Code of 1954, s. 4231(1).
[51] Fed. Tax Reg., 1963, s. 49.4241-1(e) (3).
[52] Int. Rev. Code of 1954, s. 4241 *et seq.*
[53] Ill. Rev. Stat., c. 24, s. 11-42-5.
[54] Ill. Rev. Stat., c. 34, s. 6301.
[55] Ill. Rev. Stat., c. 120, s. 440 *et seq;* O'Neil v. Department of Finance, 360 Ill. 484 (1935); Smith v. Department of Revenue, 398 Ill. 41 (1947).
[56] Prentice-Hall, State and Local Tax Service, Vol. 2, par. 21,665-D (1963).
[57] Ill. Rev. Stat., c. 120, ss. 481(b) .31-.39.
[58] For further information, refer to the statutes themselves and to Storey's "Digest of Basic Provisions of Illinois Laws Related to Parks and Recreation,"

1962. Any citizen of Illinois can obtain one free copy of this publication upon request to the Field Service, Department of Recreation and Municipal Park Administration, University of Illinois, Urbana, Illinois. Additional copies may be purchased for $2 each, which is also the price for those who are not Illinois citizens.

[59] Ill. Rev. Stat., c. 105, ss. 1-1 to 13-1.

[60] The maximum rate of .10 percent set out in Ill. Rev. Stat., c. 105, s. 5-1, is subject to the 20 percent reduction set out in Ill. Rev. Stat., c. 120, s. 643c.

[61] Ill. Rev. Stat., c. 24, s. 11, Div. 95.

[62] The maximum rate of .0667 percent set out in Ill. Rev. Stat., c. 24, s. 11-95-8 is subject to the 20 percent reduction set out in Ill. Rev. Stat., c. 120, s. 643c.

[63] Ill. Rev. Stat., c. 57½, ss. 1-15a(4).

[64] For example, cities with a population of less than 15,000 may purchase land in or within four miles of the corporate limits for the purpose of providing public parks for its inhabitants. Ill. Rev. Stat., c. 24, s. 11-100-1.

[65] See Ill. Rev. Stat., c. 122, art. 16, ss. 7-8 (the School Code); c. 139, ss. 152-160 (townships); and c. 42, ss. 383-410 (river conservancy districts).

[66] Ill. Const., art. IV, s. 26.

[67] Ill. Rev. Stat., c. 37, s. 439.1 *et seq.*

[68] See, for example, Garrison v. Community Consolidated School District, 34 Ill. App. 2d 322 (1962). Charging a fee for use of recreational facilities does not render the activity proprietary.

[69] Moore v. Moyle, 405 Ill. 555 (1950).

[70] 18 Ill. 2d 11 (1959), *cert. denied,* 362 U.S. 968 (1960).

[71] Justice Davis, in dissenting, thought the decision, "while here applicable to school districts, by its pronouncement extends to the State and all of its governmental agencies which have heretofore been within the purview of the doctrine of governmental immunity." Attorney General William Guild, in an opinion, stated: "The reasoning of the court (in *Molitor*) is as much applicable to a public corporation, county, township, municipal corporation, or other local governmental body, as it is to a school district." 1960 Ill. Att. Gen. Ops. 251.

[72] Ill. Rev. Stat., c. 105, ss. 12.1-1, 333.2a, 491.

[73] Ill. Rev. Stat., c. 34, s. 301.1.

[74] Ill. Rev. Stat., c. 57½. s. 3a.

[75] Ill. Rev. Stat., c. 122, ss. 821-831 (limit of $10,000 on each separate cause of action).

[76] Ill. Rev. Stat., c. 24, s. 1-4-4 (municipality liable for negligence of its firemen); c. 24, s. 1-4-5 (municipality must indemnify its policemen for negligence judgments against the policemen); c. 24, s. 1-4-7 (municipality liable for property damage caused by its removal of unsafe and unsanitary buildings).

[77] 75 Stat. 307, 7 U.S.C.A., ss. 1921-91 (1961).

[78] 76 Stat. 631, 7 U.S.C.A., ss. 1921-91 (1962).

[79] 28 Fed. Reg. 7 (1963).

[80] 50 Stat. 525, as amended, 7 U.S.C.A., ss. 1010-13 (a) (1962).

[81] 68 Stat. 666, as amended, 16 U.S.C.A., ss. 1002-9 (1962).

[82] 49 Stat. 163, as amended, 16 U.S.C.A., s. 590 a-g (1962).

[83] 16 U.S.C.A., ss. 590p (e) (1) (1962) (emphasis added).

[84] Illinois Office, ASCS, Notice LU-3, Cropland Conversion Involving Recreational Projects, March 1, 1963.

[85] 69 Stat. 683, 7 U.S.C.A., s. 347a (1963).

[86] 75 Stat. 47, 15 U.S.C.A., ss. 695-6, 40 U.S.C.A., s. 461, 42 U.S.C.A., ss. 1464, 2501-25 (1962).

[87] 75 Stat. 49, 42 U.S.C.A., s. 2504 (b) (1962).

[88] 42 U.S.C.A., s. 2501 (1963).

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