



United States Department of the Interior

OFFICE OF THE SOLICITOR
Washington, D.C. 20240

IN REPLY REFER TO:

July 28, 2010

Memorandum

To: John Piltzecker
Superintendent, National Mall and Memorial Parks

From: Randolph J. Myers
Senior Attorney, Branch of National Parks

Subject: National Park Service regulatory authority of the Cross Street Sidewalks
at 3rd, 4th, 7th and 14th Streets on the National Mall

This responds to a request to Tammy Stidham from Stephen Kehoe of the District of Columbia's Department of Transportation dated June 25, 2010, asking for information regarding the National Park Service regulatory authority over four specific cross street sidewalks on the National Mall. Mr. Kohoe states that the District believes that it has jurisdiction over the National Mall's 4th and 7th Street sidewalks but not as to the 3rd and 14th Street sidewalks. We understand that this inquiry stems from the District's considering regulating Segways within its Central Business District, where they need to resolve which agency has regulatory authority over these particular sidewalks.

Please be advised that it has been the longstanding conclusion of the Solicitor's Office and the National Park Service—which the District of Columbia has shared—that the National Park Service has regulatory authority on each of the National Mall's cross street sidewalks. As such, Segway operations on such sidewalks would have to comport with National Park Service policy, which generally allows them.

To begin with, the statutory authority for Federal parkland in the District of Columbia has its origins in 1898, when Congress enacted 30 Stat. 570, ch. 543, § 2. Codified at D.C. CODE ANN. § 10-104(a) (2001), this Congressional enactment now provides that the park system is "under the exclusive charge and control of the Director of the National Park Service."¹ Equally

¹ The National Park Service is the successor agency of the original Congressional enactment, as detailed in *Universal Interpretative Shuttle Corp. v Washington Metropolitan Area Transit Commission*, 393 U.S. 186, 188 n2 (1968): "In the Act of July 1, 1898, c. 543, § 2, 30 Stat. 570, Congress placed the District of Columbia parks under the 'exclusive charge and control' of the United States Army Chief of Engineers. This authority was transferred in the Act of February 26, 1925, c. 339, 43 Stat. 983, to the Director of Public Buildings and Public Parks of the National Capital. And in Executive

important, the National Park Service's authority was broadened in 1909 when Congress enacted 35 Stat. 994, ch. 299, § 1. Now codified at D.C. CODE ANN. § 10-138 (2001), this Congressional enactment provides that “[t]he application of the rules and regulations ... by the Director of the National Park Service, under authority granted by [its other cited statutory authorities], for the government and proper care of all public grounds placed by that act under charge and control of the said Director of the National Park Service, is hereby extended to cover the sidewalks around the public grounds and carriageways of such streets as lie between and separate said public grounds.” (emphasis added). See also *Universal Interpretative Shuttle*, 393 U.S. at 357-58 (quoting both statutes); *Udall v D.C. Transit Systems*, 404 F.2d 1358 (D.C. Cir. 1968) (citing first statute).

The National Park Service's authority on the National Mall and these cross street sidewalks has been officially acknowledged by the District of Columbia since at least 1971. A District of Columbia Notice dated August 11, 1971, signed by Julian P. Green, Chief of Business Licenses and Permits, Department of Economic Development, and Robert H. Campbell, Chief of Law Enforcement Branch, Office of Corporation Counsel, a copy of which is enclosed, stated that:

This is an official notice that effective August 23, 1971, the long-standing provisions of law and regulation prohibiting vending on the sidewalks and roadways around and through the public grounds known as the Mall, bounded on the West by the Potomac River, on the north by Constitution Avenue, and on the South by Independence Avenue and the Potomac River, unless the vendor possesses a permit issued by the National Park Service authorizing such vending, will be strictly enforced.

Title 8 D.C. Code 144 [now recodified as D.C. CODE ANN. § 10-138], extends the charge and control, of the sidewalks around public grounds and roadways of such streets as lie between and separate the said public grounds, to the Director of the National Park Service.

Title 36 Code of Federal Regulations 50.24 [now recodified as 36 C.F.R. §§ 5.3, 7.96(j), (k)], prohibits vending on any property under control of the National Park Service, without a permit issued by said National Park Service.

The District of Columbia's 1971 Notice of the National Park Service's jurisdiction on the National Mall has been repeatedly cited in subsequent Park Service correspondence with the District. It has also been quoted by the United States Attorney's Office in *Distrito v. Morton*, Civil 1711-71 (D.D.C. 1971). In *Distrito v. Morton*, Civil 1711-71 (D.D.C. 1971), the court found in the National Park Service's favor and rejected a vendor's attempt to enjoin the Department of the Interior from prohibiting vending on a National Mall sidewalk. Moreover, in *United States v. Adams*, Criminal 33632-71 (D.C. Sup.Ct. Oct. 29, 1971), after citing what is now

Order No. 6166, June 10, 1933, H. R. Doc. No. 69, 73d Cong., 1st Sess., § 2, this authority finally devolved upon the agency now called the National Park Service. Act of March 2, 1934, c. 38, § 1, 48 Stat. 389.”

D.C. Code Ann. §§ 10-104(a), 10-138 (2001), as well as *Universal Interpretative Shuttle and Udall*, the court stated that “[r]ecent cases by appellate courts make it evident that administrative jurisdiction over the public park lands in the District of Columbia, *including surrounding sidewalks*, was originally granted exclusively to the Director of the National Park Service.” (emphasis added).

The District’s Municipal Regulations also acknowledges the National Park Service's regulatory authority on the National Mall. D.C. MUN. REGS. tit. 24 § 515.17 (2005) states that any vendor wishing to vend in the “Mall area” or “Capital Grounds” requires the National Park Service’s or Architect of the Capital’s permission “since these federal agencies have respective authority in these areas.” And D.C. MUN. REGS. tit. 24 § 501.5 (2005) states that “No vending licensee issued by the Mayor shall authorize the licensee to vend within geographic areas under the jurisdiction of the United States Park Police, the Capitol Police, or any other agency of the United States Government.”

I hope that this background information, regarding the longstanding conclusions of our Solicitor’s Office, the National Park Service, and the District of Columbia, that the National Park Service has regulatory authority on the National Mall and its cross street sidewalks, is of assistance to Mr. Kohoe. As you will note, the longstanding conclusion stems from many years of cooperation and coordination between the National Park Service and the District of Columbia to address issues in and adjacent to National Park Service areas in the District of Columbia.

Please share a copy of this memorandum and its attachment with Mr. Kehoe. If you or he have any questions, or would like a copy of any of the documentation referred to in this memorandum, please contact me at (202) 208-4338. If the District does not agree with this long-standing determination, I request the benefit of their written analysis and supporting documentation.

Attachment: 1971 District of Columbia Notice

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF ECONOMIC DEVELOPMENT
OFFICE OF LICENSES AND PERMITS
WASHINGTON, D. C.

ADDRESS REPLY TO:



August 11, 1971

NOTICE TO ALL D. C. LICENSED VENDORS

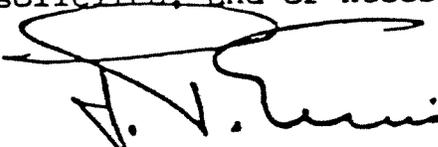
This is an official notice that effective August 23, 1971, the long-standing provisions of law and regulation prohibiting vending on the sidewalks and roadways around and through the public grounds known as the Mall, bounded on the East by the U. S. Capitol grounds, on the West by the Potomac River, on the North by Constitution Avenue, and on the South by Independence Avenue and the Potomac River, unless the vendor possesses a permit issued by the National Park Service authorizing such vending, will be strictly enforced.

Title 8 D. C. Code 144, extends the charge and control, of the sidewalks around public grounds and the roadways of such streets as lie between and separate the said public grounds, to the Director of the National Park Service.

Title 36 Code of Federal Regulations 50.24, prohibits vending on any property under the control of the National Park Service, without a permit issued by said National Park Service.

All licensed D. C. Vendors are urged to observe the subject restriction of their activities, as well as complying with those restrictions enumerated under Article 2 of the Police Regulations of the District of Columbia, as violators will not only be subject to arrest and prosecution, but will jeopardize their right to hold a D. C. Vendor's License.

The full cooperation of all D. C. Licensed Vendors is solicited, and of necessity is demanded.


JULIAN P. GREEN, Chief
Business Licenses and Permits
Dept. of Economic Development


ROBERT H. CAMPBELL, Chief
Law Enforcement Branch
Office of the Corporation
Counsel