

Opinion No. 47-5077

September 19, 1947

BY: C. C. McCULLOH,

TO: H. C. Buchly City Attorney Roswell, New Mexico

{*88} In your letter dated September 17, 1947, you state that the City of Roswell voted a bond issue in the amount of \$ 100,000.00 to build, beautify and improve public parks without the municipal limits of the city, under authority granted in Section 14-2101 of the 1941 Compilation. Therefore the City obtained a lease from the Commissioner of Public Lands for airport, park, swimming pool, fair grounds, play grounds, or other municipal purposes, pursuant to Section 8-853 of the 1941 Compilation, this lease to run for a period of five years.

{*89} You inquire whether the proceeds of the above mentioned bond issue may be used for the various purposes for which the lease was granted; in other words, whether a municipal park would include the purposes contained in the lease.

A public park has been defined as an inclosed place for the purposes of public recreation, pleasure, exercise, amusement and ornament, and there are cases holding that a municipal airport for recreational purposes is in the nature of a park, that a municipal golf course is a public park, and to the same effect, that a race track for horse racing, baseball diamond, football grounds and stadium, museums and art galleries and other types of projects come within the definition of a public park.

In this connection, see the following cases: Mayor of Savannah v. Lyons, 189 S.E. 63, 54 Ga. App. 661; Golf View Realty Co. v. Sioux City, 259 N.W. 451, 222 Ia. 433; Aquamsi Land Co. v. City of Cape Gerardeau, 142 S.W. 2d. 333, 346 Mo. 524; and City of Wichita v. Clapp, 125 Kan. 263, 263 P. 12, 63 A.L.R. 478.

In view of the abundant authorities to the effect that a municipal park may be used for numerous purposes in connection with recreation, pleasure, exercise, amusement and ornament, I am of the opinion that the proceeds of the bond issue may be used for any or all of the purposes set out in the lease to the municipality, without violating the provisions of Article 9, Section 9 of the Constitution, which provides that money borrowed by the state, or any county, district or municipality thereof shall be applied to the purpose for which it was obtained, or to repay such loan, and to no other purpose whatever.