

Opinion No. 53-5813

September 9, 1953

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. Edward M. Hartman State Comptroller Santa Fe, New Mexico

{*220} In your letter dated August 31, 1953, you enclosed a letter from the Mayor of the City of Raton, together with a copy of Ordinance No. 413. From the Mayor's letter, it is apparent that Ordinance No. 413 creates a Municipal golf ground commission and fixes its jurisdiction, powers and duties. This golf ground commission acts in an advisory capacity only. The City also has a Park Board, created by Ordinance No. 170, which has jurisdiction over all its public parks but has not exercised jurisdiction over the golf course which the City leased from the Raton Country Club on August 15, 1949, for a period of thirty-five years for the nominal sum of \$ 1.00 per year.

Apparently an effort was made to obtain title to the golf course without success. The sum of \$ 3,000 annually has been budgeted by the City to be used for construction and maintenance of the golf course since the execution of the lease. The Mayor is wondering whether, under the statutes pertaining to parks, the City may budget this amount and spend it for construction and maintenance purposes and also whether any additional amount could be obtained.

Section 14-3106, New Mexico Statutes {*221} Annotated, 1941 Compilation, provides as follows:

"For the improvement and care of parks in towns and cities in the state of New Mexico, in addition to the town or city tax provided by law, there may be levied by trustees or council and collected by the proper authority, annually, a tax not to exceed one (1) mill, upon all taxable property within any incorporated town or city. Provided, that no park is to have any benefit of the public funds which may be raised in any way for the improvement, development and care of parks, the title of which has not been conveyed absolutely to the town or city where the same is located for the benefit of the people of said town or city. And provided, further, that all parks to receive the benefit of any of the provisions of this section shall be conveyed to the cities or towns."

It is to be noted that this section was passed in 1897 and in 1909 was amended to authorize a levy of one mill instead of one-half mill. At the time of its passage, the purpose of parks within a municipality was primarily to provide an ornamental place of beauty with trees, shrubs, grass and flowers. The broad present day meaning of parks which besides being ornamental also includes recreational facilities such as playgrounds, tennis courts, swimming pools, golf courses, base ball and athletic fields, etc., probably was not contemplated by the Legislature in enacting this law.

This conclusion is strengthened when we consider later statutes. § 8-853, of the 1941 Compilation, authorizes municipalities to lease state lands within a radius of five miles of the municipal limits for use as "airports, parks, swimming pools, fair grounds, play grounds or other municipal purposes". Here the Legislature makes a distinction between parks and recreational facilities.

Also in § 14-1805, of the 1941 Compilation, passed in 1884, relating to the parks of cities, there appears the power to establish and improve parks and other public grounds, to plant trees thereon and to regulate the use thereof with other powers.

Section 14-2101 should be noted. This section was also passed in 1897, authorizing municipalities having a population of 1,000 or more to perform certain municipal functions and to issue bonds for such purposes. In 1925 this section was amended to increase the power of such municipalities by adding an additional power which is "to build, beautify and improve public parks within or without municipal limits." In Opinion No. 5077 this office held that the proceeds of a bond issue to build, beautify and improve public parks without a city could be spent upon premises leased from the State Land Office pursuant to § 8-853.

Section 14-1801, of the 1941 Compilation, defines the corporate powers of cities and towns and authorizes them to sue or to be sued, to contract or to be contracted with, acquire and to hold property, real and personal, and have such other privileges as are incident to corporations of like character not inconsistent with the laws of the State. In this instance, the city has a lease for thirty-five years for the consideration of \$ 1.00 per year, which in effect amounts to a donation. Under the lease, the City has acquired or obtained possession of the premises for a period longer than the normal anticipated life of present improvements made upon the premises.

{*222} Since § 14-3106 only applies to parks within municipalities and other laws authorize municipalities to lease lands outside the city limits for park purposes and to issue bonds to build, beautify and improve the same, it is apparent that this section does not prohibit the use of public funds of the city in maintaining and improving a municipal golf course which is a part of the park system, leased from the Raton Country Club outside the city limits, when such funds are budgeted and collected for that purpose.

By: C. C. McCulloh

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