

Opinion No. 55-6173

May 31, 1955

BY: RICHARD H. ROBINSON, Attorney General

TO: Mrs. Burton G. Dwyre, Chairman, State Library Commission, P. O. Box 1704, Santa Fe, New Mexico

Receipt is acknowledged of your letter dated May 10 in which you request an opinion concerning Chapter 263, New Mexico 1955 Session Laws, which become effective June 10.

You state that Chapter 151 of the Laws of 1953, which amended Chapter 92 of the Laws of 1951, and which is further amended by Chapter 263, Laws of 1955, is ambiguous in some respects.

You state further that considerable interest is being shown in various communities and rural areas in the State of New Mexico in using part of these funds for the development of children's and juvenile library service in the public libraries of the State. You also state that the funds are not specifically earmarked for any particular type or types of recreational purposes and that you feel that it appears to rest within the discretion of the local government authorities to budget and set aside part of the funds realized from cigarette tax revenues to libraries for juvenile purposes.

We agree with you that a well rounded recreational program for juveniles should include a balanced recreational program for both mind and muscle. The word "recreation" in Volume 36 of Words and Phrases on page 585 is defined as follows:

"'Recreation' is defined by Webster to be: (1) Refreshment of strength and spirits after toil; amusement; diversion. (2) Relief from toil or pain; amusement in sorrow or distress. Traveling on Sunday to make a social visit is not within the statute prohibiting any 'recreation' on that day. *Corey v. Bath*, 35 N.H. 530, 538."

In the case of *City of Fort Worth et al. v. Burnett et al.*, 115 S.W. 2d 436, the Court of Civil Appeals of Texas defines a library as follows:

"The New International Encyclopaedia has this to say in defining a library: 'It is generally held that the library has three functions: (1) as a storehouse of books and knowledge; (2) as a laboratory for study and research; (3) **as affording sane recreation.**'"
(Emphasis supplied)

Subsection (c) of Chapter 263, New Mexico Session Laws of 1955, reads as follows:

"(c) All revenues produced by taxes, over and above the taxes referred to in subsection (a) of this section, collected under this act shall be paid over to the state treasurer, and

shall be placed by him in a fund to be known as the 'County and Municipality Recreational Fund,' which fund is for use for juvenile recreational facilities and salaries of instructors and other employees necessary to the operation of such juvenile facilities by the various counties exclusive of municipalities within their borders and municipalities of the State of New Mexico as hereinafter provided."

Your attention is directed to Article 9, Section 14 of New Mexico State Constitution which reads as follows:

"AID TO PRIVATE ENTERPRISE.

Neither the state, nor any county, school district, or municipality, except as otherwise provided in this Constitution, shall directly or indirectly lend or pledge its credit, or make any donation to or in aid of any person, association or public or private corporation, or in aid of any private enterprise for the construction of any railroad; provided, nothing herein shall be construed to prohibit the state or any county or municipality from making provision for the care and maintenance of sick and indigent persons."

The above section of our Constitution prohibits the allocating of any part of the fund in question to other than a municipal or county library since any other type of library will not be under the absolute control of the distributing agency.

Bearing in mind the above quoted section of Chapter 263, New Mexico Session Laws of 1955, and the constitutional prohibition hereinabove cited, by a liberal construction and interpretation of the wording of the statute a librarian is an instructor if he is qualified as such and not only selects the proper books for the children and juveniles but also instructs or teaches them. If the library is municipally or county owned, the village, town or city or the county are conforming with the requirements of the statute.

It is, therefore, the opinion of this office that, in cases of villages, towns and cities, before a librarian can be paid as an instructor out of this fund the library must be municipally owned and the librarian must teach and furnish books to the children principally and not incidentally for recreational purposes. This would also apply to county libraries.

In your second question you request an opinion in cases where if library facilities are furnished to adults who wish to avail themselves of such library facilities, would this service preclude the use of a portion of the funds derived from the cigarette tax for the payment of the salary of this type of librarian.

We believe that this question is answered by our answer to your first question.

You also request an opinion in a case where a county desires to devote any of its revenue from the cigarette tax to a library facility which happens to be located within the boundaries of a municipality but is county owned. You state that a number of our public libraries are located within a municipality but provide library services to children and

citizens of the entire county, part and perhaps all of the support for such libraries coming from county funds.

Here again each case must be judged according to the facts, but all the conditions as provided in our answer to your first question must be met before the county commissioners can spend from this fund any amount for library expenses and salaries.

Trusting that this fully answers your inquiry, I remain

By Hilario Rubio

Assistant Attorney General