

Opinion No. 57-104

May 16, 1957

BY: OPINION OF FRED M. STANDLEY, Attorney General Paul L. Billhymer, Assistant Attorney General

TO: Larry W. Waterman, Executive Secretary, New Mexico Commission on Youth, Post Office Box 2034, Santa Fe, New Mexico

QUESTIONS

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Can a board created under the provisions of § 6-4-3, N.M.S.A., 1953 Comp., budget and spend the "Juvenile Recreational Fund" provided for by § 72-14-14, N.M.S.A., 1953 Comp. (p.s.)?

CONCLUSION

See Opinion.

OPINION

ANALYSIS

§ 6-4-3, N.M.S.A., 1953 Comp., reads as follows:

"Establishing system of supervised recreation - Powers of managing boards. -- The governing body of any such municipality or county may establish a system of supervised recreation and it may, by resolution or ordinance, vest the power to provide, maintain and conduct playgrounds, recreation centers and other recreational activities and facilities in the school board, park board, or other existing body or in a playground and recreation board as the governing body may determine. Any board so designated shall have the power to maintain and equip playgrounds, recreation centers and buildings thereon, and it may, for the purpose of carrying out the provisions of this act, employ play leaders, playground directors, supervisors, recreation superintendents or such other officers or employees as they deem proper; and to make such expenditures therefor as the board shall deem necessary or advisable, from any fund provided for by said municipality or county, said expenditures not to exceed the amount of such appropriation."

The section authorizes the creation of a recreation board to provide for supervised recreation, including the expenditure of any funds given to it for that purpose. Provision is also made for a joint board by § 6-4-5. § 72-14-14, N.M.S.A., 1953 Comp. (p.s.) provides for distribution of tax money to counties and municipalities for juvenile

recreation. It further provides that before money can be distributed, the county and municipality must create a "Juvenile Recreational Fund." It is provided also that the funds are to be used exclusively for recreational facilities and salaries of employees for the operation of juvenile facilities.

The question thus presented is really whether the county, or municipality, may turn over the "Juvenile Recreational Fund" to a recreational board created pursuant to § 6-4-3?

We do not believe that the county commissioners, or the governing body of the municipalities, can in any way surrender control of the funds to any board. See Opinion No. 6459, which is enclosed herewith, dealing with the surrender of the control of the "Juvenile Recreational Fund." This "fund" is a special fund for a particular purpose set forth in the statute and the acceptance of this money, by creating a fund known as "Juvenile Recreational Fund", places the duty upon the accepting officials, be they county or municipality, to see that these funds are spent according to the provisions of § 72-14-14.

This does not mean, however, that where there is a board in charge of a city recreational program, that the "Juvenile Recreational Fund" cannot be used to finance part of the program which is for juveniles, as defined by § 72-14-14. It does mean that the governing body of the city will have to determine how and when this money is to be spent and not delegate this authority to the recreational board. This same reasoning must apply where the county has such a recreational board. Where there is a joint board, the county and municipal Juvenile Recreation Funds could be used so long as the rule announced in Opinion No. 6459 is observed, namely the funds should be used for the benefit of the juveniles of the county and municipalities, respectively. The two funds cannot be lumped together and spent by a recreation board without regard to the benefits to be received by the county juveniles and those of the municipalities.

We believe that there can be no other conclusion because Opinion No. 6459 must have been known to the legislature and the legislators did not see fit to change the distribution of this fund so that it could be used by a recreation board created under § 6-4-3.

Nothing herein should be construed to mean that these recreational boards cannot devise the juvenile program for either the county or municipalities. We do not mean that the county commissioners or the governing bodies of the municipalities which have juvenile recreational funds, under § 72-14-14, must design the program of juvenile recreation. All these bodies must do is spend the funds so that § 72-14-14 is followed. They must exercise their judgment so that the fund is properly spent and they cannot delegate the spending of this money to any recreational board.