

Opinion No. 58-18

January 22, 1958

BY: OPINION OF FRED M. STANDLEY, Attorney General Robert F. Pyatt, Assistant Attorney General

TO: Mr. Larry W. Waterman, Executive Secretary, New Mexico Commission on Youth, Santa Fe, New Mexico

QUESTION

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With reference to Section 72-14-14 C, N.M.S.A., 1953 Compilation, 1957 Supp., can funds be lawfully expended from either a municipal, or county, juvenile recreational fund, for the purposes of acquiring land or land and buildings for recreational facilities for juveniles?

CONCLUSION

Yes.

OPINION

ANALYSIS

Section 72-14-14 C, particularly the second and third paragraphs thereof, must be interpreted by us in answering your question. These two paragraphs read:

"The funds so distributed to the counties and municipalities of this state shall be used exclusively for recreational facilities and salaries of instructors and other employees necessary to the operation of such juvenile facilities primarily suitable for juveniles either within or outside of each county exclusive of municipalities therein, and either within or outside of each municipality; Provided that adults may not be excluded from the use of any such facility which is suitable for use by both juveniles and adults; Provided, further, that as a prerequisite to participation in the use of such of the funds provided for by Laws 1943, chapter 95, sections 1 to 15, inclusive, as amended, for county and municipal recreational purposes, each county or municipality shall establish a fund to be known as the "Juvenile Recreational Fund" into which all moneys distributed to it under Laws 1943, chapter 95, sections 1 to 15, inclusive, as amended, shall be deposited.

Any municipal officer who approves any expenditure or expends such funds for any purpose other than operation and construction of recreational facilities and salaries of instructors and other employees necessary to the operation of facilities, wherein juveniles may participate shall be guilty of misdemeanor and upon conviction thereof

shall be fined not less than one hundred dollars (\$ 100) nor more than five hundred dollars (\$ 500) or by imprisonment in the county jail not exceeding six (6) months, or by both, such fine and imprisonment in the discretion of the court. The word "juvenile" shall mean and include every person under the age of twenty-one (21) years."

The first quoted paragraph seems to be, *inter alia*, a grant of authority to counties and municipalities in respect to juvenile recreational facilities, and standing alone, would seem to indicate an affirmative answer, having due regard to the nature of the provision. On the other hand, the second quoted paragraph, admittedly a penal provision, by use of the terms ". . . operation and construction . . ." (but not purchase or acquisition), casts some doubt on the matter.

Now, as we construe the first quoted paragraph, it appears to us to be remedial in nature, and is thus to be liberally construed. In *re Gossett's Estate*, 46 N.M. 344, 129 P. 2d 56. Hence, said paragraph should, in our opinion, be held to include an authorization to acquire, by purchase, land or land and buildings in a good faith intention to use them for juvenile recreational facilities. Any other construction would ignore the practicalities of the situation, and would disregard what should be evident to all, to wit, that without the necessary real estate, recreational facilities for juveniles could not exist. To this end, disbursements from the local Juvenile Recreational Fund may lawfully be made.

Turning to the Second paragraph, an apparent inconsistency arises, since only ". . . operation and construction . . ." are employed. We could possibly stop there and hold that the expression of the two items impliedly excludes others. But in our judgment, a holding to that effect would be erroneous. For one thing, the legal maxim "*expressio unius est exclusio alterius*", while time honored, is only an aid to construction. It is not a rule of law, and in any event is of limited application. *Wilson, et al., v. Rowan Drilling Co., et al.*, 55 N.M. 81, 227 P. 2d 365 (on motion for rehearing). Perhaps of greater weight is the fact that the two above quoted paragraphs came into our law as Laws 1955, Ch. 263, Sec. 3, and that each and every part of a statute, where possible, must be given effect in order to achieve reconciliation. *Cox v. City of Albuquerque* 53 N.M. 334, 207 P. 2d 1017. We believe reconciliation is possible, and that the second quoted paragraph does not call for a negative conclusion. After all, said paragraph is penal. As such, it must be strictly construed against the state and in favor of potential defendants. *State v. Thompson*, 57 N.M. 459, 260 P. 2d 370.

We hold the statute, as above quoted, to be both remedial and penal. As such, it must be strictly construed in favor of defendants when the penalty is sought to be applied, and liberally construed insofar as the remedy or purpose is concerned. 82 C.J.S., Statutes, Sec. 390. That being so, our judgment is that ". . . operation . . ." as used in the second quoted paragraph includes acquisition by purchase (or gift for that matter). Nor should we disregard the practicalities. Unless one can acquire, it is impossible to operate. Such acquisition would not in our opinion, subject one to the penalties provided by the cited statute.

It is not necessary, in this opinion, to construe the term ". . . municipal officer . . ." as being restricted to officers of cities, towns and villages, or to construe the term as encompassing county officers.

We answer in the affirmative. In doing so however, we assume, and this opinion is so conditioned, that the land or land and buildings purchased would not be donated to private organizations, even though the latter might be well adapted to handling youth problems. Otherwise, grave issues under Article IX, Section 14, Constitution of New Mexico, would be presented. See Opinion of the Attorney General No. 6253, rendered August 15, 1955.