

Opinion No. 59-202

December 14, 1959

BY: OPINION of HILTON A. DICKSON, JR., Attorney General

TO: Julius C. Sanchez Assistant District Attorney Seventh Judicial District Socorro, New Mexico

QUESTION

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May the Village of Magdalena expend its recreational funds arising under § 72-14-14, N.M.S.A., 1953 Compilation (P.S.), for the purchase of new school band and basket ball uniforms?

CONCLUSION

No.

OPINION

{*312} **ANALYSIS**

Section 72-14-14, as above mentioned, is the authority through which certain revenues arising through the assessment of a {*313} cigarette tax is set aside for a county and municipal recreational fund. The said fund is to be used by the county and municipal authorities for the establishment and maintenance of recreational facilities, the use of which is primarily for juveniles.

Your request seeks our advice as to whether the municipal authorities of the Town of Magdalena may expend the funds created and set aside by the above section for the purchase of fifteen new school band uniforms and new uniforms for the school basket ball teams. Our conclusion, as above indicated, is that it may not.

Our opinions have in the past held that the funds may be expended for virtually any activity related to the recreation of juveniles within the particular area for which they are set aside. This is to say that county funds must be expended for the recreation of the county juveniles and municipal funds must be expended for the recreation of juveniles within the municipality. This is not to say, however, that they cannot be jointly expended for joint facilities.

However, our office has further consistently said that it is incumbent upon the respective governing bodies of the city and county that they see and supervise the expenditure of such funds. Opinion No. 6466, dated June 13, 1956. In Opinion No. 6459, dated June 6,

1956, we stated that "the county commissioners cannot make a donation of county funds to any recreational facility unless they have such control of the facility as would insure the use of such facility to benefit county juveniles." In this connection, also see Opinion No. 57-104, dated May 16, 1957.

In view of these past opinions and since we must assume that the Legislature has been aware of the conclusions reached therein and yet, although the act has been amended, has not changed it in this particular respect, we must conclude that it agrees with this office's interpretation as heretofore expressed.

In conformity with these conclusions, we are of the opinion that the proposed expenditure, as suggested in your letter of inquiry, would not constitute an expenditure within the full control of the municipal authorities, nor would the municipality retain any control over its use and enjoyment. Therefore, we conclude that the proposed expenditure is unlawful.

By: Thomas O. Olson

First Assistant Attorney General