

Opinion No. 61-02

January 5, 1961

BY: OPINION OF EARL E. HARTLEY, Attorney General Norman S. Thayer, Assistant Attorney General

TO: Mr. Robert H. Sprecher, Assistant District Attorney, Fifth Judicial District, Chaves County Courthouse, Roswell, New Mexico

QUESTION

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Does the enclosed list of items constitute legal expenditures of cigarette tax moneys by a 4-H club?

CONCLUSION

No.

OPINION

ANALYSIS

We do not deem it necessary to pass on each individual item listed in your request, for the expenditure of cigarette tax moneys by the 4-H, or on behalf of the 4-H, is illegal for any purpose.

The cigarette tax moneys referred to are paid into the juvenile recreation fund. See § 72-14-14, N.M.S.A., 1953 Compilation (P.S.). In Attorney General's Opinions No. 6253, August 15, 1955, No. 60-191, October 13, 1960, and No. 60-208, October 28, 1960, we advised that the juvenile recreation fund could not be used to make donations to, or expenditures on behalf of, private persons or groups. To do so violates Art. IX, Sec. 14 of the Constitution of New Mexico, in that such donations or expenditures amount to unconstitutional donations of public funds in favor of private persons or associations. A further ground for those rulings was that by making donations to private groups, the governing body of the county or municipality concerned loses control over the funds and cannot be assured that they will be spent for recreational purposes. This problem can be avoided, it is true, by making expenditures only after the expenses have been incurred, and can be shown to have been incurred for recreational purposes. But the constitutional prohibition still bars the way, and we have consistently ruled that the juvenile recreational fund cannot be expended for recreation programs that are not either municipally-owned, operated, or sponsored.

We are aware that such groups as the 4-H, Boy Scouts, and Girl Scouts conduct juvenile recreation programs that come within the spirit of § 72-14-14, supra. But the framers of our constitution have clearly provided that public funds shall not be donated to private persons or associations, and it is our opinion that the juvenile recreation fund cannot be expended by, or on behalf of, a 4-H club.