

Opinion No. 64-156

December 28, 1964

BY: OPINION OF EARL E. HARTLEY, Attorney General Thomas A Donnelly, Assistant Attorney General

TO: Mr. John W. Flynn, State Planning Officer, State Planning Office, Santa Fe, New Mexico

QUESTION

QUESTIONS

(1) Based on current law, is it possible for a municipality to acquire and develop a city recreation area which is not contiguous to the city's corporate limits and may be, 15 to 25 miles away, and in the same county or another county from that in which such city is situate?

(2) To what extent may cities utilize cigarette and tobacco tax moneys in the acquisition and development of recreation areas which are not within the municipal city limits?

CONCLUSION

(1) Yes; see analysis.

(2) See analysis.

OPINION

ANALYSIS

The first question presented inquires if a municipality is debarred from acquiring or developing a city recreation area if such site is located outside the corporate limits of the municipality. We believe this question to be governed by the provisions of Section 14-35-9, N.M.S.A., 1953 Compilation, which states as follows:

"Acquisition of park property -- Restrictions on condemnation. -- Any town, village or city, through its governing body, **may acquire by eminent domain within the city, or by purchase, gift or donation any property for park purposes within or without the city, town or village limit;** Provided, that in case of a gift, or donation, to any town, village or city for park purposes, the governing body is authorized to pay all expenses of transfer or conveyance and the examination of title: Provided, that whenever a park or property therefor is acquired, the same shall come immediately under the control of the governing body." (Emphasis supplied).

This statutory provision was discussed in the case of **City of Albuquerque v. Huning**, (1924) 29 N.M. 590, 225 P. 580, wherein the court held:

"This section (Section 14-35-9, supra) clearly contemplates the acquisition of property for park purposes outside the city limits by purchase. No question of want of power in the city could be made if it were proposed to buy the land in question. The city has a general grant of power of eminent domain for the acquisition of park property, unrestricted by any terms of the statute. The restriction on the city to activities within its own limits arises out of the principle that public or city purposes cannot, ordinarily, be subserved except within the city itself. The acquisition of land outside the city limits, however, is by this statute declared to be a proper public and city purpose.

We have then this condition of affairs: The city has the power to acquire for park purposes land without the city limits, and, upon complying with the conditions mentioned in the statute, has the power to pay out the city's money in the acquisition and improvement of the same. . . ." (parenthetical note added).

It is clear from the above statutory provision and interpretive court decision that a municipality may acquire and develop a city recreation park area which is not within the confines of the city's boundaries and which is some distance from the city, even in another county from that in which the city is located.

Secondly, you have inquired as to what extent cities may utilize cigarette and tobacco tax moneys to acquire and develop recreation areas which are outside the corporate limits of the municipality.

Section 72-14-14, N.M.S.A., 1953 Compilation, specifies that a percentage of all receipts from the state tax on cigarettes shall be paid over to the state treasurer and placed in a fund to be known as the "county and municipality recreational fund" which fund is 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 New Mexico. . ."

This enactment further delineates that such moneys are to be used as follows:

"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 this section, 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 this section shall be deposited."

From a careful study of the above statute we conclude that a municipality may utilize its share of such juvenile recreational fund for the acquisition or development of recreational facilities situated outside the corporate limits of such city as long as such recreational park facility is primarily "suitable for juveniles." This statute would restrict the use of such moneys by cities to the acquisition and development of parks which have for their primary purpose the establishment and maintenance of juvenile facilities for the young people of such city and under such limitation the facility should be so situated as to be readily accessible to such young persons. Unless such facility were easily accessible to the youth of the city a serious question might arise as to whether such facility was in fact "suitable for juveniles" of such community.