

## **Opinion No. 68-73**

July 12, 1968

**BY:** OPINION OF BOSTON E. WITT, Attorney General

**TO:** Honorable Tibo J. Chavez State Senator P.O. Box 544 Belen New Mexico

### **QUESTION**

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1. May a municipality legally issue recreational revenue bonds pledging revenues from the excise tax on cigarettes to construct recreational facilities for the exclusive use of the elderly?
2. May a municipality legally issue recreational revenue bonds pledging revenues from the excise tax on cigarettes to construct recreational facilities for joint use by both the elderly and youths?

#### **CONCLUSIONS**

1. No.
2. No.

### **OPINION**

#### **{\*117} ANALYSIS**

Recreational revenue bonds may be issued by municipalities pursuant to Sections 6-4-10 through 6-4-14, N.M.S.A., 1953 Compilation. These bonds are payable solely from the tax on cigarettes for recreational purposes. Section 6-4-10 B, supra, provides in part that revenue bonds may not be issued for recreational facilities which exclude juveniles. To fully answer the questions asked, however, we must look to the legislative enactments providing for an excise tax on cigarettes, Sections 72-14-1 through 72-14-17, N.M.S.A., 1953 Compilation.

Cigarette taxes are collected by the State and are deposited on one of two funds, the "county and municipality recreational fund," or the "county and municipal cigarette tax fund". At the end of each month the state treasurer distributes all moneys in these funds to the counties and municipalities.

In 1968 the legislature increased the excise tax on cigarettes. The act increasing the excise tax on cigarettes expressed the purpose of the act as follows:

"Section 1. Purpose of Act. -- The legislature finds that the income of our cities and counties is insufficient to enable them to provide the essential services required today. In order to provide these services. it is necessary to make wage adjustments for police officers, firemen, refuse collectors, and unskilled workers, as well as **to provide adequate inspirational and health giving activities for the young and the elderly.** Therefore, it is the intent and purpose of this act to provide, through an increase in the tax on the sale of cigarettes, additional income to fulfill these responsibilities." (Emphasis added). Chapter 50, Laws of 1968.

The underlined language of the above quoted section would be helpful in determining legislative intent if there is any ambiguity in the statutory section related to the expenditure of the county and municipal recreation fund.

{\*118} Section 72-14-14.1, N.M.S.A., 1953 Compilation provides for the expenditure of the funds disbursed by the State from the county and municipal recreational fund as follows:

"B. The funds distributed to the counties and municipalities under this section **shall be used exclusively for juvenile recreation facilities and salaries of instructors and other employees necessary to the operation of such facilities primarily suitable for juveniles; provided, that adults may not be excluded from the use of any such facility which is suitable for both juvenile and adult use.**

Each county or municipality shall establish a fund to be known as the "juvenile recreational fund" into which all moneys received from the county and municipality recreational fund shall be deposited. As used in this section, "juvenile" means every person under the age of twenty-one years." (Emphasis added).

The above quoted section of the New Mexico Statutes was reenacted by the 1968 session of the legislature as Section 7, Chapter 50, Laws of 1968. It is our opinion that the above section is clear and unambiguous, cigarette tax moneys distributed to municipalities from the county and municipal recreational fund must be used exclusively for juvenile recreational facilities. However, adults may not be excluded from these facilities when they are suitable for both juveniles and adults. The answer to your first question is therefore no.

In answer to your second question, it is our opinion that recreational facilities may not under Section 72-14-14.1, supra, be constructed by a municipality for the joint use of adults and juveniles. It follows that recreational revenue bonds may not be issued pledging the revenues received from the county and municipal recreational fund to finance joint facilities for juveniles and adults.

By: Gary O'Dowd

Assistant Attorney General