

## Opinion No. 53-5866

December 8, 1953

**BY:** RICHARD H. ROBINSON, Attorney General

**TO:** Mr. Richard F. Rowley District Attorney Ninth Judicial District Clovis, New Mexico

{\*294} On November 5, 1953, you addressed an inquiry to this office concerning the use of funds derived under § 14-4008, N.M.S.A., 1941 Comp., Pocket Supplement, which is Ch. 92, § 5, of the 1951 Session Laws, as amended by Ch. 151 of the 1953 New Mexico Session Laws, relative to the method of expending the funds derived under the municipal cigarette tax. The pertinent part of the amendment reads as follows:

§ 14-4008. PROCEEDS OF TAX -- RECREATIONAL FUND. -- All such cigarette taxes collected within the limits of any municipality shall be paid into the municipal treasury, to be placed in a special fund to be designated as the 'Recreational Fund,' and said fund shall be used exclusively for recreational facilities within the said municipality, provided, however, that no revenue in said fund shall be used for recreational facilities which excludes the use of such facilities by persons under twenty-one (21) years of age. (Laws 1951, Ch. 92, § 5; 1953, Ch. 151, § 1.)"

Section 2 permits the issuance of revenue bonds for the purpose of acquiring, constructing, repairing, extending or improving recreational facilities within the municipality, providing no revenue bonds shall be issued in connection with recreational facilities which exclude recreational facilities for youth. We do not believe that the moneys derived under the tax must necessarily be limited to the purposes specified for the revenue bonds. We believe that the moneys received from the tax directly may be used for a much broader purpose.

In answer to your questions specifically,

1. Q. Whether or not municipal officials have any right whatever to use any part of the money so collected for any other purpose than that specified by the statute.

A. It is the opinion of this office that the above collected cannot be used for any purpose other than the purpose specified in the statute and specifically set out in § 1 of Ch. 151 of the Laws of 1953.

2. Q. Whether or not the recreational fund could properly be used, even if all of it was necessary, for the purpose of paying salaries such as Park Superintendent, police officers used in policing parks and other employees who are generally employed by the municipality in the city park system as laborers and otherwise.

{\*295} A. It is the opinion of this office that the purposes for expenditure of the tax may include the salaries of the Park Superintendent, police officers used in the parks and

other employees maintaining the parks. The salaries of persons directly interested, or a proportionate part thereof, and whose employment is with recreational facilities may be paid from the proceeds of this tax.

3. Q. Whether or not said funds may be used for buying animals for the zoo and buying feed for such animals and paying employees' salaries for caring for animals.

A. The same answer is applicable to this as is stated in the answer to question No. 2.

The payment of salaries of those duties may incidentally include the parks or other juvenile recreational facilities cannot be paid from the proceeds of this tax.

Therefore, it is the opinion of this office that any expenditure directly connected with the maintenance of recreational facilities, not excluding juveniles, may be expended under this Act but no salaries may be paid any employee whose duties are only incidentally connected with the recreational facilities provided. This fund must be kept separate and not commingled with any other funds. We believe that a strict accounting should be made and the proportionate parts paid to any employee should be accounted for in each voucher submitted.

By: Fred M. Standley

Assist. Attorney General