

Opinion No. 56-6459

June 6, 1956

BY: RICHARD H. ROBINSON, Attorney General

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

We have your letter of April 12th in which you ask an opinion as to whether municipalities and counties can make joint use of their funds to provide for recreational facilities under the provisions of Section 72-14-14, N.M.S.A., 1953, as amended by Chapter 263, Laws of 1955.

The pertinent parts of this law read as follows:

". . . (c) All revenues produced by taxes, over and above the taxes referred to in subsection (a) of this section, collected under this act shall be paid over to the state treasurer, and shall be placed by him in a fund to be known as the 'County and Municipality Recreational Fund', which fund is for use 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 the State of New Mexico as hereinafter provided.

". . . 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 act 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 act shall be deposited."

It is apparent that the Legislature contemplated two funds, one for county recreational facilities and the other to provide for municipal recreational facilities.

We are of the opinion that the place where the funds are expended is not important. The controlling factors are that the county funds must be spent in such way that county juveniles will receive the benefit of the recreational facilities so provided by the funds. It is incumbent upon the county commission to control the expenditure of such funds so that the county funds are used for the juveniles of the county. 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.

The municipal officers would likewise have to use municipal funds so as to insure that the juveniles of the municipality were provided with recreational facilities. In other words, the statute places a duty on the governing bodies of the county and municipality to see to it that the respective funds are used for the benefit of the respective youth groups.

There would be no objection to the joint use of the funds to provide for recreational facilities so long as each of the participating bodies can establish that the respective funds were being used for the groups intended by the statute, namely the county funds were used for county juveniles and the municipal funds were used for municipal juveniles. The county commissioner and municipal commissioner must control the expenditure of the respective funds so as to insure the proper use of the fund.

Trusting we have answered your questions, we remain

By: Paul L. Billhymer

Assistant Attorney General