

Opinion No. 57-163

July 10, 1957

BY: OPINION OF FRED M. STANDLEY, Attorney General Joel B. Burr, Assistant Attorney General

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

QUESTIONS

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Is the Roswell Museum eligible to receive cigarette tax money from the City of Roswell to aid the Musuem in the furtherance of its youth program?

CONCLUSION

No.

OPINION

ANALYSIS

It is our understanding that the Museum's program for young people is divided into three distinct categories. First, there are a series of programs and tours provided for the school children of the City of Roswell and the children from Chaves County schools. Each child in the county and city school system visits the Museum at least once every year. The Museum also has helped to plan and arrange traveling exhibits which have been brought to the individual school buildings. The second type of youth activities provided by the Museum are programs in archeology and geology. The Museum conducts and sponsors both classes and field trips in these two fields. In addition to the actual groups themselves, the Museum has developed a program, especially in the field of Indian lore and archeology, for organizations such as the Boy and Girl Scouts. The third series of activities for young people is contained in the art and dance classes offered by the Roswell Museum School. Here the young student may obtain instructions from professional painters and dancers. It is also our understanding that many of the exhibits and film programs sponsored by the Museum appeal as much to the young people in the community as to the adults.

The disposition of cigarette taxes collected within the limits of any municipality as originally provided for in Laws 1951, Chapter 92, § 5, as amended in 1953 by Chapter 151, § 1, reads as follows:

"PROCEEDS OF TAX -- DISPOSITION. -- 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."

However, in 1955, the Legislature repealed Chapter 92 which gave any municipality the power to fix and have collected a tax upon the sale of cigarettes within the limits of said municipality. (See Laws 1955, Chapter 263). Instead, the State was substituted for the municipality as the collection agency for this tax and the revenues received were to be paid over to the State Treasurer and placed by him in a fund to be known as the "County and Municipality Recreational Fund." The use of the moneys in said fund was limited by the following language:

"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." (See § 72-14-14, N.M.S.A., 1953 Comp., 1955 Pocket Supp.)

Chapter 263 of the Laws of 1955 was amended by Laws 1957, Chapter 28, but the above quoted language relative to the use to be made of said funds was retained in the amendment.

It should be borne in mind at the outset that the legislative history reflects a clear intent on the part of the Legislature to restrict the use of this fund more and more with each succeeding piece of legislation. A reading of the 1957 amendment discloses that the use of said revenues is restricted to recreational facilities and salaries of employees necessary to the operation of juvenile facilities **primarily suitable for juveniles**. Although we feel that the activities carried on by the Roswell Museum for the benefit of youth in the community are laudable, the information available to this office will not justify a conclusion by us that moneys advanced the Roswell Museum from cigarette tax revenues will be used for facilities which are primarily suitable for juveniles. We can only conclude that the purpose of the museum is to provide educational, scientific and cultural benefits for the public in the community as a whole, and that the facilities available are not, nor were they intended to be, primarily suitable to juveniles. The fact that the youth of the community will benefit incidentally from the facilities available will not, under the statute, justify the use of cigarette tax funds.

Nor do we feel that the Museum could effectively segregate the funds received from cigarette tax moneys from the other funds available for operation and maintenance to the end that the former would be used exclusively for facilities primarily suitable for juveniles. In any event, we would strongly advise those officials responsible for the disposition of cigarette tax revenues that such action not be attempted in view of the stringent penalty provision set up in the act.