

Opinion No. 57-285

November 6, 1957

BY: OPINION OF FRED M. STANDLEY, Attorney General Alfred P. Whittaker,
Assistant Attorney General

TO: Mr. Manuel Garcia, Jr., Assistant District Attorney, Eighth Judicial District, Raton,
New Mexico

QUESTION

QUESTION

May a municipal corporation of the State of New Mexico properly expend monies of the "municipal recreational fund" distributed to said municipality by the State Treasurer pursuant to Section 72-14-14, N.M.S.A., 1953 Compilation, Pocket Supplement, for the support and maintenance of a municipally owned public library?

CONCLUSION

Yes, so long as the facilities furnished are primarily suitable for the recreation of juveniles.

OPINION

ANALYSIS

The answer to your inquiry is controlled by the provisions of § 72-14-14, N.M.S.A., 1953 Compilation, as amended. This statute now provides in relevant part that:

"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 Laws 1943, chapter 95, sections 1 to 15, inclusive, as amended, 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 Laws 1943, chapter 95, sections 1 to 15, inclusive, as amended, shall be deposited."

The question of the specific nature of the recreational facilities to be operated as primarily suitable for juveniles, appears to be a question of fact, to be determined by the governing body of the municipality in the reasonable exercise of its discretion based

upon the facts and circumstances presented in the specific situation in which the question arises.

We call your attention to Opinion of the Attorney General No. 6173 issued May 31, 1955, copy of which is attached for your information, holding that under the conditions stated the librarian of the public library operated by a municipal corporation can be compensated from the juvenile recreational fund for services as an instructor.

The conclusion stated should not be construed as implying there are not clear and substantial limitations within which the governing body of the municipality must exercise its discretion. Compliance with the statutory mandate and proper application of the legal principles announced by the Legislature must largely depend upon the sound judgment and good faith of the governing body of the municipality in the exercise of its discretion. Thus, under § 72-14-14, supra, adults may not be excluded from the use of a recreational facility primarily designed for juveniles when such facility is suitable for both juveniles and adults. On the other hand, the application of monies of the municipal juvenile recreational fund to the purchase of a number of books clearly designed primarily for the use and enjoyment of adults, would certainly be an abuse of discretion by the governing body of the municipality, and presumably, unlawful.

As the foregoing indicates, it is the view of this office that the lawfulness of the proposed expenditure must be determined in the light of the fact in each separate situation; but we do not consider the application of the juvenile recreational fund contemplated by your inquiry to be unlawful, unless made so by the abuse of discretion by the governing body of the municipality charged with the proper application of the fund.