

Opinion No. 59-81

July 28, 1959

BY: HILTON A. DICKSON, JR., Attorney General

TO: Mr. A. E. Hunt Director Department of Finance and Administration P. O. Box 1359
Santa Fe, New Mexico

{*138} This opinion is in response to your recent request in which you raised the following questions:

1. May funds derived from the state cigarette tax for recreational purposes be legally transferred to the Bernalillo County Planning Commission and expended by that commission if such funds are used for planning for parks and rerecreational purposes?
2. May funds derived by the counties from fees collected under the Uniform Motor Vehicle Administration, Certificate of Title, and Anti-theft Act, as amended, be transferred to the County Planning Commission and expended by that commission for planning in relation to roads, transportation and land use?

Our opinion is as follows:

1. The cigarette tax funds designated by statute for recreational purposes may not be transferred to the County Planning Commission.
2. The road funds, as heretofore mentioned, may not be transferred to the County Planning Commission.

I shall first discuss the first above mentioned question.

The pertinent statute is codified as § 72-14-14, N.M.S.A., 1953 Pocket Supplement. This statute states in pertinent part as follows:

"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 . . ." (Emphasis supplied)

Again, the same section states in the next paragraph:

"Any municipal officer who approves any expenditure or expends such funds for any purpose other than **operation and construction of recreational facilities . . .**" (Emphasis supplied)

{*139} The question with which we are here concerned is whether the transfer of funds and the expenditure thereof by the Planning Commission would fall within the purview of

the statutory mandate. The word "facilities" has been defined in the case of **People vs. Bunge Bros. Coal Co.**, 64 N.E. 2d 365 (Ill.), as follows:

"The word 'facilities' is not a technical word but one in common use, and its meaning is to be found in the sense attached to it by approved usage. Standard lexicographers give 'aid', 'assistance,' and 'help' as synonyms or equivalents of 'facility.' Thus, books, maps, globes and charts are facilities to the imparting of knowledge. The meaning of the word is not, however, limited to inanimate bodies or things. A school with a complement of pupils in every room, but lacking teachers, would certainly not have facilities to carry on educational work. Without a crew to man his vessel, the captain of a ship would not have the necessary facilities to enable the ship to sail."

The word "construction", in its ordinary sense, means to build or erect something which theretofore did not exist. See 8A Words and Phrases, page 471 et seq.

In the broad sense of the word, planning could possibly be construed as falling within the intention or meaning of the phrase "recreational facilities". However, the second quoted portion of the statute limits the expenditures to "operation and construction" of recreational facilities. As thus limited, it is our opinion that a transfer to a planning commission which is not directly concerned with the construction or operation of the recreational facilities for juveniles would not be permissible as an expenditure of the cigarette tax funds. This office has previously stated that expenditures of this recreational fund must be directly connected with recreational facilities. See Attorney General Opinion No. 5866, dated December 8, 1953. That opinion further stated:

"This fund must be kept separate and not commingled with any other funds. We believe that a strict accounting should be made . . ."

In keeping with that opinion and the general construction of the statute, we are of the opinion that the proposed transfer and subsequent expenditure of the funds is too remote from the purposes for which the fund was created and, therefore, not legal.

Your second above question refers to the expenditures of the counties' share of the fees allocated by § 64-11-12, N.M.S.A., 1953 Compilation, as amended by Chapter 28 of the Laws of 1959. The pertinent portion of the above mentioned statute reads as follows:

"Amounts so distributed to each county shall be credited to the county road fund of said respective counties, and used for the **improvement and maintenance** of the public roads therein, . . ." (Emphasis supplied)

What was said above applies equally here. It is our opinion that the proposed transfer and the subsequent expenditure by the County Planning Commission is so remote from the purposes enunciated in the statute that it would be an illegal diversion of the funds.

In rendering this opinion, we recognize that it is a necessary function in preparation for the construction or maintenance of either of the above mentioned facilities that planning

be undertaken. However, we are of the view that there must be a direct and closer relationship between the planning functions and the actual carrying out of the purposes enunciated in either of the above mentioned statutes than that which would exist between the County Planning Commission and the carrying out of the designated purposes.

By: THOMAS O. OLSON

Assistant Attorney General