Opinion No. 60-191

October 13, 1960

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

TO: Mr. Robert D. Castner State Auditor State Capitol Santa Fe, New Mexico

QUESTION

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1. May a municipality make payments from the juvenile recreation fund to vendors, and specified personnel, for goods and services rendered to a municipally owned or operated public library, a municipally owned or operated playground, for planning of municipally sponsored juvenile activities, for the execution of such planned activities, for the planning of and construction of a building on land owned by the municipality for use by municipally sponsored activities, including adult activities if the land and building is suitable for both juveniles and adults?

2. Can a municipality disburse lump sums from the juvenile recreation fund to any organization, club, group or individual that is conducting an operation that is owned or sponsored by the municipality, or must such costs be presented individually to the governing body of the municipality, and payment be made upon individual billings?

3. Can a municipality make lump sum or individual payments from the juvenile recreation fund to any organization, club, group, or individual that is conducting an operation that is not owned or officially operated by the municipality?

4. Can a municipality make payments from the juvenile recreation fund for goods or materials that will be used in juvenile recreation programs, if such goods or materials will be placed or used in a building or on grounds that are not owned, leased, or under the jurisdiction of the municipality?

5. Do these answers apply to the county juvenile recreation funds as well as to municipal juvenile recreation funds?

CONCLUSIONS

1. Yes.

2. Payment must be made on individual billings.

3. No.

4. See Analysis.

5. Yes.

OPINION

*{*593}* **ANALYSIS**

The answers to your first question can be found in prior opinions of this office. The governing body of a municipality can make payments from the juvenile recreation fund for goods and services rendered to a municipally owned or operated public library, Attorney General Opinion No. 6173, May 31, 1955, Attorney General Opinion No. 57-285, November 5, 1957, for a municipally owned or operated playground, Attorney General Opinion No. 6466, June 13, 1956, and for the planning and execution of municipally sponsored juvenile recreation programs, Attorney General Opinion No. 59-121, August 26, 1959. The latter opinion impliedly authorizes the planning of a building for juvenile recreation activities, and the construction of such a building is authorized by Section 72-14-14, N.M.S.A., 1953 Compilation, (P.S.). Adult activities may be included if the facilities are suitable for both juvenile and adult use, Attorney General's Opinion No. 57-285, November 6, 1957.

Your second question concerns lump sum payments in advance to groups or persons conducting proper municipal recreation programs. A lump sum payment in advance allows the group or person to whom the payment is made to determine the ultimate use of the money. Prior opinions of this office have stressed that the responsibility for the expenditure of juvenile recreation funds cannot be delegated. These funds should be kept separate, and strictly accounted for, Attorney General's Opinion No. 5866, December 8, 1953. They may not be turned over to a subordinate board or agency, Attorney General's Opinion No. 6466, June 13, 1956. While they may be used for planning purposes, they may not be paid in a lump sum to a county planning commission for the commission's use in planning recreational activities and facilities, Attorney General's Opinion No. 59-81, July 28, 1959, and Attorney General's Opinion No. 59-121, August 26, 1959. The latter opinion also held that costs and expenses of a planning commission should be presented as they arise, and paid individually. We are of opinion that *{*594}* juvenile recreation funds may not be paid in lump sums to groups, clubs, organizations, or individuals conducting proper juvenile recreational activities, but that all costs and expenses of such groups or persons must be presented to the governing body of the municipality, and paid individually as they arise. In no other way will the governing body retain control over the specific uses to which the recreation funds are put.

In answer to your third question, we refer to Attorney General's Opinion No. 6253, August 15, 1955. That opinion held that juvenile recreation funds could not be donated to the Girl Scouts, Boy Scouts or Salvation Army juvenile recreation programs. The opinion went on to add that no donation could be made to a Community Service Center, if not owned by the municipality. All such donations were held contrary to Article IX, Section 14, Constitution of New Mexico, which prohibits counties and municipalities, among others, from donating to persons, associations, or public or private corporations.

Although private groups are conducting activities that could properly be conducted by the municipality with juvenile recreation funds, the Constitution prevents donations to such groups. Juvenile recreation expenditures must be limited to municipally owned, operated, or sponsored activities. Hence, we hold that neither lump sum nor individual payments may be made to private groups or persons conducting juvenile programs that are not municipally owned, operated, or sponsored.

Your fourth question, in part, is much like your third. If the municipality may not make a donation of money to a private group or individual, we fail to see how the municipality can pay for goods that will be turned over to private groups or persons. Even where the city retains title to the goods, but gives the control and use of those goods to private groups or individuals, it is readily seen that the municipality has made a donation of the use of the goods. Either arrangement runs afoul of the constitutional prohibition against making donations to persons, associations, or public or private corporations.

The question is not only one of ownership, but also involves control and use of the facilities furnished by the municipality. In Attorney General's Opinion No. 6459, June 6, 1956, we ruled that payments from the juvenile recreation fund can only be made for facilities that are under the control or supervision of the governing body of the municipality, so that the governing officials of the municipality could insure that the facilities or goods provided were used for the purposes intended by law. In Attorney General's Opinion No. 59-202, December 4, 1959, we ruled that a municipality could not expend the juvenile recreation fund to purchase band uniforms and basketball uniforms for the local high school. The gravamen of that ruling is that, by turning over the control of the uniforms to the school authorities, the governing officials of the municipality lost all power to ensure the use of the uniforms for juvenile recreation purposes. It is our opinion that it is contrary to law for the governing officials of a municipality to expend the juvenile recreation fund for goods or facilities that are to be turned over to private groups or individuals not under the control of the governing officials of the municipality. This is not to say that goods or facilities purchased by the municipality cannot in any case be **placed** or **used** on grounds or in buildings not owned, leased, or under the jurisdiction of the municipality. For example, suppose the municipality decided to sponsor a juvenile basketball league, and bought basketballs for that purpose. We would certainly not require the municipality to construct a municipal basketball gymnasium just to make use of the basketballs. It would be perfectly proper for the governing officials of the municipality, or **their** agents in charge of the league, to use the equipment in the local high *{*595}* school gymnasium, if such were made available. But we do hold that the basketballs could not be turned over to the high school to use as it sees fit. It might even be possible to place or store the municipally owned goods in the local high school, or a local Y.M.C.A., for instance, rather than use municipal storage space. Any such arrangement must be under adequate safeguards to ensure that access to the goods, and control over them, is not surrendered to some group or person over whom the municipal officials have no control. Therefore, we hold that the municipal officials may not purchase goods or facilities with juvenile recreation funds if the title to those goods, or the control over those goods, is surrendered to a group or person not under the control of the municipality. But where title to the goods is retained, and

adequate control over the goods is ensured, there is no prohibition on **placing** the goods, or **using** them, in buildings or on grounds not owned, leased, or otherwise under [Illegible Word] jurisdiction of the municipality.

Our answers to the preceding questions apply with equal force to the county juvenile recreation fund as to the municipal juvenile recreation fund. Both funds are created by the same statute, both are for the same purposes, and both have the same limitations. See Section 72-14-14, N.M.S.A., 1953 Compilation (P.S.).

By: Norman S. Thayer

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