

Opinion No. 60-208

October 28, 1960

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

TO: Mr. James L. Hine Clerk-Manager Ruidoso, New Mexico

QUESTION

QUESTION

Can the Village of Ruidoso expend its juvenile recreation funds for maintenance of a Boy Scout building, to purchase library books of juvenile interest, and to create a village operated and supervised fly fishing pond?

CONCLUSION

See Analysis:

OPINION

{*621} ANALYSIS

Expenditures of the juvenile recreation fund are controlled by Section 72-14-14, N.M.S.A., 1953 Compilation, (P.S.). The pertinent part of that section provides:

"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; . . ."

Attorney General's Opinion No. 57-285, November 5, 1957, held that juvenile recreation funds could be expended for the support {*622} and maintenance of a municipally-owned public library, so long as the facilities provided were primarily suitable for juveniles. It was there pointed out that an expenditure for books that were primarily of interest to adults would be an abuse of discretion on the part of the municipal officials. But we think that the purchase of library books that are primarily suitable for juveniles, and placing them in a municipally owned or operated public library, would be proper expenditure of the juvenile recreation fund.

A publicly owned and operated fly fishing pond is unquestionably a recreational activity. If the pond is primarily suitable for juveniles, we think it represents a proper expenditure of the recreation fund. Note that Section 72-14-14, *supra*, provides that adults are not to

be excluded from using such facilities, if the facilities are suitable for both juvenile and adult use. However, as the statute requires, and as our previous opinions have repeated, the facilities acquired or provided through the expenditure of juvenile recreation funds must be primarily suitable for juveniles.

Attorney General's Opinion No. 6253, August 15, 1955, and No. 60-191, October 13, 1960, ruled that municipalities could not make donations from the juvenile recreation fund to such organizations as the Boy Scouts. Two grounds of objection were advanced. The first was that such a donation is contrary to the Constitution of New Mexico, Article IX, Section 14, which prohibits donations by municipalities to persons, associations, or public or private corporations. The second ground of objection was that, by donating to such organizations, the governing officials of the municipality surrendered control over the money or property donated to a group that is not under the control of those municipal officials. With control surrendered, there is no guarantee that the money or property will be used for juvenile recreation purposes. We recognize that organizations such as the Boy Scouts conduct activities that are properly classified as juvenile recreation, but have consistently held that donations to such groups are prohibited. If you make repairs or improvements to a Boy Scout building in Ruidoso, you have made a donation to that organization. Furthermore, your governing officials have no power or control over the property to see that it is used primarily for juvenile recreation. The Boy Scouts, or other owners, might sell it out the next day at a profit, and never again use it for juvenile recreation activities. Therefore, we are of the opinion that the juvenile recreation fund may not be expended for maintenance of a Boy Scout building.

You have also requested advice on what other expenditures have been approved by this office. We have approved expenditures such as payment of the salary of a public librarian where she acts as an instructor of juveniles, purchase of land and buildings for recreational facilities for juveniles, payment for the expenses of persons sent to schools or courses to acquire supervisory skills to be used in a juvenile recreation program, purchase of an automobile to be used solely in connection with the recreation program, maintenance of a municipally owned and operated playground, planning of juvenile recreation programs, and planning and construction of a building for juvenile recreation programs. We have disapproved expenditures of these funds for the purchase of high school band uniforms and basketball uniforms, as well as donations to various groups such as the Boy Scouts and Girl Scouts. In general, we feel that if a recreational activity is primarily suitable for juveniles, and is municipally owned, operated, or sponsored, then it is a proper subject for expenditure of the juvenile recreation fund.

By: Norman S. Thayer

Assistant Attorney General