

## Opinion No. 62-100

July 26, 1962

**BY:** OPINION OF EARL E. HARTLEY, Attorney General Thomas A Donnelly, Assistant Attorney General

**TO:** Mr. Richard A. Parsons, Assistant District Attorney, Third Judicial District, Ruidoso, New Mexico

### QUESTION

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May the Village of Ruidoso Downs properly expend monies from their Juvenile Recreation Fund for the purpose of constructing a juvenile recreation center which would be located upon realty owned by the Volunteer Fire Department of Ruidoso Downs, a non-profit corporation?

#### CONCLUSION

See analysis.

### OPINION

#### ANALYSIS

Section 72-14-14, N.M.S.A., 1953 Compilation, as amended, designates the purposes for which juvenile recreation funds may properly be expended. This section sets out in applicable 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** 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 \* \* \*"

(Emphasis supplied).

Under the portion of the statute quoted above, municipalities and counties are required to use juvenile recreation funds only for the purposes therein stated. It is implicit also, that such restriction necessitates that the municipality or county receiving such funds maintain some degree of legal control over the juvenile recreation facilities constructed or over the personnel paid from such funds in order to guarantee the use of these funds as required by statute. Proper provision could be made to insure sufficient right of control by the municipality or county over the use of juvenile recreation facilities

constructed through expenditures of juvenile recreation funds where the municipality or county executes a written contract, lease or other agreement supported by legal consideration providing for such right of control.

Where the title to realty upon which juvenile recreational facilities sought to be constructed is vested in other than the municipality or county, and where there is no right of control maintained by such governing body by means of an agreement of purchase for such land or a lease agreement, no right of control is maintained over the juvenile recreational facilities placed thereon, and thus there is no legal assurance that the facilities will be maintained for the purposes for which the legislature made such monies available.

Article IX, Section 14 of the New Mexico State Constitution prohibits any municipality, except as specifically otherwise authorized in the constitution, from in any manner lending or pledging its credit, or making any donation to or in aid of any person, association or public or private corporation. In Attorney General's Opinion No. 186, dated August 15, 1955, it was held that such constitutional provision precluded the use of juvenile recreation funds from being donated or contributed to organizations or groups not a part of the municipality **or to facilities not owned by the municipality**. Similarly, in Attorney General's Opinion No. 60-14, February 2, 1960, it was recognized that a municipality and a public school system could properly enter into a written joint agreement under the terms of which the school and the municipality shared the expenses of remodeling and maintaining an old school building as a joint venture for school use during the day and for juvenile recreation after school hours. It was held therein under the facts presented, that a municipality could properly expend juvenile recreation funds for such joint venture **since the city maintained a right of control** under such agreement so as to meet the requirements imposed under Section 72-14-14, N.M.S.A., 1953 Compilation as to use.

Under the clear import of the above authorities, it is our opinion that a municipality or county may not properly permit the expenditure of juvenile recreation funds for the construction of juvenile facilities upon land the title to which is not held by the municipality or county, or over which the municipality or county does not possess a definite legal right of control so as to guarantee the use of such facilities for the purposes expressly designated under the provisions of Section 72-14-14, N.M.S.A., 1953 Compilation, as amended.