

Opinion No. 62-123

October 2, 1962

BY: OPINION OF EARL E. HARTLEY, Attorney General Joel M. Carson, Special Assistant, Attorney General

TO: Mr. James B. Stapp, Attorney for the City of Roswell, P.O. Box 1838, Roswell, New Mexico

QUESTION

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Is a municipality authorized under the provisions of Section 72-14-1 et seq., N.M.S.A., 1953 Compilation, (now amended by Chapter 5, Laws of 1962), to expend funds from its cigarette tax revenues on behalf and in support of juvenile recreational activities at Walker Air Force Base?

CONCLUSION

See analysis.

OPINION

ANALYSIS

New Mexico Statute Ann. 72-14-14 (1953) has been amended by Chapter 5, Laws of 1962. The pertinent part of Chapter 5, is 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; provided further, that as a prerequisite to participation in the use of such funds provided for by this section, 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 this section shall be deposited."

The Juvenile Recreation Fund is a special fund created for the purposes set forth in Chapter 5, Laws of 1962, supra. By acceptance of the money and the creation of the "Juvenile Recreation Fund" there is placed upon the municipal officials the duty to see that the funds are spent according to the provisions of the above mentioned statute, Opinions of the Attorney General No. 57-104, May 1957; No. 6459, June 1956. The

responsibility for the expenditure of the funds cannot be delegated, or turned over to a subordinate board or agency, nor may lump sum payments of the funds be made to a group or association. The expenses of the juvenile recreation program must be paid as they arise. Opinion of the Attorney General 60-191, October 1960. The City of Roswell may not make a lump sum donation of Recreation Fund money to Walker Air Base.

The City of Roswell may, however, expend Chapter 5 funds for juvenile recreational activities on Walker Air Base if city officials maintain **complete** control over the activities for which the money is expended. If the control and supervision of the recreational activities remain in Walker Air Base personnel to the exclusion of the officials of the City of Roswell, an expenditure of Recreation Fund monies for the activities and facilities would be illegal. The expenditure of recreational funds would also be illegal if control over the facilities and activities could be taken from municipal officials at any time. Opinion of the Attorney General 60-208, October 1960.

The Juvenile Recreation Fund was created for the benefit of all the juveniles of the municipality. The funds cannot be used to provide recreational activities for a portion of the population to the exclusion of the remainder of the population. For example, the funds may properly be used to provide uniforms for a boys basketball team, formed under city supervision. Obviously, the expenditure would discriminate against girls. It would also favor certain boys over others since not every boy in the city can play on the team. Nevertheless, all boys in the city have an opportunity to try out for the team. If however, this was the only basketball team in the city, and the membership on the team was limited to boys from a certain section of town, the expenditure of Recreation Fund monies would be illegal. Therefore, if recreational funds are used to provide recreational activities for the children of Walker Air Force Base personnel which are not otherwise available to the juveniles of the city, and the children of Roswell are excluded from participation in the activities, the expenditure of the funds would be improper.

If the City of Roswell maintains control over the activities financed by Chapter 5, Laws of 1962, Recreation Fund funds, if the activities are primarily suitable for juveniles, and if the juveniles of Roswell are not excluded from participation in the activities, then the expenditure of Juvenile Recreational Funds for activities conducted on Walker Air Base would be proper, Attorney General Opinion 60-208, October 1960.

For additional information concerning the limitations on the use of juvenile recreational funds, see Opinion of the Attorney General No. 60-191, October, 1960.

Your question referred only to the expenditure of juvenile recreation funds for **activities** on Walker Air Base. Our opinion is limited to that question. Attorney General's Opinion No. 62-100, July 1962 would seem to prohibit the use of Juvenile Recreation Funds for the construction of Juvenile **facilities** on Walker Air Base, unless the city maintained some right of control over such facilities.