

Opinion No. 63-146

October 29, 1963

BY: OPINION of EARL E. HARTLEY, Attorney General

TO: Mr. Floyd Cross Superintendent State Park and Recreation Commission P. O. Box 958 Santa Fe, New Mexico

QUESTION

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May a city or county use cigarette tax money to help establish camping areas if facilities for juvenile recreation are provided in connection with the camping areas?

CONCLUSION

See analysis.

OPINION

{*334} ANALYSIS

The portion of the statute applicable to your question reads as follows:

"C. 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**. . . Provided that adults may not be excluded from the use of any such facility which is suitable for use by both juvenile and adults; . . ." Section 72-14-14 C, N.M.S.A., 1953 Compilation (P.S.). (Emphasis supplied).

This pertinent portion of the present statutory language is identical with that in the former Section 72-14-14, N.M.S.A., 1953 Compilation on this subject. Therefore the Opinions written on the older section are still applicable.

Your question may be answered in the affirmative providing that certain requirements are first met. The first requirement is that any facilities built with cigarette tax money must be primarily suitable for juvenile recreation. This does not mean that adults are prohibited from using the facilities. See Attorney General's Opinion No. 57-285; Section 72-14-14, N.M.S.A., 1953 Compilation (P.S.).

In addition to the first requirement, it has been the opinion of this office that the city or county furnishing the tax money must be able to maintain control over the moneys furnished and over the use of the facilities constructed. Attorney General's Opinion 57-

164. If facilities are not constructed with the money, then the city or county must still be able to maintain control of the activities and these activities can not be restricted for the use of any private group such as 4-H Clubs. Attorney General's Opinion No. 61-20; Attorney General's Opinion No. 62-123.

If facilities are constructed with the money, the city or county furnishing the funds must be able to maintain control over the facilities. In order to exercise control it is necessary that the city or county have some legal interest in the land on which the facilities are constructed. Attorney General's Opinion No. 62-100. If the facilities were constructed on property in which the city or county had no interest then the governing body's control would be a nullity.

If the city or county does not own the real property in fee, it may, under appropriate circumstances, {*335} negotiate a lease of the real property. To assure the city or county of continuing control over the facilities, the duration of the lease should be at least as long as the estimated life of the facilities. This requirement applies to any structures constructed with public funds on land not owned in fee by the state or political subdivision of the state. Otherwise Article IX, Section 14 of the Constitution of New Mexico would be violated because of the donation of public funds contrary to that section. See Attorney General's Opinions: 1953, No. 191, 1958, No. 18.

We are therefore of the opinion that the money may be expended in the manner you indicate in your question if all the requirements we have mentioned are complied with.

By: Wayne C. Wolf

Assistant Attorney General