

Opinion No. 63-93

August 7, 1963

BY: OPINION of EARL E. HARTLEY, Attorney General

TO: Mr. John W. Flynn State Planning Officer State Capitol Santa Fe, New Mexico

QUESTION

FACTS

The County of San Miguel, together with the City of Las Vegas, the Town of Las Vegas, the East Las Vegas City Schools and West Las Vegas Municipal Schools and the State of New Mexico are contemplating entering into a proposed contract with a private concern whereby a comprehensive plan would be drawn up to assist such parties to formulate goals, objectives and policies. The Federal Government has agreed to provide financial assistance to the State, county, and local bodies under the Urban Planning Provisions of the Housing Act of 1954, as amended.

QUESTION

May the County of San Miguel use county recreation fund monies for its share of the cost of financing such comprehensive area planning?

CONCLUSIONS

See Analysis.

OPINION

{*203} ANALYSIS

Section 72-14-14, N.M.S.A., 1953 Compilation, as amended by Laws 1963, Chapter 177, Section 1, governs the purposes for which moneys in the county recreational fund may be expended. This section as amended, provides in applicable part:

"Receipts from the tax on cigarettes . . . collected under Section 72-14-1 through 72-14-17 New Mexico Statutes Annotated, 1953 Compilation, shall be paid over to the state treasurer and shall be placed by him in a fund to be known as the 'county and municipality recreational fund' **which fund is for use for juvenile recreational facilities and salaries of instructors and other employees necessary to the operation of such juvenile facilities by the various counties exclusive of municipalities within their borders.**

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. . . ." (Emphasis added)

Under the above statute, juvenile recreation fund moneys may be utilized solely for purpose having as their direct object the providing of juvenile recreation facilities or for salaries to operate such facilities.

In Attorney General's Opinions Nos. 59-81, July 28, 1959, and 59-121, August 26, 1959, it was recognized that planning may be construed as falling within the {**204*} permissible statutory purposes for which juvenile recreation funds may be expended. However, it was expressly pointed out that "lump sum" transfers of juvenile recreation funds to another public body or agency was not permissible.

It may be readily seen that planning for the construction and operation of juvenile recreational facilities in a county is a legitimate and proper purpose and one for which juvenile recreational funds may be employed. Planning is a necessary prerequisite to determining the need for particular types of juvenile facilities, the area where such facilities should be located to best serve the public, and to realize the maximum use of juvenile facilities.

While the expenditure of juvenile recreation funds under Section 72-14-14, supra, as amended, derived from the state tax placed on cigarettes, is proper when used to plan juvenile recreation facilities, the method of disbursement of such funds is however, subject to most careful control and scrutiny.

In order to utilize such funds for planning purposes there must be a **direct and obvious** relationship between the planning objectives and the statutory purposes quoted herein above.

Thus, juvenile recreational funds may be spent by the county for planning purposes where the specific planning undertaken is primarily for the development of juvenile recreational facilities by such public body. Such funds may not properly be used for other planning purposes, and should be used to pay for only carefully phased planning purposes having a direct and clearly evidenced objective of instituting juvenile recreational projects.

Extreme care should be employed in instances where several municipalities and the county are cooperatively joining in the development of a master plan for such areas, to clearly segregate any juvenile recreational funds of a county and to expend such funds for planning purposes only where the expenditure **is directly tied to the development of juvenile recreational facilities for the county**, since it is provided under Section 72-14-14, N.M.S.A., 1953 Compilation, Subsection D, that a diversion or use of such moneys for other purposes is a misdemeanor. In order to clearly demonstrate that the juvenile recreation fund moneys of the county are being expended in strict compliance

with the provisions of law -- the moneys should be paid out by the county for planning purposes only where the specific and clearly delineated portion of the plan is clearly tied into the development of juvenile recreational facilities in such county.

By: Thomas A. Donnelly

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