Opinion No. 67-136

November 15, 1967

BY: OPINION OF BOSTON E. WITT, Attorney General

TO: Honorable William G. Shrecengost State Representative Box 68 Lincoln, New Mexico

QUESTION

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1. Is the purchase of stock in a corporation conducting a recreational facility within the provisions of Sections 6-4-1, et seq., N.M.S.A., 1953 Compilation?

2. Can a municipality with a population of less than 5,000 acquire property for recreational purposes within the boundaries of another municipality and, if so, does such other municipality have to consent to such acquisition?

3. If a municipality can acquire a recreational center within the boundaries of another municipality, is its operation subject to the payment of taxes?

4. Could a race track be considered a recreational facility within the meaning of Sections 6-4-1, et seq. or of 14-17-15, N.M.S.A., 1953 Compilation (P.S.)?

CONCLUSIONS

1. No.

2. Not unless both municipalities operate a joint recreational facility.

3. Not if a joint facility is being operated.

4. No.

OPINION

*{*218}* **ANALYSIS**

Sections 6-4-2 and 6-4-3, N.M.S.A., 1953 Compilation read as follows:

6-4-2. Dedication of lands and buildings as playgrounds and recreation centers. -- The governing body of such municipality or county may dedicate and set apart for use as playgrounds, recreation centers, zoos and other recreation purposes, any lands or buildings, or both, owned or leased by such municipality or county, and not dedicated or

devoted to another or inconsistent public use; and authorized or provided by law for the acquisition of lands or buildings for public purposes by such municipality or county, acquire or lease lands or buildings, or both, within or beyond the constituted limits of such municipality or county, for playgrounds, recreation centers, zoos and other public recreational purposes, and when the governing body of the city, town or county, so dedicates, sets apart, acquires or leases lands or buildings for such purposes, it may provide for their conduct, equipment and maintenance according to the provisions of this act [6-4-1 to 6-4-9], by making an appropriation from the general municipality or county funds.

6-4-2. Establishing system of supervised recreation -- Powers of managing boards. -- The governing body of any such municipality or county may establish a system of supervised recreation and it may, by resolution or ordinance, vest the power to provide, maintain and conduct playgrounds, recreation centers, zoos and other recreational activities and facilities in the school board, park board, or other existing body or in a play ground and recreation board as the governing body may determine. Such governing body or any board so designated shall have the power to maintain and equip playgrounds, recreation centers, zoos and buildings thereon, and it may, for the purpose of carrying out the provisions of this act [6-4-1 to 6-4-9], employ play leaders, playground directors, supervisors, recreation superintendents, zoo directors or such other officers or employees as they deem proper; make such expenditures therefor as the board shall deem necessary or advisable, from any fund provided for by said municipality or county, said expenditures not to exceed the amount of such appropriations. Such governing body may determine by ordinance or resolution the method by which zoo animals shall be obtained, traded, loaned borrowed or disposed of, notwithstanding the provisions of section 4 [6-4-4] of this act, or sections 6-5-1 through 6-5-9, or sections 14-47-1 through 14-47-12, New Mexico Statutes Annotated, 1953 Compilation.

These sections authorize the acquisition of land or buildings, or both, and equipment by a municipality for the purpose of furnishing playgrounds, recreation centers, zoos and for other **public** recreational purposes, either within or without its municipal boundaries. These provisions only authorize such acquisition by purchase or by lease. They do not specifically authorize a municipality to purchase some of the capital stock of a corporation conducting a recreational enterprise.

In considering the act as a whole *{*219}* the conclusion is necessarily reached that the legislature intended the municipality to have the exclusive control of the operation of such premises, for the benefit of such municipality, although it may delegate this.

The only exception appears in Section 6-4-5, supra, which reads as follows:

6-4-5. Establishment of joint recreational systems. -- Any two [2] or more municipalities or counties may jointly provide, establish, maintain and conduct a recreation system and acquire property for and establish and maintain playgrounds, recreation centers, zoos and other recreational facilities and activities. Any school board may join with any

municipality or county in conducting and maintaining a recreational system, and may expend such funds as are included in its maintenance budget for such purpose.

It is apparent that the purchase of some of the capital stock of a corporation which operates a recreational facility does not comply with the legislative requirements of Sections 6-4-1, et seq., supra. The exclusive operation and control of the facility is not in the municipality. Neither is it a joint operation of two municipalities. Investment by a municipality in the capital stock of such a corporation is not contemplated by Sections 6-4-1, et seq., supra.

Your next question is whether one municipality may acquire property within the boundaries of another, with or without the consent of the second municipality. Although the question refers to a population figure, this does not appear to be material to the consideration of this question. The question appears to be answered by Section 6-4-4, supra. Under this section, it would appear that the acquisition and maintenance of such a recreational facility within the boundaries of another municipality would have to be done pursuant to a joint agreement under this section. If such joint agreement is entered into there would appear to be no prohibition against the facility being located entirely within the bounds of one of the municipalities so cooperating, **so long as it is readily available to the public of both communities.** This cannot, of course, be done without the **consent of both** communities.

It is stated in **Rhyne, Municipal Law,** as follows:

A municipality in exercising the powers granted to it by the state legislature, may expend public funds whether generated by taxation or by borrowing, **only for public purposes.** (Emphasis added)

It logically follows that the public purpose must be that of the residents of the community expending the public funds and not that of some other subdivision. There would be some question as to whether the purchase or lease of a recreational facility in another community would be an expenditure primarily for the benefit of the residents of the community acquiring it rather than for the primary benefit of the community in which the facility is located. This principle, together with the language of the sections of our statutes involved and of our Constitution, would prevent one municipality in this state from acquiring a recreational facility located in another municipality except under the provisions of Section 6-4-5, supra, for the establishment of a joint facility.

If the facility is acquired under the provisions of 6-4-5, supra, and located in another municipality, it would not be subject to taxation.

The last question is also answered in the negative. Section 6-4-2, supra, permits a municipality to acquire playgrounds, zoos, recreation centers or lands for other recreational purposes. It is stated in **Sutherland Statutory Constructions,** 3rd Ed., Sec. 4909 *{*220}* as follows:

A variation of the doctrine of **noscitur a sociis** is that of **ejusdem generis.** Where general words follow specific words in an enumeration describing the legal subject, the general words are construed to embrace only objects similar in nature to those objects enumerated by the preceding specific words.

The language of Sections 6-4-2, et seq., supra, refers to **playgrounds, recreation centers, zoos** followed by the general language "and other recreation purposes." Under the principle above enumerated such other recreational purposes must be similar to those enumerated objects. **State v. Morley,** 63 N.M. 267.

Numerous cases have attempted to define 'recreation" and "recreational activities". In **McClure v. Bd. of Ed. of City of Visalia,** 38 Cal. App. 500, 176 P. 711, Words and Phrases (Perm. Ed.) Vol. 36A, p. 122, the court said:

"Recreational activities," within the meaning of Civic Center Act, establishing a civic center in every public school house, includes dancing; "recreation" meaning refreshment of strength or spirits after toil and "activity" meaning a physical or gymnastic exercise, an agile performance.

It has been held that a library, being a place of study, of storing books and of recreational reading was not a "place of recreation", **City of Ft. Worth v. Burnett,** (Tex.) 115 S.W. 2d 436, Words and Phrases (Perm. Ed.) Vol. 36A, **p.** 122.

In **Appeal of Municipal Authority of Borough of West View,** 381 Pa. 416, 113 A.2d 307, Words and Phrases, (Perm. Ed.) Vol. 36A, p. 123, the term "recreation center" was construed. The court stated:

"Recreation center" within statute authorizing boroughs to provide and maintain indoor recreation centers refers to public parks, parkways, playgrounds, playfield, swimming pools, public baths, bathing places and gymnasiums, and that portion of municipal water authority's building which was leased to borough, and rented out for private social affairs and meetings of various organizations was not such a recreation center as would constitute a public use and entitle property to tax exemption.

A horse race has been defined as a "game" within the meaning of various statutes pertaining to "gaming." **Shropshire v. Glascock,** 4 Mo. 536, 31 Am. Dec. 189, Words and Phrases, (Perm. Ed.) Vol. 18 p. 85; **Toomey v. Penwell,** 76 Mont. 166, 245 P. 943, 45 A.L.R. 993, Words and Phrases, (Perm. Ed.) Vol. 18 p. 85.

In **State v. Williams,** 35 Mo. App. 541, Words and Phrases, (Perm. Ed.) Vol. 18 p. 86, the court stated:

While horse racing and cockfighting may be classed generally as games in the sense that they are amusements, diversion, or sports, yet they are not such games as are commonly understood may be placed at"; and therefore their particular designation in a statute prohibiting horse racing, cockfighting, or playing at cards or games of any kind

on Sunday cannot be construed as calling for the application of the rule of ejusdem generis in construing the term games of any kind.

Although persons may attend a horse race as a source of recreation as defined, it is a matter of common knowledge that a horse race is not ordinarily attended for that primary purpose and does not normally constitute such an activity. It is not the same type of activity as is contemplated by the terms playground, zoo and recreational *{*221}* center and is not, therefore, a recreational purpose within the meaning of Section 6-4-2, supra.

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