

Opinion No. 68-33

March 15, 1968

BY: OPINION OF BOSTON E. WITT, Attorney General

TO: Mr. L. L. Scheier Clerk-Manager Town of Springer Municipal Utilities Springer, New Mexico 87747

QUESTIONS

1. May a municipality enter into a long term lease with the New Mexico Boys School for land and buildings for the purpose of setting up a recreation center for the community and the surrounding area, and which will be under the control and supervision of the municipality?
2. Can the revenue from the Juvenile Recreation Fund (cigarette tax) be expended for a partial cost of any improvements added to the land?

CONCLUSIONS

1. See analysis.
2. See analysis.

OPINION

{*58} ANALYSIS

The municipality has the power to enter into contracts in the nature of long term leases under Section 14-17-1, N.M.S.A., 1953 Compilation (P.S.). The major limitation on the municipality's contractual power is that of ascertaining that an appropriation has been made to cover such proposed contractual expense. Section 14-46-3, N.M.S.A., 1953 Compilation.

The authority for the Board of Directors of the New Mexico Boys School, a state institution, to enter into a long term lease of land and buildings with the municipality is derived from Sections 6-1-8 and 6-1-8.1, N.M.S.A., Compilation. See also, Attorney General Opinions 62-54, April 2, 1962, 64-92, July 16, 1964, 64-143. December 1, 1964. An analysis of 6-1-8 and 6-1-8.1, supra, supported by the above cited Attorney General Opinions interpreting those sections produces the result that:

If the lease is for a period exceeding 25 years duration on real property belonging to a state institution, which lease is for a consideration of \$ 100,000 or more, it shall be subject to the ratification and approval of the state legislature prior to such lease.

However, although the approval of the legislature is not needed for a lease of less than \$ 100,000 consideration, or of less than 25 years duration the approval of the State Board of Finance plus the approval of the Board of Directors of the New Mexico Boys School is necessary. Section 6-1-8, N.M.S.A., 1953 Compilation. See particularly {*59} Opinion No. 64-92, July 16, 1964.

In summary of your first question then, if the lease is for more than \$ 100,000 consideration, **and** if the lease term is for more than 25 years duration approval by the State Legislature is necessary. If the lease is for less than \$ 100,000 consideration or for less than 25 years duration the approval of the State Board of Finance is necessary. If the lease is for a use which is temporary or brief, and limited to hours when the property is not needed for public purposes of the state institution, the approval of the State Board of Finance is not necessary. I do not recognize from the facts presented that your request embraces this last alternative.

The answer to your second question is that revenue from the Juvenile Recreation Fund (cigarette tax) can be expended for the partial cost of any improvement added to the land in setting up and operating a recreation center **if** such facilities are primarily "suitable for juveniles". See Attorney General Opinion 64-156, December 28, 1964.

"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 of the funds provided for by Laws 1943, chapter 95, Section 1 to 15, inclusive, as amended, 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 Laws 1943, chapter 95, sections 1 to 15, inclusive, as amended, 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 Laws 1943, chapter 95, sections 1 to 15, inclusive, as amended, shall be deposited."

A summary of your second question then concludes that if the recreational facilities to be developed and operated are primarily suitable for juveniles, or such facilities are so situated as to be readily accessible to such young persons, the revenue from the cigarette tax can be expended for the partial cost of any improvements added to the land for the purpose of setting up and operating a recreational center.

By: Spencer T. King

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