OPINION
69-56

March 24, 1969 (OPINION)

Mr. Comart M. Peterson

Attorney for the Park District

Tioga, North Dakota

RE: Cities - Recreation Systems - Dances for Teen-Agers

This is in reply to your letter with regard to the powers of a city recreation system under Chapter 40-55 of the North Dakota Century Code.

You state that you have been presented specific questions as to whether they have authority to hold dances for the teen-agers, hire name bands, charge admission to defray the cost and at the same time invite teen-agers from surrounding towns to also attend.

You state that the members of the board are also concerned with what supervision would be required at the dances and what liabilities they could incur.

We agree generally with your thought that the language of these statutes does appear to grant very broad powers to the systems established thereunder.

We do not find a decision of the North Dakota Supreme Court directly on the question of the appropriateness of dancing projects under said Chapter 40-55. We do note that in each sections 40-55-02 through 40-55-05 mention is made of "community centers, playgrounds, recreation centers and other recreational and character building purposes." We do note further that McQuillin, Municipal Corporations, 3rd Edition, Volume 13, Section 3702 at page 23 informs us in part:

> "Whether on the ground of the public welfare, the public health, or the like providing recreational facilities or projects for the public is usually an authorized public improvement. Reference has already been made to auditoriums, opera houses, stadiums, etc. In addition, are the opening, establishing and maintaining of public parks, squares, and other pleasure resorts, as playgrounds for children, golf courses, bathing beaches, swimming pools and like places for diversion and recreation."

We are most used to the concept of municipal recreational projects as including such items as golf courses, swimming pools and similar facilities. However, said Chapter 40-55 is not in terms limited to "outdoor" recreation. Community centers and recreation centers could well be utilized for such functions as dancing. On such basis, we would be inclined to the viewpoint that dancing was an appropriate recreational project within the purposes specified in said Chapter 40-55.

The limitation of such dances to the "teen-agers" does present a more difficult problem. The broad authority granted would certainly not include the right to discriminate against individuals or groups of citizens in dispensing the benefits of a recreational program. On the other hand, assuming that "teen-age dances" were merely one phase of a total program for the benefit of the entire community we are sure there would be no objection to special programs for special distinct groups of citizens as a part of an overall program for all citizens of the community.

The suggestion of hiring bands may also be subject to some question. The statutory provision section 40-55-03 of the North Dakota Century Code provides that the board, commission or other body "may employ play leaders, playground and recreation center directors, supervisors, recreation superintendents and such other employees as they deem proper," for the purpose of carrying out the provisions of this chapter. While a "name brand" does not necessarily come within the specific described types of employees, and while it might be suggested that the band is more closely related to an independent contracting entity for the purpose of furnishing a part of the program, we would not suggest that the total purpose is beyond the scope of the chapter of itself where appropriate to an otherwise proper recreation program.

The statutory provisions do provide for utilization of public moneys, acceptance of grants or donations of money (Section 40-55-07) etc.; however, no specific provision is made for charging admission. Within the limits you specify, i.e., "to defray the cost", we know of no specific legal objection, assuming of course that the admission fee does not prevent the program from being available to all eligible citizens of the community. We would assume that the admission fee would be in an amount within the means available to at least the majority of citizens.

You mention also the possibility of inviting teen-agers from surrounding towns to attend. The cases we have examined, McLain v. South Pasadena, 318 P. 2d., 199, (Cal. 1957) and Schreiber v. Rye, 278 N.Y.S. 2d. 527 involve instances where the court found itself constrained to consider and approve the right of a local public body to prevent attendance in the recreational facility by non-residents where the large number of non-residents actually prevented use of the facility by residents. No specific comment is made in these cases as to the right of a public body to admit non-residents to its facilities. To the extent that non-resident attendance does not prevent or inconvenience the local citizenry in utilizing the benefits of the facility, and the system is actually reimbursed for actual expenses incurred in furnishing the facility, we would see no legal objection to same on the same basis as surplus production of other public projects may be sold.

You state that the members of the board are also concerned with what supervision would be required at the dances and what liabilities they could incur. You are undoubtedly familiar with the provision of section 40-55-10 to the effect that "The provision, conduct, operation, and maintenance of a system of public recreation under the provisions of this chapter shall be a governmental function of

municipalities, school districts, or park districts." On such basis where the program was reasonably maintained and controlled as such a governmental function, we would assume that governmental immunity would apply to any legal action brought against the municipality or its officers. It would seem unlikely in any case that the public body could be held liable for injuries incurred. In this respect we believe it interesting to note the provisions of sections 53-02-08 and 53-02-10 of the 1967 Supplement to the North Dakota Century Code. Section 53-02-10 specifically provides that the provisions of said section with regard to admission of persons under the age of eighteen years do not apply to dances sponsored and supervised by a municipality, school district, or civic, fraternal, or religious organization. No similar exception is made with regard to the remainder of the chapter. We would therefore assume that the provisions thereof with regard to policing, supervision, etc., would apply to the type of project you have in mind. In addition we might reiterate that the exception to the provision of section 53-02-10 refers not only to sponsorship, but also to supervision. We would therefore assume that if the system intended to take advantage of the exception to said section 53-02-10, it would be necessary to provide adequate supervision on behalf of the sponsoring organization.

HELGI JOHANNESON

Attorney General