

**OPINION
79-73**

January 16, 1979 (OPINION)

The Honorable Kent Jones
State Senator
District No. 15
Webster, North Dakota 58382

Dear Senator Jones:

This is in response to your letter of December 28, 1978, wherein you request an opinion of this office relative to the application of state revenue sharing funds and the eligibility of public recreation systems to receive such funds in view of the provisions of the initiated measure approved by the electorate in the November, 1978 general election. You submit the following in your letter:

I have been asked to request your opinion concerning the eligibility of public recreation systems to receive state revenue sharing funds.

Chapter 40-55 of the North Dakota Century Code provides that either a city, a township, a school district, or a park district may establish a public recreation system. In November the voters approved an initiated measure which provides for state revenue sharing for cities, city park districts, counties, and townships but no provision is made for public recreation systems. May the governing body of a city spend its revenue sharing funds on a city-established public recreation system? If the territory encompassed by the city-established public recreation system extends beyond the city limits, is the public recreation system eligible to receive revenue sharing funds from any other political subdivisions?

We have reviewed the provisions of Chapter 40-55 of the North Dakota Century Code and agree with your stated conclusion that a city, township, school district or park district may establish a public recreation system.

With regard to the expenditure or allocation of moneys received by the municipality or other entitled entities under the provisions of the Revenue Sharing Fund created by the initiated measure which was passed by the electorate at the November, 1978 general election, we would note Section 4 thereof which provides as follows:

SECTION 4. DISBURSEMENT OF LOCAL FUNDS - REPORTS.) Cities, city park districts county governments, and townships may receive and expend payments made pursuant to this Act and such payments shall be considered an appropriation in the budget of the local unit of government, which, upon the order of the governing body may be disbursed in the manner other disbursements are made. The state revenue sharing moneys so received shall be treated as a part of the local tax effort of each local unit of government receiving such funds. The state treasurer may require local units of government receiving state

revenue sharing funds to provide such information or copies of reports as may be necessary to administer the Act. (Emphasis Supplied)

Clearly the measure enumerates those specific governmental units which can receive and expend payments received under the Act. The payments are to be considered as an appropriation in the budget of such local unit of government and are to be expended and disbursed in the manner other disbursements are made. The measure also providing that state revenue sharing moneys so received shall be treated as a part of the local tax effort, we can only conclude that such funds may be expended by the municipality or other governmental unit upon any item for which it may expend regularly budgeted funds. This would also include expenditures pursuant to Chapter 40-55 of the North Dakota Century Code, in support of any public recreation system falling under the respective or joint jurisdictions of the governmental units. Such appropriation, expenditure and disbursement, however, would appear to be a discretionary matter within the authority of the entity or municipality receiving such funds. This would appear true whether the city-established public recreation system extended beyond the city limits or not, it being apparent from the provisions of Chapter 40-55 of the North Dakota Century Code, that such extension of authority and responsibility may be undertaken by the municipality.

Accordingly, we are of the belief that funds received by the municipality may, upon proper appropriation, budgeting and disbursement, be spent pursuant to the purposes and needs of a public recreation system over which that particular municipality or entity may exercise authority pursuant to the provisions of Chapter 40-55 of the North Dakota Century Code.

We trust that the foregoing general observations, comments and expressions will adequately reflect our thinking upon the matter submitted and will be of interest and assistance to you.

Sincerely,

ALLEN I. OLSON

Attorney General