

OPINION
46-42

June 4, 1946 (OPINION)

CITIES

RE: Power to Provide Recreational Facilities

This will acknowledge the receipt of your letter of June 1, 1946, in which you request the opinion of this office as to whether the city of Enderlin may, in this year's budget, provide for the lighting of a skating rink, leasing ground for a softball diamond, etc. In other words, you desire to be informed whether your city has the legal right to provide for and maintain recreational facilities such as a playground, skating rink, and a softball diamond.

There is an urgent need for legislative clarification of our state laws relating to the powers of cities to provide for the recreational facilities mentioned in your letter. The powers of cities are enumerated under section 40-0501 of the North Dakota Revised Code of 1943. There is no provision in any of the subsections under said section which specifically authorizes a city to establish and maintain such recreational facilities.

Subsection 8 of section 40-0501 authorizes a city to, "lay out, establish, --- park, or otherwise improve and regulate the use of streets, alleys, --- , and public grounds.

The term "public grounds" as used in subsection 8 of section 40-0501 is not defined. It is my opinion that it refers to the grounds upon which a public building, such as a city hall, is located, not the establishment and maintenance of public playgrounds.

Subsection 1 of section 40-0501 of the Revised Code authorizes a city to, "enact or adopt all such ordinances, resolutions, and regulations, - - - as may be proper and necessary to carry into effect the powers granted to such municipality or as the general welfare of the same may require, - - -."

It is, of course, obvious that the general welfare requires suitable recreational centers for children and young people. And it is conceivable that our supreme court might hold that, within the tax limitations prescribed by statute, a city is authorized under its police power to provide recreational facilities such as playgrounds, ball diamonds, skating rinks, etc. For it is generally recognized that juvenile delinquency is often due to the lack of such facilities. But since the statutes do not specifically confer such authority, it is my opinion that cities do not have the authority to expend public moneys for such purposes.

Prior to the enactment of chapter 196 of the Session Laws of 1927, cities were, under the provisions of section 4016 of the 1925 Supplement to the 1913 Compiled Laws, authorized, when empowered to do so by a two-thirds vote of the voters, to issue bonds for the purchase or erection of municipal auditoriums, armories, gymnasiums, public baths, or other public places of amusement or recreation - -

-. The clause "or other places of amusement or recreation" was left out when chapter 196, laws 1927, reenacted section 4016 of the 1925 Supplement. And that clause was also omitted from subsection 2 of section 21-0306 of the 1943 Revised Code.

If a city were authorized to issue bonds for playgrounds, etc., it would appear that it would impliedly have the right to establish and maintain such recreational facilities without a bond issue, provided taxes would be sufficient within the tax limitations statute to do so. But since a city is not now authorized to issue bonds for recreational facilities other than those specifically mentioned in the statutes, and since a city is not definitely authorized to levy a tax therefor, I am forced to the conclusion that a city does not have the legal right to establish and maintain the recreational facilities mentioned in your letter.

However, your school district has the right to establish playgrounds, including a skating rink and ball diamond, in connection with its physical education program and if your city has a park district, a playground, skating rink, and ball diamond can be established and maintained under its jurisdiction. It is my opinion that recreational facilities may be established and maintained cooperatively by the park board and school district.

It is my opinion that the city is authorized under its police power to provide for lighting and police supervision. Under subsection 10 of subsection 40-0501 of the revised code, a city is authorized, "to provide for the lighting of streets, alleys, avenues, parks, and public grounds.

NELS G. JOHNSON

Attorney General