

OPINION
46-63

April 30, 1946(OPINION)

CITIES

RE: Authority to Construct Swimming Pools

Re: City of Valley City Swimming Pool

Your letter of April 26, addressed to the attorney general, re the above matter, has come to my desk.

The opinion referred to in the Municipal League Bulletin of March, 1946, was given with reference to a city which, I believe, had no park district. I have examined the cases referred to in your letter, to-wit, Vallaley v. Board of Park Commissioners, 111 N. . 615, at page 617, (16 N.D. 25(, Bischke v. City of Minot, 215 N.W. 81, (55 N.D. 531), and City of Fargo v. Geary, 156 N.W. 552, (33 N.D. 64).

The writer of this opinion wrote the opinion referred to in the Municipal League Bulletin and it was written upon the theory that a swimming pool is, and must be, a public bath. Certainly, I know of no present-day public baths other than swimming pools. Section 21-0306 (2a) clearly authorizes municipalities to construct public baths. I believe, further, that the park district has the right to improve parks by the construction of swimming pools. I know, as a matter of fact, a number of the park districts in this state have established and maintained swimming pools. It is further my opinion, that section 40-4912 giving the park board "the sole and exclusive authority to maintain, govern, and improve the land and to provide the erection of structures thereon", merely gives the park board exclusive control over such lands as are acquired by the park district as such. I see no legal reason why the city, independently of the park district, may not construct a swimming pool under the provisions of section 21-0306 (2a). It would be my opinion that that is the authority under which the city should proceed rather than subdivision 2f of the above section.

It is my opinion that the cases of City of Fargo v. Geary and Bischke v. City of Minot clearly indicate that the park district as such has sole control only over parks and improvements made by the park district itself. These cases hold that, although the park district may assume control over streets adjacent to the park, that such control exists only in cases where the park board has by proper proceeding assumed such control, and until such action is taken, the city has sole control over the streets and highways adjacent to the park. I see no reason why the same rule should not apply in case of any other park improvement. That is, if a city in the exercise of its statutory powers, has exercised any of the powers given it by section 21-0306, it would have sole control until such time as control has been surrendered to the park district.

Therefore, it is my opinion that the City of Valley City, as a city, may construct a swimming pool under the authority of section 21-0306 (2a). Certainly the park district would have this power, if it had the means of financing the same, and in the absence of such finances, the city, if it can do so within its debt limit, would have the same authority.

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Attorney General