

OPINION
50-19

October 16, 1950 (OPINION)

CITIES

RE: Proper Use of Public Park

Your letter of the twelfth instant relating to use of part of the land conveyed to the city for park purposes for airport use has been received.

You say that this land was deeded to the city for park purposes with a provision for reversion unless there was continued use as a park and public playground and place of public recreation. You say that the city desires to use a portion of this land as a municipal airport and ask an opinion as to whether such use would cause a reversion to the original grantee.

Cities have authority to establish public parks, sections 40-0501 (9) and 40-4912 N.D.R.C. 1943, and to establish and maintain municipal airports, section 40-0501 (58).

The city has power to acquire real property by purchase, lease, or gift for any lawful purpose. Section 40-0501 (55). The donor has the right in making a gift to the city to restrict the use of the property as he may see fit so long as such use is a lawful one within the power of the city.

However, when he makes the gift and restricts its use to that of a park, a playground, and a place of public recreation, the city may use the property for any purpose as long as that purpose is, within the holdings of the courts, a proper use of a park.

So far as we are able to learn, our courts have never passed upon the question as to whether a specific use was or was not proper use of park property, that is property dedicated to use as a public park. Therefore, we must look to the holdings of other courts which our courts would refer to as a guide in determining any such question.

The Supreme Court of Kansas has passed squarely on the question of whether or not use of park land for an airport was a proper use of park property. The court held that such use was a proper use of a portion of a public park. See city of Wichita v. Clapp et al. 125 Kans. 100,263 Pac. 12, 63 A.L.R. 478.

The authorities are gathered in 39 Am. Jur. 819, section 24. Following these holdings, it is our opinion that your city may use a part of the property for airport purposes without danger of a reversion.

WALLACE E. WARNER

Attorney General