

**OPINION
60-204**

January 21, 1960 (OPINION)

MUNICIPAL GOVERNMENT

RE: Public Recreation System - Funds

This is in reply to your letter of January 18, 1960 in regard to the handling of funds collected by a two and a half mill tax levy for a city recreation system pursuant to section 40-5509 of the 1957 Supplement to the N.D.R.C. of 1943.

You point out that the Public Recreation System Act, (chapter 40-55 of the 1957 Supplement to the N.D.R.C. of 1943), does not specifically set out the manner of handling the moneys collected. You express the opinion that the funds would be payable to the City Treasurer and kept by him in a special fund in approximately the same manner as Park District funds, School District funds, and other special funds of the city.

In substance we must agree with your thoughts on this matter. The tax levied is in the nature of an excess levy. (SEE section 40-5509 of the 1957 Supplement to the N.D.R.C. of 1943). Provision is specifically made in the Act that certain moneys received for recreation purposes thereunder are to be deposited with the Treasurer of Municipality ". . . . to the account of the recreation board or commission or other body having charge of such work," (SEE section 40-5507). Note the provision of section 175 of the Constitution of this state to the effect that:

No tax shall be levied except in pursuance of law, and every law imposing a tax shall state distinctly the object of the same, to which only it shall be applied."

It is thus our conclusion that the tax levied herein must be collected by the County Treasurer and turned over to the Municipal Treasurer pursuant to section 40-4013 of the N.D.R.C. of 1943. The City Treasurer would of course be required to credit the amount received for this purpose to the proper fund pursuant to section 40-4014 of the N.D.R.C. of 1943, which presumably would be the same account referred to in section 40-5507 of the 1957 Supplement to the N.D.R.C. of 1943.

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Attorney General