

**OPINION
60-51**

March 21, 1960 (OPINION)

COUNTIES

RE: County Park Board - Expenditure of Funds Outside of District

This is in reply to your question whether or not a county park board under chapter 11-28 of the 1957 Supplement to the North Dakota Revised Code of 1943 can expend funds received through taxation beyond its geographical area. The contemplated expenditure would be on property on which the county would either acquire control or a long term lease.

You also ask whether the park board could grant money to a nonprofit corporation to be used by such corporation for the development of recreational areas within the county where the county board would control the disposition and use of the funds.

As to the first question, we are unable to find any authority which authorizes the board of park commissioners to expend its funds other than in an area within the park district. Section 11-2805 sets forth the powers and duties of the park commissioners. The powers and duties are set forth rather extensively, but in none of these provisions do we find where the board is authorized to expend money for recreational purposes beyond its area.

We find such qualifying language as "area under the jurisdiction, supervision, control and management of the board." It would be difficult, if not impossible, for the Burleigh County Park Board to exercise jurisdiction, supervision, control and management of a recreational area not within the county.

Generally speaking any governmental body has only jurisdiction in the area over which it governs except as otherwise specifically provided for. This holds true in townships, municipalities and counties. It would naturally follow the same principle applies to county park commissions where such district has the same boundaries as the county. The county park commissioners, and for that matter the park board, is created by the county, and as such their jurisdiction would be limited to be within the geographical area of the county.

Some police powers are granted to the park board to establish regulations within one-half mile from adjoining or adjacent lands. This provision, however, cannot be construed as granting authority to the board to develop and expend moneys on a recreational area beyond the geographical boundaries of the county. This conclusion is supported when we consider that the Legislature provided for joint county park districts. Even in permitting a joint county park district, the Legislature limited such joining to counties which are contiguous to a natural navigable lake. The Legislature then specifically limited the joint

county park district to establish and maintain public parks, playgrounds, and recreational areas within the joint district. It is presumed that the Legislature thought it advisable to specifically limit the joint county park district. It is unlikely that a county park board would have greater authority than a joint county park board. As to the county park district we must assume that the Legislature took for granted that the county could not exercise any jurisdiction beyond its geographical area. The funds in question are raised by a tax levy throughout the county except cities and villages which are already levying such tax. Cities and villages, of course, may come under such tax if the governing body of such municipality by resolution consents to the levy.

It is extremely doubtful whether the funds could be expended in an area other than where it was raised without specific legislative authority to that effect.

It is therefore our opinion that a county park board may not expend funds raised by taxation beyond the geographical area of the county.

As to the question whether the park board could grant money to a nonprofit corporation for the development of recreational areas within the county, we do not believe that such authority is given to park boards. Under the section enumerating the powers and duties of the park commission, the language is replete with matters relating to cooperation between said state, municipal, and other public and private agencies. Such provisions, however, do not authorize the granting of money to any nonprofit corporation. These statutes must be construed to mean that the park board is authorized to cooperate with such organizations, governmental or otherwise, but this does not include the granting of funds. The statutes must be construed as authorizing the park board to permit these other agencies to join with the park board in developing and maintaining certain parks for recreational purposes. The moneys received by the park board through taxation must at all times be expended under the direct supervision and control of the park board. This is a duty that is imposed upon the park board and cannot be delegated to some nonprofit organization.

This conclusion does not prohibit any of the enumerated organizations, both political and private, from joining with and assisting the park board in developing parks and recreational areas. The supervision and control of such areas, however, at all times must remain in the park board.

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