

OFFICIAL OPINION NO. 76-113, Authority of county commissioners to appropriate money for recreational purposes

December 2, 1976

Mr. Eugene Jones
State's Attorney
Mellette County Courthouse
White River, South Dakota 57579

OFFICIAL OPINION NO. 76-113

Authority of county commissioners to appropriate money for recreational purposes

Dear Mr. Jones:

You have presented the following factual situation:

FACTS:

The Board of County Commissioners of Mellette County, by resolution, has authorized expenditures of \$10,000 of county funds to be used for the construction of a swimming pool by the City of White River, who will own, operate and maintain the pool. Matching funds to the city have been approved by the Bureau of Outdoor Recreation.

Regarding these facts, you ask:

QUESTION:

Does the Board of County Commissioners of Mellette County have sufficient authority under SDCL 42-2-1 to, by resolution, authorize the expenditure of funds for the purpose above-outlined?

SDCL 42-2-1 permits a system of public recreation and playgrounds operated by any county, municipality or school district and permits them to acquire equipment, maintain land, buildings or other recreational facilities and expend its funds therefor. SDCL 42-2-5 then provides:

Any county, municipality, or school district delegating the operation of a recreational system to a recreation board may levy a tax of not to exceed one mill on all taxable property, which levy shall be in addition to all other levies and exclusive of any levy limitations, when voted for such purpose, by a majority vote of the electors at a regular or special election called therefor; provided, however, that such levy shall not be authorized unless the elections are conducted in such manner as to provide separate returns and canvass of votes for rural and urban populations, where rural property would be subject thereto, and the issue carries in both areas.

However, it must also be noted that SDCL 42-2-5 makes reference to the expenditure of funds when the political subdivision has delegated the operation of a recreational system to a recreation board established pursuant to SDCL 42-2-2. Therefore, in my opinion, SDCL 42-2-1 and 42-2-5 are exclusive of each other, and a recreation system operated independently of a recreation board may be financed from the general fund of the participating political subdivision. Such expenditures may be authorized by action of the respective governing body without voter approval.

Your inquiry raises the additional question relative to the power of a county pursuant to SDCL 41-16-2 and 41-16-3. Under those sections, the Board of County Commissioners or the governing body of a municipality, in cooperation with either the Game, Fish and Parks Commission or with each other, may acquire, develop and maintain park and recreation areas within the respective counties or adjacent to their respective municipalities and are empowered to purchase land, equipment and materials and to hire services and labor in order to effectuate such cooperation.

Under SDCL 41-16-3, for the purposes of carrying out these powers, the boards of county commissioners or the governing bodies of municipalities may appropriate, out of the general fund of their respective counties or municipalities, a sum of not to exceed five thousand dollars per year and may make a levy sufficient to produce a sum of not to exceed five thousand dollars per year, which levy is in addition to the maximum levy now permitted by law.

It is my opinion that the authority vested in municipalities and counties pursuant to SDCL 41-16-2 and 41-16-3 is exclusive of the expenditure authority contained in SDCL 42-2-5. However, it should be noted that by its terms, SDCL 41-16-3 limits such appropriation to

five thousand dollars per year.

In answer to your question, therefore, the Mellette County Commission has the authority, pursuant to SDCL 42-2-1, to approve a ten thousand dollar expenditure for construction of a swimming pool in White River. Further, SDCL 41-16-2 and 41-16-3 appear to be broad enough to authorize an expenditure not in excess of five thousand dollars for swimming pool construction. Of major significance, however, is the fact that *both* 42-2-2 and 41-16-2 require a cooperative effort of the political subdivisions involved here. In other words, an outright gift or donation is not contemplated by law, and the county would have to be involved in construction, operation, and maintenance of the project pursuant to a joint agreement.

Respectfully submitted,

WILLIAM J. JANKLOW
ATTORNEY GENERAL

WJJ:JD:cms