

Date Issued: May 18, 1981 (AGO 81-48)

Requested by: A. S. Benson, Bottineau County State's Attorney

- QUESTION PRESENTED -

Whether the amendments to sections 11-28-05(9) and 11-28-06 of the North Dakota Century Code, effective July 1, 1981, require a county to share tax proceeds generated by the county's park and recreational areas tax levy with a city or city park district within the county which controls recreational activities that are beneficial to the general populace of the county.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that the amendments to sections 11-28-05(9) and 11-28-06, N.D.C.C., effective July 1, 1981, do not require a county to share tax proceeds generated by the county's park and recreational areas tax levy with a city or city park district within the county which controls recreational activities that are beneficial to the general populace of the county.

- ANALYSIS -

Section 11-28-06, N.D.C.C., as amended effective July 1, 1981, provides:

At the time of levying taxes for other county purposes, the board of county commissioners shall consider the certificate and budget statement of the board of county park commissioners and shall levy each year upon all taxable property in the county a tax sufficient in amount to pay the actual necessary expenses and activities program of the board of county park commissioners, including construction, improvement, repair, operation, and maintenance of the park and recreational areas and their facilities under its control and those recreational activities of benefit to the general populace of the county which are under the control of a city or a city park district within the county, not exceeding one mill on each dollar of the taxable valuation of the county, which tax may be levied in excess of the mill limit fixed by law for taxes for general purposes. No levy in excess of one mill shall be made without approval of the eligible voters in the county at a special or general election. The county auditor shall credit the proceeds of such tax to the separate fund of the board of county park commissioners. This levy shall not apply to cities that already have a park levy unless the governing body of such city by resolution consents to such levy. (Emphasis supplied).

This section allows the board of county commissioners to levy a one mill tax to pay for necessary expenses incurred by the board of county park commissioners in the maintenance of parks and recreational areas under its control and recreational areas under the control of a city or city park district within the county which benefits the general

populace of the county. This section also prohibits the application of this tax to cities that already have a park levy unless the city consents.

Section 11-28-05(9), N.D.C.C., states, in pertinent part, that the board of county park commissioners shall:

certify to the county auditor the amount of money necessary to meet the estimated expenses and costs of . . . maintaining . . . the park and recreational areas under its control and those recreational activities of benefit to the general populace of the county which are under the control of a city or a city park district. . . .

Neither section requires a county to share the county's park and recreational areas tax proceeds with a city or city park district.

The intent of the Legislature in amending sections 11-28-06 and 11-28-05(9), N.D.C.C., was to allow counties to assist cities in maintaining their parks if the county decided it would benefit the people of the county. The following excerpts are from the minutes of the 1981 Senate Finance and Taxation Committee:

Senator Lee, sponsor, said . . . Passage of S.B. 2250 will legalize a procedure . . . to enable counties to assist city park boards.

Jim Borlaug, McLean County Auditor, said . . . This bill would give authority to the county, if they so desire, to use park fund money to assist in park activities or improvements on parks that are not owned or controlled by the county but determined to be in the general interest of people of the county. . . . (Emphasis supplied).

Sections 11-28-06 and 11-28-05(9), N.D.C.C., with the amendments effective July 1, 1981, allow a county to share its park and recreational areas tax proceeds with a city or city park district within the county if the county determines that the recreational activities to be funded would benefit the people of the county. Any such payment to a city or city park district is solely within the discretion of the board of county commissioners.

- EFFECT -

This opinion is issued pursuant to section 54-12-01, N.D.C.C. It governs the actions of public officials until such time as the question presented is decided by the courts.

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