

FILE

Subject

*Cities
Recreation Systems
Counties
Park & Recreation*



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STATE OF KANSAS

Office of the Attorney General

State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

VERN MILLER
Attorney General

August 15, 1974

Opinion No. 74-274

B. E. Nordling
Hugoton City Attorney
P.O. Box 250
Hugoton, Kansas 67951

Dear Mr. Nordling:

You advise that the City of Hugoton and Stevens County are interested in jointly participating in the construction, maintenance and operation of a swimming pool. At the present time, you state, the city is maintaining and operating the city swimming pool located in one of the city parks. The present pool needs to be enlarged, and also needs major repairs to be usable next summer. In the face of these needs, the question has arisen whether the city and the county might jointly undertake the construction, maintenance and operation of a new pool, or the renovation of the old.

K.S.A. 1973 Supp. 19-2801 commences thus:

"Any county may establish and maintain public parks, museums and recreation grounds and make additions to the same within said county as hereinafter provided, including the maintenance of any city, park district or township park, museum and recreation grounds used generally by residents of the county under agreements with the governing bodies thereof"

Subsequent sections in this enactment deal more specifically with the financing of such programs. The statute does not speak specifically of swimming pools. It does not entail, in our view, a strained or tortured construction of this statute, however, to regard it as authority for joint participation by the county with the city in the construction, and operation of a recreational facility in a park, such as a swimming pool. Other

B. E. Nordling
August 15, 1974
Page Two

recreational facilities commonly found in parks, such as tennis courts, shuffleboard, children's playground equipment, and others, might appropriately be regarded as appurtenant to "recreation grounds," and we would regard a swimming pool as authorized thereunder. K.S.A. 79-1947, as amended by ch. 432, L. 1974, authorizes a one-half mill levy for establishment and maintenance of parks under K.S.A. 19-2803.

K.S.A. 19-2801 *et seq.* may not prove fully suitable and adaptable to your purposes, however. In that instance, the county may wish to rely upon the powers granted under Senate Bill 175, now ch. 110, L. 1974, known as county home rule. Section 2(a) commences thus:

"Counties are hereby empowered to transact all county business and perform such powers of local legislation and administration as they deem appropriate, subject only to the following limitations, restrictions, or prohibitions"

The enumerated restrictions and prohibitions are not pertinent here. Clearly, the construction, maintenance and operation of a swimming pool is a matter of purely "local legislation and administration," and is thus an appropriate subject for the exercise of county home rule powers. Subsection (b) commences thus:

"Counties shall apply the powers of local legislation granted in subsection (a) of this section by resolution of the board of county commissioners. If no statutory authority exists for such local legislation other than that set forth in subsection (a) of this section and the local legislation proposed under the authority of such subsection is not contrary to any act of the legislature, such local legislation shall become effective upon passage of a resolution of the board and publication in the official county newspaper."

Thus, to the extent that the provisions of K.S.A. 19-2801 *et seq.* may be ill-suited to the joint venture contemplated by the city and county, the county is free, by resolution, to confer upon itself the necessary authority required to enable it to enter upon the joint undertaking with the city. Thus, by adoption of a resolution providing that the county shall be authorized and empowered to enter into agreement with the City of Hugoton, or any city in the county, for construction of a swimming pool and operation thereof on any property designated by and agreed upon by the commissioners with the city governing body, the county could then, pursuant to that self-conferred authority, proceed as it deems fit. It would then probably find it desirable and helpful to enter into an interlocal agreement with

B. E. Nordling
August 15, 1974
Page Three

the city pursuant to K.S.A. 12-2901 *et seq.*, the necessary elements of which are set out at K.S.A. 12-2904. The respective responsibilities of the county and city for financing the undertaking, and for maintenance and operation, may be as defined by the parties in the agreement. If the pool is to be constructed on city property, the agreement may provide for the "manner of acquiring, holding and disposing of real and personal property used in the joint or cooperative undertaking."

I hope that the foregoing observations will be helpful. Insofar as concerns the authority of the county to proceed as has been proposed, we think that the authority may be furnished by the county itself, through a resolution adopted pursuant to ch. 110, § 2(b), L. 1974. An interlocal agreement would be an appropriate vehicle for resolving and implementing the financial and management considerations involved in the undertaking. Doubtless, if the matter proceeds, further specific questions will arise. If so, please do not hesitate to call upon us.

Yours very truly,



VERN MILLER
Attorney General

VM:JRM:jsm