

FILE

Subject

*Cities
Recreation Systems*

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STATE OF KANSAS

Office of the Attorney General

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VERN MILLER
Attorney General

November 5, 1974

Opinion No. 74-352

The Honorable Wallace M. Buck, Jr.
4008 Stratford Road
Topeka, Kansas 66604

Dear Representative Buck:

We have your letters of October 11, requesting review of Opinion No. 74-38 in view of the additional facts you have supplied.

In that opinion, we concluded that in our view, K.S.A. 1973 Supp. 12-1914 authorizes the City of Topeka to combine its park department and recreation commission. That conclusion was based in part on the assumption that the city recreation commission was established following approval by the voters pursuant to K.S.A. 12-1904.

In your recent letter, you state that the recreation commission was established by resolution on February 3, 1953, following a joint meeting of the board of education of the City of Topeka, and the Topeka city commission, on October 13, 1952, pursuant to a petition requesting the establishment, maintenance and conduct of a recreation system. The proposition to appear on the ballot was approved as follows:

"Shall a public play-ground and recreation system be operated by the City of Topeka and School District no. 23 also known as the City School District of the City of Topeka acting jointly as provided in the Kansas 1949 Statutes, Section 12-1901 through Section 12-1910 with an additional tax levy sufficient to raise the amount required for the operation thereof, not to exceed the statutory limitations?"

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This information indicates that the procedure followed was that set out at K.S.A. 12-1904 and 12-1905, and conforms to the assumption underlying our earlier opinion.

K.S.A. 1973 Supp. 12-1914, enacted as § 2, ch. 121, L. 1965, commences thus:

"Whenever the governing body of any city shall deem it advisable to combine the operation and administration of its park system and *its public recreation system*, it shall publish a notice of its intention to combine the two systems and establish a single department." [Emphasis supplied.]

In view of the fact that the present recreation commission was formed jointly by the board of education and the city, you inquire whether it constitutes a "public recreation system" as used in the italicized language, i.e., whether it is a public recreation system of the city. K.S.A. 1973 Supp. 12-1913, enacted as § 1, ch. 121, L. 1965, contains the following definition:

"For the purposes of this act the following words and phrases shall have the meaning ascribed to them in this section....(b) '*Public recreation system*' shall mean any system of public recreation and playgrounds established by a city under the provisions of article 19 of chapter 12 of the *Kansas Statutes Annotated*." [Emphasis supplied.]

The present recreation commission was established jointly by the city or the school board under the provisions of article 19 of chapter 12, K.S.A. It may be argued, on the one hand, that because the recreation commission was established jointly by the city and the school board, that it is therefore not one created by the city alone, and it therefore may not be combined with the operation and maintenance of the city park system under the authority of K.S.A. 1973 Supp. 12-1914. It may also be argued, on the other hand, that the Topeka recreation commission was as a matter of fact established by the city pursuant to art. 19 ch. 12, K.S.A., and that this remains so notwithstanding the city acted jointly with the school district in so doing, and that therefore, the recreation commission may properly be combined with the operation of the city park system

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under K.S.A. 1973 Supp. 12-1914.

The definition of "public recreation system," supra, purports to be a comprehensive and exclusive definition of that term for purposes of the statutory enactment authorizing combining of recreation and park programs. The definition permits a city to combine the operation and maintenance of a recreation system which is established by it, with the city park system. A public recreation system organized jointly by a city and school district is not one which is "established by a city," under K.S.A. 1973 Supp. 12-1913. The Topeka Recreation Commission, you advise, was established not by the city alone, but jointly by the city and the board of education. Accordingly, K.S.A. 1973 Supp. 12-1913 et seq., provides no authority for combining the Topeka Recreation Commission with the city park department.

Yours very truly,



VERN MILLER
Attorney General

VM:JRM:tp