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ATTORNEY GENERAL OPINION NO. 82-192

Dr. Merle R. Bolton
Commissioner of Education
State Department of Education
120 East Tenth Street
Topeka, Kansas 66612

Re: Cities and Municipalities--System of Public
Recreation and Playgrounds--Establishment and
Operation

Synopsis: A board of education of a unified school district, on its own initiative, may establish and operate a system of public recreation and playgrounds, under the authority of K.S.A. 12-1901. In addition, if such action is taken, the board of education, under the authority of K.S.A. 1981 Supp. 12-1902, may delegate the operation of the system to a recreation commission created by the board of education. However, if a board of education, on its own initiative, establishes such a system, the provisions of K.S.A. 1981 Supp. 12-1904 to K.S.A. 1981 Supp. 12-1908 (as amended by L. 1982, ch. 77, §1), inclusive, are inapplicable, and the board of education must fund the system with moneys derived from the school district's general fund tax levy, and with gifts received by the board, as authorized by K.S.A. 12-1903. In addition, since the provisions of K.S.A. 1981 Supp. 12-1908, as amended, are inapplicable to a system of public recreation and playgrounds established by a board of education on its own initiative, a recreation commission, established by said board of education, cannot certify a budget to the school board, which the school board is required to fund through the imposition of a separate property tax levy.

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Finally, the provisions of K.S.A. 1981 Supp. 12-1902 do not prohibit a school district from establishing a system of public recreation and playgrounds, although a city located wholly or partially within the boundaries of the school district is operating a system of its own, and such action by a school district has no effect upon the system of public recreation and playgrounds being operated by the city. Attorney General Opinion No. 74-66 is withdrawn. Letter opinion, dated August 8, 1969, to Jan G. Banker, VI Op's of the Att'y Gen. 595, is affirmed. Cited herein: K.S.A. 12-1901, K.S.A. 1981 Supp. 12-1902, K.S.A. 12-1903, K.S.A. 1981 Supp. 12-1904, K.S.A. 12-1906, 12-1907, K.S.A. 1981 Supp. 12-1908 (as amended by L. 1982, ch. 77, §1).

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Dear Dr. Bolton:

You pose several questions concerning the provisions of K.S.A. 12-1901 et seq., which concern the establishment, maintenance and operation of a system of public recreation and playgrounds by cities or school districts. Specifically, you inquire whether the Board of Education of Unified School District No. 229 (USD 229) can establish such a system and delegate the responsibility of operating the system to a recreation commission established by the school board, while denying the commission the power to certify a budget to the school board, which the school board would be required to fund through the levy of property taxes. If this can be done, you also inquire whether the board of education, having established such a recreation system, can submit to the voters of the school district, at some subsequent date, the question of whether a one mill tax levy should be imposed to operate and maintain the recreation system. Finally, if both the foregoing questions are answered in the affirmative, you ask what effect such action would have on the public recreation and playgrounds system currently being operated by the Recreation Commission of the city of Leawood, since a portion of the city is included in USD 229.

In regard to your final inquiry, you explain that a portion of the city of Leawood is included in USD 229, while the remainder of the city is included in Unified School District No. 512. The city of Leawood has established and is operating a system of public recreation and playgrounds, the operation of which is the responsibility of a recreation commission established by the

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governing body of the city. The city has levied a property tax on all the taxable property within the city for the purpose of operating and maintaining the city recreation and playgrounds system. If USD 229 also were to levy a tax, on all the property within the school district, for the purpose of maintaining the school district's recreation and playgrounds system, those persons who own property which is located in both the city of Leawood and USD 229 would be subject to two taxes, one by the city and one by the school district, for the operation of separate public recreation and playgrounds systems.

You also explain that this matter is further complicated by the fact that a portion of the cities of Overland Park and Olathe are included in USD 229 and, while neither city operates a system of public recreation and playgrounds under the provisions of K.S.A. 12-1901 et seq., each has a parks and recreation department and levies property taxes to support the same. Moreover, USD 229 also contains territory which is included in the Shawnee Mission Park District, which was created pursuant to K.S.A. 19-2859 et seq., and which provides recreational activities and levies property taxes to support those activities. Thus, within the boundaries of USD 229, at least four, separate governmental entities, each of which is provided for by state statute, currently are providing recreational activities and are levying property taxes to pay for those activities.

Whether the Board of Education of USD 229, on its own initiative, also may provide a system of public recreation and playgrounds depends upon an interpretation of K.S.A. 12-1901, K.S.A. 1981 Supp. 12-1902 and 12-1904, and K.S.A. 12-1906.

K.S.A. 12-1901 provides:

"Any city or school district may operate a system of public recreation and playgrounds, acquire equipment and maintain land, buildings or other recreational facilities, employ a superintendent of recreation and assistants, [and] vote and expend funds for the operation of such a system." (Emphasis added.)

K.S.A. 1981 Supp. 12-1902 provides:

"Any city or school district may operate such system independently, or may cooperate in its conduct in any manner mutually agreed upon, or may delegate the operation of the system to a recreation commission created

by either or both of them, but the programs and services within such recreation system shall not be conducted by both the city and school district each acting independently of the other. In any city or school district where a recreation commission has been established, said recreation commission shall have responsibility to operate the system and all programs and services thereof." (Emphasis added.)

K.S.A. 1981 Supp. 12-1904, in relevant part, provides:

"[W]henever a petition signed by at least five percent (5%) of the qualified and registered voters of the city or school district shall be filed with the clerk thereof, requesting the governing body of the city or school district to provide, establish, maintain and conduct a supervised recreation system and to levy an annual tax not to exceed one mill for such recreation system . . . it shall be the duty of the governing body of the city or school district to cause such question to be submitted to the qualified voters thereof to be voted upon at the next regular or special election of the city or school district to be held more than thirty (30) days after the filing of such petition." (Emphasis added.)

Finally, K.S.A. 12-1906 provides:

"Upon the adoption of the proposition by a majority of those voting on it at the election, the governing body of the city or school district if acting independently or the joint governing bodies of a city and school district then acting jointly, shall by appropriate resolution or ordinance provide for the establishment, maintenance and conduct of such supervised recreation system as they deem advisable and practicable and which shall establish a commission to be vested with the powers, duties and obligations necessary for the conduct of such recreation system, the members of which shall serve without pay." (Emphasis added.)

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In a letter opinion issued by this office on August 8, 1969, to Jan G. Banker, it was concluded that the above-quoted statutes provide two separate and distinct methods for the establishment of a system of public recreation and playgrounds. In this letter opinion, it was stated:

"Under 12-1901 and 12-1902, the governing body of any city or school district may, on its own initiative, create and operate a system of public recreation, with monies from the general fund [of the city or school district].

. . . .

"A second method for the creation of a recreation system is provided for under 12-1904 to 1907. Where the governing body for one reason or another declines to exercise its authority under 12-1901 and 12-1902, the voters may require the establishment of such a program by filing a petition, signed by at least 5% of the qualified voters, directed to the governing body of either the city or the school district or both. An election is then required and if the issue passes, a annual tax levy not to exceed 1 mill is authorized in order to finance the program." (Emphasis added.) VI Op. of the Att'y Gen. 595, 596.

While a different conclusion was reached in Attorney General Opinion No. 61-250, we are constrained to concur with the above-quoted statements, and it is our conclusion that the board of education of a unified school district, on its own initiative, may establish and operate a system of public recreation and playgrounds. In addition, if such action is taken, the board of education, under the authority of K.S.A. 1981 Supp. 12-1902, may delegate the operation of the system to a recreation commission created by said board of education.

It is to be noted, however, that K.S.A. 12-1907, which concerns the appointment of recreation commission members, contains the following language:

"All recreation commissions shall consist of five (5) members to be appointed as follows: Upon the adoption of the provisions of this act by the city or school district acting independently in the manner provided in K.S.A. 12-1904 and 12-1905" (Emphasis added.)

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It also is to be noted that K.S.A. 1981 Supp. 12-1908(a), as amended, likewise provides:

"Except as otherwise provided in subsection (b), when the provisions of this act have been adopted by an election the commission shall annually . . . certify its budget to such city or school district, which shall levy a tax sufficient to raise the amount required by such budget" (Emphasis added.)

If a board of education, on its own initiative, establishes a system of public recreation and playgrounds as is authorized under K.S.A. 12-1901, said board of education is not "acting independently in the manner provided in K.S.A. 12-1904 and 12-1905" (emphasis added, K.S.A. 12-1907), since both of those statutes direct the action of a school board, after an election has been held. Moreover, where a school board, on its own motion, establishes such a system, the provisions of K.S.A. 12-2901 et seq. are not "adopted by an election" as contemplated by K.S.A. 1981 Supp. 12-1908, as amended, and thus, that statute is not applicable. Therefore, neither K.S.A. 12-1907 nor K.S.A. 1981 Supp. 12-1908, as amended, is applicable in those instances where no election has been held in regard to the establishment of a system of public recreation and playgrounds. Consequently, we are of the opinion that the Board of Education of USD 229, under the authority of K.S.A. 12-1901 and K.S.A. 1981 Supp. 12-1902, can establish a system of public recreation and playgrounds and delegate the operation of the system to a recreation commission created by said board. However, since the provisions of K.S.A. 1981 Supp. 12-1908, as amended, would be inapplicable to a system of public recreation and playgrounds established in this manner, the recreation commission could not certify a budget to the school board, which the school board would be required to fund through the imposition of a separate property tax levy.

We note further that, if a board of education, on its own initiative, creates a system of public recreation and playgrounds under K.S.A. 12-1901, there is no statutory authority for the board to call an election on the question of levying a separate property tax to fund the district's public recreation and playgrounds system. Thus, in our opinion, said board has no authority to call or hold an election on this question. Such an election can be held only if it is requested in a petition filed pursuant to K.S.A. 1981 Supp. 12-1904. Hence, where a board of education creates a system of public recreation and playgrounds on its own initiative, said board must fund the system with moneys derived from its general fund tax levy and gifts received by the board, as authorized by K.S.A. 12-1903.

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The final matter to be addressed herein is the effect that the creation of a system of public recreation and playgrounds by the Board of Education of USD 229 would have upon the public recreation and playgrounds system heretofore created and currently being operated by the city of Leawood, through the Leawood Recreation Commission. This inquiry arises due to the provisions of K.S.A. 1981 Supp. 12-1902, and a prior opinion of this office. K.S.A. 1981 Supp. 12-1902, in part, provides:

"Any city or school district may operate such system [i.e., a system of public recreation and playgrounds] independently, or may cooperate in its conduct in any manner mutually agreed upon, or may delegate the operation of the system to a recreation commission created by either or both of them, but the programs and services within such recreation system shall not be conducted by both the city and school district each acting independently of the other." (Emphasis added.)

In 1974, this office issued an opinion in which it was concluded that the above-emphasized language prohibits the independent operation of a recreational system by both a city and the school district in which the city is located. Att'y Gen. Op. No. 74-66. We strongly disagree. We believe the context of this statute indicates the purpose of the above-emphasized language is to insure that the conduct of the "programs and services" of a single system of public recreation and playgrounds, established jointly by a city and school district, are not directed by both the governing body of the city and the board of education of the school district, each acting independently of the other. In our judgment, the legislature did not want the two governmental bodies, each acting independently, to be directing the programs and services of the single system of public recreation and playgrounds that the two governmental entities had jointly established. This prohibition, however, clearly is not applicable if a city and a school district operate separate systems of public recreation and playgrounds. Thus, we are of the opinion that the establishment of a system of public recreation and playgrounds by a school district under the provision of K.S.A. 12-1901 has no effect on another system of public recreation and playgrounds being operated by a city located wholly or partially within the boundaries of said school district. Each governmental entity has the authority to operate, independently, a system of public recreation and playgrounds. K.S.A. 12-1901. Attorney General Opinion No. 74-66 is withdrawn.

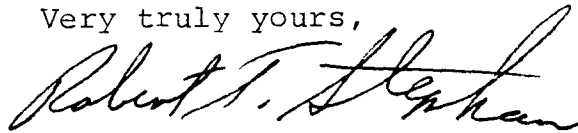
In summary, it is our opinion that a board of education of a unified school district, on its own initiative, may establish

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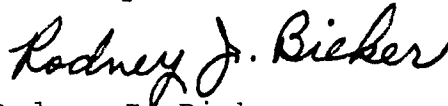
and operate a system of public recreation and playgrounds, under the authority of K.S.A. 12-1901. In addition, if such action is taken, the board of education, under the authority of K.S.A. 1981 Supp. 12-1902, may delegate the operation of the system to a recreation commission created by the board of education. However, if a board of education, on its own initiative, establishes such a system, the provisions of K.S.A. 12-1904 to K.S.A. 1981 Supp. 12-1908 (as amended by L. 1982, ch. 77, §1), inclusive, are inapplicable, and the board of education must fund the system with moneys derived from the school district's general fund tax levy, and with gifts received by the board, as authorized in K.S.A. 12-1903. In addition, since the provisions of K.S.A. 1981 Supp. 12-1908, as amended, are inapplicable to a system of public recreation and playgrounds established by a board of education on its own initiative, a recreation commission, established by said board of education, could not certify a budget to the school board, which the school board would be required to fund through the imposition of a separate property tax levy.

Finally, we are of the opinion that the provisions of K.S.A. 1981 Supp. 12-1902 do not prohibit a school district from establishing a system of public recreation and playgrounds, although a city located wholly or partially within the boundaries of the school district is operating a system of its own, and such action by a school district has no effect upon the system of public recreation and playgrounds being operated by the city.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Rodney J. Bieker
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