

FILE

Subject Cities - Recreation
System
Copy to Schools - Districts
Recreational



STATE OF KANSAS

Office of the Attorney General

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

VERN MILLER
Attorney General

February 22, 1974

Opinion No. 74- 66

Granville M. Bush
Sterling City Attorney
124 S. Broadway
Lyons, Kansas 67554

Dear Mr. Bush:

As city attorney for the City of Sterling, and as attorney for Unified School District No. 376, you inquire concerning K.S.A. 12-1901 et seq.

You advise that the city has a recreation commission appointed pursuant to K.S.A. 12-1901 et seq., and has made appropriate levies therefor for a number of years. Petitions have now been circulated and presented to the school district asking that an election be called by the school district upon the question whether it shall establish a recreation program under K.S.A. 12-1901 et seq. The petitions have been found sufficient.

Your questions are prompted because the city and school district, for reasons not here material, do not wish to operate the recreation system jointly. You inquire, first, whether an election may be held in the school district when there is an established recreation system in the city within the district. Under K.S.A. 12-1904, the duty of the school district governing body to cause the question to be submitted to a vote of its electors is not dependent upon whether a city located within the school district is already operating independently a recreation program under the act. Thus, we cannot but conclude that an election must be held upon the petition, notwithstanding the City of Sterling already operates a pre-existing recreational program.

K.S.A. 12-1902 states thus:

"Any city or school district may operate such system independently, or may co-operate in its con-

Granville M. Bush
February 22, 1974
Page Two

duct 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: Provided, however, That such recreation system shall not be conducted by both the city and school district each acting independently of the other." [Emphasis supplied.]

You inquire how the city may abolish its own recreation commission established within the city limits, should the election for a school district recreation system be approved by the electorate. The underscored language of K.S.A. 12-1902, above, prohibits the independent operation of a recreational system simultaneously by both the city and the school district. The obvious purpose of this prohibition is to avoid needless and costly duplication of programs. If the electorate of the school district, which includes the city but also a much larger area than the city proper, approve the operation of a recreational system by the district, the city is, in our view, stripped by operation of law of authority to continue its separate and independent program. Upon approval by the school district electorate of a proposition for operation of a system of public recreation by the district, the city recreation commission simply becomes functus officio, without authority to continue the operation of the municipal program.

K.S.A. 12-1904 requires that when a sufficient petition is filed,

"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."

If the petition is addressed to the school district, as you indicate, the governing body of the district must cause the question to be submitted to the voters at the next regular or special election of the school district to be held more than thirty days after the filing of such petition. If the petition is addressed to the city, the question shall be submitted at the next city election. Any election of city officials held in April of this year is not, as a matter of law, a "regular or special election of the . . . school district." Accordingly, the election to be called upon the petition must await the next regular or special election of the school district itself.

Lastly, you inquire whether, should the voters of the school district approve the establishment of a recreational program by the district, the governing body of the district would be required to appoint a recreation commission, or whether the school board

Granville M. Bush
February 22, 1974
Page Three

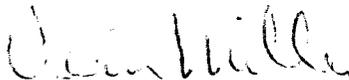
may itself operate the recreational system within the district.
K.S.A. 12-1906 states in pertinent part thus:

"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 . . . 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"

As you point out, K.S.A. 12-1902 suggests that the "city or school district may operate such system independently . . . or may delegate the operation of the system to a recreation commission created by either or both of them" There certainly exists some ambiguity in this section, when read against K.S.A. 12-1906. However, K.S.A. 12-1907 and -1908 both set out the responsibilities of the recreation commission in great detail. Under the latter section, the commission must prepare and certify to the city or school district, as the case may be, a budget, which must then levy a tax sufficient to fund the budget so certified, within statutory limits. Under K.S.A. 12-1907, the proceeds from this tax "shall be set over to the commission and used by said commission for the purposes herein set out" In the statutory scheme, the commission is given critical responsibilities in budgetary and administrative matters of the recreation program, such that we feel constrained to conclude that it is mandatory that the school district establish a recreation commission under K.S.A. 12-1906, if the proposition is approved by the voters.

If you should have further questions, please do not hesitate to contact us.

Yours very truly,



VERN MILLER
Attorney General

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