

FILE

Subject

*Counties
Park and Recreation*

Copy to



STATE OF KANSAS

Office of the Attorney General

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

VERN MILLER
Attorney General

May 24, 1974

Opinion No. 74-163

Honorable Mike Hayden
Representative, 120th District
Atwood, Kansas 66730

Dear Representative Hayden:

We have your request to construe "donation" as it relates to K.S.A. 19-2803c and the federal land and water conservation fund.

The Kansas statute provides the procedure for the establishment and maintenance of a county lake. For financing K.S.A. 19-2803c reads, in pertinent part:

"In no case shall the cost of the real estate, establishment and original improvement of said lake and recreational grounds exceed the sum of one hundred fifty thousand dollars (\$150,000), exclusive of donations and bequests."

The question then arises as to what moneys constitute "donations and bequests." Webster's Third New International Dictionary defines donation, in part, as:

"2. the action of making a gratuitous gift or free contribution esp. to a charity, humanitarian cause, or public institution or utility."

We feel that the fund for land and water conservation, which is statutorily authorized at both the federal and state level, can in no way be considered a "gratuitous gift" or "free contribution."

The word "free" connotes an unencumbered gift; if you will, one with no strings attached. The fund with which to carry out the purposes of the land and water conservation act does not come so unencumbered. 16 U.S.C.A. 460~~l~~-8 provides:

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"The Secretary of the Interior . . . is authorized to provide financial assistance to the States from moneys available for State purposes. Payments may be made to the States by the Secretary as hereafter provided, subject to such terms and conditions as he considers appropriate and in the public interest to carry out the purposes of section 4601-4 to 4601-11 of this title, for outdoor recreation: (1) planning, (2) acquisition of land, waters, or interest in land or waters, or (3) development." [Emphasis supplied.]

The act then sets forth the necessary requirements. To allow participation by Kansas, K.S.A. 74-4532 provides:

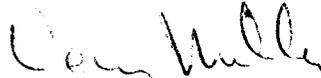
"The purpose of this act is to provide the acceptance of federal assistance under the provisions of the 'land and water conservation fund act of 1965' . . . , subject to the provisions hereof."

The fund itself is established by Congress through authorization and appropriation of tax money. As such the action becomes a regular and proper governmental function and, therefore, cannot be considered a donation as that word is commonly used.

You note in your letter that a group of citizens had expressed interest in the development of the lake. That being the case we would call your attention to K.S.A. 80-933 which provides for a township to lease lake property to certain specified groups. It may be that this possibility could be explored.

If we may be of further assistance, please contact us.

Yours very truly,



VERN MILLER
Attorney General

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