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June 1, 1992

ATTORNEY GENERAL OPINION NO. 92- 69

David C. Burns
Attorney for Unified School
District No. 440
Box 546
809 North Main Street
Newton, Kansas 67114

Larry E. Baer
Halstead City Attorney
713 N. Main, P.O. Box 224
Newton, Kansas 67114

Re: Cities and Municipalities--Public Recreation and
Playgrounds--Participants in the Recreation
Commission

Synopsis: The city of Bentley, located within U.S.D. No. 440, is not a part of a joint recreation commission created between the city of Halstead and U.S.D. No. 440 and as such, the city of Bentley has no right to representation on the commission, is not required to contribute facilities, and may continue to operate its own recreation commission. The city of Bentley will, however, be a part of the joint recreation commission taxing district. Cited herein: K.S.A. 12-1922; 12-1924; 12-1926.

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Dear Mr. Burns and Mr. Baer:

As attorney for Unified School District No. 440 and attorney for the city of Halstead, respectively, you request our opinion regarding the formation of a joint recreation commission between the city of Halstead and U.S.D. No. 440.

Within U.S.D. No. 440 is the city of Bentley. The proposed joint recreation commission would not include the city of Bentley within its organizational structure. You ask whether the current statutes require that the city of Bentley be included in the organizational structure because the city is included within U.S.D. No. 440. You also ask that assuming the city of Bentley is not entitled to be part of the organizational structure, whether it is allowed to continue to operate its own independent recreation system. Finally you ask whether the city of Bentley must make its recreational facilities available to the joint commission under the set of facts presented.

The city of Bentley is concerned with creation of the recreation commission because K.S.A. 12-1925 and 12-1927 provide that the school district and city of Halstead may levy a tax on taxable tangible property within the taxing district. K.S.A. 12-1922(d) defines "taxing district," in the case of a joint recreation system as "the area within the corporate limits of a city or the area within the boundary lines of a school district, whichever has the greater assessed valuation. . . ." If U.S.D. No. 440 becomes the taxing district, citizens living within the city of Bentley would be subject to the tax, yet potentially have no representation on the commission in Bentley's status as a city.

Membership on recreation commission is provided for in K.S.A. 12-1926:

"(a) Except as provided by subsection (b), all recreation commissions shall consist of five members to be appointed as follows: . . . (2) upon the adoption of the provisions of this act by the city and school district acting jointly, the governing bodies each shall appoint two persons who are residents of the taxing district to serve as members of the recreation commission, and the persons so selected shall select one additional person, and all of such persons shall constitute the recreation commission."

This section expressly provides that the only members on the commission shall be selected by the city and school district who are acting to form the commission. As such Bentley, as a city not a party to the commission, has no statutory right to determine membership of the commission.

A city's duties within a recreation commission are set forth in K.S.A. 12-1924 which provides:

"Any city or school district may establish a system of public recreation in the manner provided by this act. Any city or school district may establish, independently or jointly, a recreation system. The programs and services within a joint recreation system shall not be conducted by both the city and school district, each acting independently of the other. Whenever a recreation system is established, any city or school district operating or participating in the operation of a recreation system shall cooperate in providing property and facilities belonging to each such entity for recreation purposes. . . ."
(Emphasis added).

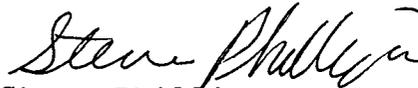
This section requires only the city and the school district participating in the recreation system to provide property and facilities. Nothing in K.S.A. 12-1924 requires a city not participating in the recreation commission to provide facilities.

Bentley is not required to contribute property and facilities belonging to it. Because the city of Bentley is not represented on the recreation commission and is not required to participate by making its facilities available to the commission, Bentley is not precluded from continuing to operate its own independent recreation system after creation of the joint commission.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Steve Phillips
Assistant Attorney General

RTS:JLM:SP:jm