

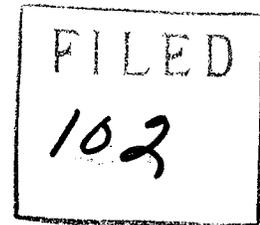
SCHOOLS:

Subject to the restrictions set forth in Section 177.101, RSMo Supp. 1967, the Doniphan R-I School District may enter into an agreement with the State Inter-Agency Council for Outdoor Recreation for a grant-in-aid from the Federal Land and Water Conservation Fund to assist the school district in the purchase of a school-community park.

OPINION NO. 102

January 30, 1970

Mr. Robert L. Dunkeson
Executive Secretary
State Inter-Agency Council
for Outdoor Recreation
Post Office Box 564
Jefferson City, Missouri 65101



Dear Mr. Dunkeson:

This letter is in response to your request for an official opinion of this office on the following question:

"Can a six director school district legally sign the Project Proposal Assurances and Project Agreement with attached General Provisions (copy enclosed). This agreement would be between a School Board and the State Inter-Agency Council for Outdoor Recreation."

Your opinion request also contained the following brief description of the facts giving rise to this request:

"The R-I School District of Doniphan proposes to enter into an agreement with the State Inter-Agency Council for Outdoor Recreation for a grant-in-aid from the federal Land and Water Conservation Fund to acquire, develop, maintain, and operate twenty-two (22) acres of a school-community park."

We have reviewed the Project Agreement with attached General Provisions and the Project Proposal Assurances, all of which were enclosed with your opinion request. Also, we have examined the copy of the Bureau of Outdoor Recreation Grants-In-Aid Manual provided to us by your office. We assume these are all of the documents which contain any terms or conditions applicable to the proposed agreement between the R-I School District of Doniphan and the

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State Inter-Agency Council for Outdoor Recreation. In addition to these factual matters, we have reviewed the Land and Water Conservation Fund Act of 1965, 16 U.S.C.A. 460d, 460l-4 to 460l-11 and certain Missouri statutes pertaining to the powers of six director school districts.

From a review of these documents we have determined that the factual situation is basically as follows: The Doniphan R-I School District proposes to acquire an additional twenty-two acres adjoining its present park and recreational facilities, which are maintained for school and community use. The twenty-two acres in question is a tract of land with virgin timber and an existing lake which could be developed at a minimal cost into an extension of the present facilities owned by the school. The Doniphan School District desires to obtain a grant from the Federal Land and Water Conservation Fund to acquire, develop and maintain this tract as a school-community park.

As a condition to obtaining this assistance from the federal government, the district would agree not to use this additional tract for any purpose other than the public outdoor recreation use set forth in the Project Proposal unless the additional use is approved by the Director of Outdoor Recreation and/or the Executive Director of the State Inter-Agency Council for Outdoor Recreation. (See Section 11 of the General Provisions, Section 3A of the Project Proposal Assurances and 16 U.S.C.A., Section 460l-8(f)). The public outdoor recreation use outlined in the Project Proposal includes both school activities and community or general use. The school district would assure the federal government that it has the ability to finance and maintain the facility being developed according to certain standards set forth by the Bureau of Outdoor Recreation and the State Inter-Agency Council for Outdoor Recreation. (See Section 4A, Project Proposal Assurances) Also, the school district would agree to perform in accordance with the terms of the Land and Water Conservation Fund Act of 1965.

Section 432.070, RSMo 1959, prohibits any school district from making any contract which is not within the scope of its powers or expressly authorized by law.

"No county, city, town, village, school township, school district or other municipal corporation shall make any contract, unless the same shall be within the scope of its powers or be expressly authorized by law, nor unless such contract be made upon a consideration wholly to be performed or executed subsequent to the making of the contract; and such contract, including the consideration, shall be

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in writing and dated when made, and shall be subscribed by the parties thereto, or their agents authorized by law and duly appointed and authorized in writing." (Section 423.070, RSMo 1959)

In this instance there is a statute, Section 177.101, RSMo Supp. 1967, which provides the authority for this six director district to enter into a project of this type.

"1. In six-director districts as specified in this section, the school board may establish and maintain public parks and playgrounds for the use of the public school district, and may appropriate the sums they deem proper for the support thereof, not to exceed in any one year two thousand five hundred dollars for districts in cities of twenty thousand and under one hundred thousand inhabitants, and not to exceed five hundred dollars for districts in cities of five thousand and under twenty thousand inhabitants, and not to exceed two hundred and fifty dollars for districts in cities of one thousand and under five thousand inhabitants.

"2. The school board may lease or purchase grounds additional to the schoolhouse site, either adjacent thereto or elsewhere in the school district, for libraries, public parks and playgrounds and pay for the grounds so leased or purchased out of the funds of the school district available for the purpose.

"3. The board of education shall have full custody and control of the parks and playgrounds including the policing and preservation of order thereon and may permit the use of the grounds that it deems best in the interest of the district. The board shall adopt and enforce, subject to the laws of the state and the ordinances of the city, suitable rules and regulations for the control of the grounds and the conduct of persons using them." (Section 177.101, RSMo Supp. 1967)

This section does not apply to all six director school districts but is restricted in its application to those ". . . six-director districts as specified in this section, . . ." The six director

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school district covered by this section are school districts in cities having more than one thousand but less than one hundred thousand inhabitants. The Doniphan R-I School District is a six director district in a city having less than five thousand but more than one thousand inhabitants.

The second paragraph of Section 177.101 authorizes the school board of a qualifying district to purchase land adjacent to a schoolhouse site or elsewhere in the school district for a public park and to pay for this land out of school district funds. In the instant case, the land which the R-I School District of Doniphan proposes to acquire is adjacent to other land owned by the district and, presumably, adjacent to the schoolhouse site. However, if it is not adjacent to the schoolhouse site, it is certainly land located in the school district. The purchase must be made out of school district funds available for the purpose. Section 177.101 (2). A grant to the Doniphan R-I School District by the State Inter-Agency Council for Outdoor Recreation would make funds available to the school district for the purchase of land for a public park. See Opinion No. 190, dated July 13, 1967, rendered to you which reaches a similar conclusion.

Nothing in the terms and conditions imposed by the federal government would remove from the Doniphan School Board the custody and control of the twenty-two acres in question contemplated by paragraph 3 of Section 177.101. The school board would agree to use the area in conformity with the Project Proposal until a different use is approved by the Bureau of Outdoor Recreation and for the State Inter-Agency Council for Outdoor Recreation. The school board has made the determination that the combination school and community use outlined in the proposal is in the best interests of the school district. See paragraph 3, Section 177.101. That land purchased and maintained pursuant to Section 177.101 would be available for both public and school use appears to be what the legislature intended in enacting this legislation. See paragraph 1, Section 177.101, which provides that certain school districts ". . . may establish and maintain public parks . . . for the use of the public school district, . . ." (Emphasis supplied). This section does not give the school board authority to purchase and maintain land for any purposes other than a public park, a playground or a library. Therefore, the board's assurance as part of its agreement with your agency to maintain the land as a public park for school and community use is consistent with the requirements of and authority granted by Section 177.101.

Notice should be taken of one additional provision of Section 177.101. In the first paragraph thereof, the six director school district in a city having a population of over one thousand and under five thousand inhabitants is permitted to appropriate from

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the funds of the school district only up to two hundred fifty dollars for the support of a public park purchased pursuant to this section. In paragraph 4A of the Project Proposal Assurances the school district warrants that it has the ability to finance the operation and maintenance of the facility being developed according to certain standards. The Doniphan R-I School District's ability to perform this assurance is limited by the foregoing restriction on the amount which can be appropriated from the funds of the school district.

CONCLUSION

Therefore, it is the opinion of this office that, subject to the restrictions set forth in Section 177.101, RSMo Supp. 1967, the Doniphan R-I School District may enter into an agreement with the State Inter-Agency Council for Outdoor Recreation for a grant-in-aid from the Federal Land and Water Conservation Fund to assist the school district in the purchase of a school-community park.

The foregoing opinion, which I hereby approve, was prepared by my Assistant D. Brook Bartlett.

Yours very truly,



JOHN C. DANFORTH
Attorney General

Enclosure: Op. No. 190
7-13-67, Dunkeson