

COUNTIES: PARKS:

County court has no authority to make donation to city for park use in absence of joint cooperative agreement.



July 8, 1954

Honorable Dick B. Dale, Jr.
Prosecuting Attorney
Ray County
Richmond, Missouri

Dear Sir:

Reference is made to your request for an official opinion of this department reading as follows:

"The County Court of Ray County, Missouri, has asked this Office if the Court could make a donation from County funds to a shelter house fund, which shelter house will be constructed in the City Park of Richmond, Missouri, which is the County Seat of Ray County, Missouri. After a diligent search in the Statute, I failed to find any Statute which would authorize a County donation to a City Park fund. Since the County Court would like to make the donation, which is needed for the erection of a shelter house, I am herewith respectfully requesting an official opinion from your Office in answer to this question."

We believe that your question may be answered by reference to a prior official opinion of this department rendered under date of May 12, 1952, to the Honorable Roger Hibbard, Prosecuting Attorney, Marion County. You will observe that in the opinion mentioned it has been held that a county may not contribute money to a municipal corporation for aid in sewer construction. We think the same reasoning equally applicable to the question which you have proposed.

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However, you will note that on page two of the opinion it is indicated that in certain circumstances similar activities might be lawfully carried out. The qualification attached to such joint cooperative action is that with respect to each of the jointly participating municipalities or subdivisions the proposed activity be within the lawful scope of its powers.

This reference relates to a provision of the Constitution of Missouri, 1945, found as Section 16, Article VI, which reads as follows:

"Any municipality or political subdivision of this state may contract and cooperate with other municipalities or political subdivisions thereof, or with other states or their municipalities or political subdivisions, or with the United States, for the planning, development, construction, acquisition or operation of any public improvement or facility, or for a common service, in the manner provided by law."

Pursuant to this constitutional authorization the General Assembly has enacted statutes implementing the subject matter thereof. We direct your attention to the provisions of Section 70.210 to 70.320, inclusive, RSMo 1949. These statutes provide the method under which joint cooperative activities may be lawfully conducted.

In view of the qualifications expressed in the opinion attached hereto we further direct your attention to the provisions of Section 64.450, RSMo 1949, authorizing county courts in all counties to provide revenue for the purchase of county parks and the maintenance thereof. We further direct your attention to Section 90.010, RSMo 1949, authorizing cities to establish and maintain parks. We think that these and other related statutes sufficiently disclose that a joint cooperative agreement between a county and a city for the establishment and maintenance of a park system is lawful, inasmuch as each of the contracting parties have the power to engage in such activities separately.

CONCLUSION

In the premises we are of the opinion that a county court may not contribute funds to a city for the purpose of aiding

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such city to establish and maintain a park or any facility related thereto.

However, we are of the further opinion that such activity may be done upon a joint cooperative basis in accordance with the laws of the State of Missouri enacted under the authority of Section 16, Article VI of the Constitution of Missouri, 1945.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Will F. Berry, Jr.

Yours very truly,

John M. Dalton
Attorney General

By _____
Julian L. O'Malley
Acting Attorney General

WFB:vlw

Enclosure - 5-12-52 - Roger Hibbard