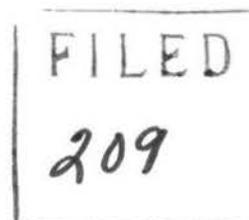


June 11, 1973

OPINION LETTER NO. 209
Answer by Letter - Klaffenbach

Honorable John D. Schneider
Missouri Senate, District 14
418 State Capitol Building
Jefferson City, Missouri 65101



Dear Senator Schneider:

This letter is in response to your question asking whether a city may exclude nonresidents from the use of the city swimming pool or ice rink facility and whether it makes any difference whether city funds, state funds, or federal funds are involved.

You have also asked us for an early answer to this question, and therefore, we have prepared our answer as concisely and quickly as possible.

The fundamental propositions of law as stated by the various courts in the United States are of a general nature and not particularly decisive of the question. That is, it is stated that a "park" is a place open for everyone and that the term carries no idea of restriction to any part of the public, and, conversely, that a park may be primarily for the benefit of the inhabitants of the municipality in which it exists. 67 C.J.S. "Park", p. 861. Other authorities hold to the proposition that a public park is "confessedly public". 59 Am. Jur. 2d, "Parks" §16.

However, the only case that we find which is clearly in point is McClain v. City of South Pasadena, 318 P.2d 199 (1957), in which the District Court of Appeal, Second District, Division 3, of the State of California, held that a regulation of a municipal corporation excluding all nonresidents, irrespective of race, color, or creed, from the use of a municipal plunge bore a reasonable and substantial relation to the health, safety,

Honorable John D. Schneider

morals, and general welfare of the residents of the city and was a reasonable classification. In so holding the court stated at l.c. 210:

"The regulation excludes all nonresidents, irrespective of race, color, or creed. It operates equally on all persons similarly situated and uniformly on all persons within the same class. Nonresidents are not situated similarly to residents. Persons are not similarly situated if there is any reasonable difference in their relation to the purposes of the regulation. The classification is reasonably related to the end in view. It bears a real and substantial relation to the health, safety, morals, and general welfare of the residents of South Pasadena. South Pasadena has the sovereign duty of maintaining the health of its residents. *Kellar v. City of Los Angeles*, 179 Cal. 605, 608, 178 P. 505. It owes no such duty to nonresidents. Residents are entitled to preference over nonresidents and such action is not in contravention of the rights of nonresidents. The primary purpose of a municipal corporation is to contribute toward the welfare, health, happiness, and interest of the inhabitants of such corporation, and not to further the interests of those residing outside its limits. 37 Am. Jur. 736, §122. There is no classification of racial groups residing within South Pasadena. If plaintiff's position were sustained, nonresidents of South Pasadena from anywhere in the country would have carte blanche to use the plunge. The regulation restricting use of the plunge to residents of South Pasadena was a reasonable regulation.

"We are not to be understood as implying that an owner of property in a municipality who is a nonresident thereof could be excluded from use of a plunge owned by the municipality. That question is not before us."

We are of the view that the holding and the reasoning of the McClain case is sound. However, as we have no particular factual situation before us we do not purport to say that any particular exclusionary regulation or ordinance is valid.

Honorable John D. Schneider

Further, we cannot in the premises state what the proper conclusion would be if state or federal funds were involved. The McClain case held that the use of federal funds did not affect the city's right to prohibit use of the plunge by nonresidents because the terms under which the federal gift was received did not preclude the city from excluding nonresidents. Clearly, the terms of the federal grant involved may affect the validity of such exclusion.

We do not determine what the situation may be if "state funds" are involved because our attention has not been directed to the source or substantive provisions respecting such "state funds".

Very truly yours,

JOHN C. DANFORTH
Attorney General