

PARKS: The City of Sedalia cannot undertake to con-
COUNTIES: struct a park four miles outside its corpor-
THIRD CLASS COUNTIES: ate limits.
MUNICIPAL PARKS:

OPINION NO. 369 (1966)
43 (1967)

January 17, 1967

Honorable Joe F. Rains
Representative, Pettis County
700 East Tenth Street
Sedalia, Missouri



Dear Representative Rains:

This is in answer to your opinion request which in part reads as follows:

"In the old section of the statutes which permitted to develop and operate parks, Section 90.010, R.S. Missouri, the law required such parks to be within one mile of the city, so far as third class cities were concerned. However, the new recreation laws passed recently made no mention of the one mile limitation (see Sections 64.750 et seq.). Our first question, then, is whether the City of Sedalia can ignore the old one mile requirement in proposing a park four miles distant from the present city limits."

Section 90.010, RSMo 1959, cited in the opinion request, is a statute applicable to all cities. Under this section, a city can acquire land only within its boundaries, or within one mile thereof.

Section 77.140, RSMo 1959, is directed specifically at cities of the third class. This section provides for the establishment of parks by the council within the city, or within three miles thereof.

Since Sedalia is a city of the third class, we rule that Section 77.140, imposing a three mile limit, is the governing section, and not Section 90.010, since the latter section is directed at cities in general.

However, Section 64.755, Subsection (1), RSMo Cum. Supp. 1965, imposes no limitation. It provides:

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"1. The governing body of any political subdivision may provide, establish, equip, develop, operate, maintain and conduct a system of public recreation, including parks and other recreational grounds, playgrounds, recreational centers, swimming pools, and any and all other recreational areas, facilities and activities, and may do so by purchase, gift, lease, condemnation, exchange or otherwise, and may employ necessary personnel. Funds to be spent for such purposes may be set up in their respective budgets by any governing body."

Section 64.760, RSMo Cum. Supp. 1965, provides for a joint operation of a recreational system. This section states:

"Any two or more governing bodies may establish and conduct jointly a system of public recreation and may exercise all the powers authorized by sections 64.750 to 64.780. The respective governing bodies administering programs jointly may provide by agreement among themselves for all matters connected with the programs and determine what items of cost and expense shall be paid by each."

We have recently held that the authority given a political subdivision in Section 64.755 to construct a park outside its limits was limited to those situations when it was undertaking a cooperative recreational program with one or more other political subdivisions as provided for in Section 64.760. Opinion No. 133, Kiser, 12/6/66.

Stated differently, this opinion holds that Section 64.760 impliedly limits political subdivisions from spending public funds outside their limits except where they cooperate with another political subdivision in the manner provided.

It follows, therefore, that, since the proposed park would be located four miles outside the city limits, and since the City of Sedalia is not undertaking this project on a cooperative basis with another political subdivision, we must rule that Section 64.-755, supra, does not permit this undertaking.

Thus, the City of Sedalia must rely on Section 77.140, supra, for authority to construct parks outside its corporate limits. As noted previously, this section limits such construction to the corporate limits or within three miles thereof.

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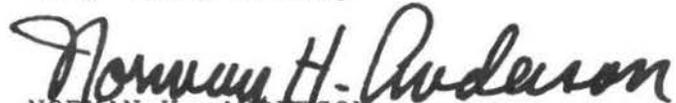
Since the opinion request states that the park is proposed for four miles outside the corporate limits of the City of Sedalia, we conclude that the project is prohibited.

CONCLUSION

It is the opinion of this office that the City of Sedalia, a city of the third class, acting alone, may not undertake to construct a park located four miles outside its corporate limits.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Donald R. Wilson.

Very truly yours,


NORMAN H. ANDERSON
Attorney General