

COUNTY COURT: The county court of Vernon County, Missouri may
COUNTY PARKS: appropriate a sum of money, not to exceed five
per cent of the county revenue fund, for the
erection of a building upon land donated to the
county for county park and recreational purposes.



March 12, 1957

Honorable James E. Woodfill
Prosecuting Attorney
Vernon County
Nevada, Missouri

Dear Sir:

Your recent request for an official opinion reads
as follows:

"The County Court of Vernon County, Missouri, has asked me to contact your office for an official opinion concerning the interpretation of Section 64.450 of the Missouri Revised Statutes of 1949.

"The Youth Fair Organization of this county is planning on giving approximately 40 acres of unimproved land to Vernon County. The long range plan is that this 40 acres, along with an adjoining 40 acres, is to be used as a Public Park and Fairgrounds. The County Court has this year planned to appropriate some \$3,500.00 for the erection of a building on this property. This proposed building is to be primarily used by the Youth Fair once each year to carry on their activities--including the showing of their exhibits. The rest of the year the building would be available to the general public. The theory of this proposed appropriation seems to be that the area will sometime in the future become

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a Public Park and that this is merely the first step, hence the appropriation is proper under Section 64.450.

"There is in my mind a serious question as to whether this would be a proper expense under this section of the statutes. It seems to me that the proper procedure in the case would be to proceed under Section 262.500 of the Missouri Revised Statutes, this statute calling for an election.

"My first inquiry is whether the expense set out above is authorized under Section 64.450.

"If this expense is not authorized by said section, would said section allow the County Court to purchase the tract of land from the Youth Fair Organization and develop the same into a County Park, permitting the Youth Fair Organization and any other organizations to construct their own buildings thereon subject to the approval of the County Court?"

We are informed that the land in question has been deeded to Vernon County.

Section 64.450, RSMo 1949, to which you refer, reads as follows:

"County courts in all counties in the state of Missouri may set aside five per cent of the county revenue fund for the purchase of county parks and the maintenance thereof.

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Titles to land purchased shall be taken in the name of the county, and each court is authorized to set aside a sufficient amount each year for the maintenance of said parks when purchased."

Section 262.500, RSMo 1949, to which you refer, provides for an election to levy a special tax "* * * for the purpose of encouraging, promoting and improving the livestock, poultry, agricultural, horticultural, mechanical fabrics and fine arts, products and articles of domestic industry, and the exhibition of such stock, poultry articles and commodities, at the district or county fair held in such county."

This section goes on to provide that the county court may purchase grounds and erect suitable buildings for such fair purposes.

It would clearly appear that the erection of the building which is contemplated on this ground is a proper structure for park purposes. In the case of Aquamsi Land Company v. City of Cape Girardeau, 142 S.W. 2d 332, at l. c. 335, the Missouri Supreme Court stated:

"Appellant's brief substantially quotes the following definition of a park from Williams v. Gallatin, 229 N.Y. 248, 253, 128 N.E. 121, 122, 18 A.L.R. 1238, 1241: 'A park is a pleasure ground set apart for recreation of the public, to promote its health and enjoyment.' But the brief makes no reference to what follows immediately thereafter; 'It need not, and should not, be a mere field or open space, but no objects, however worthy, * * * which have no connection with park

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purposes, should be permitted to encroach upon it without legislative authority * * *.' (Italics ours.) Enumerating structures which do have a natural connection with park purposes, and therefore require no special legislative sanction, the opinion says: 'Monuments and buildings of architectural pretension which attract the eye and divert the mind of the visitor, floral and horticultural displays, zoological gardens, playing grounds, and even restaurants and rest houses, and many other common incidents of a pleasure ground, contribute to the use and enjoyment of the park. The end of all such embellishments and conveniences is substantially the same public good. They facilitate free public means of pleasure, recreation and amusement, and thus provide for the welfare of the community. The environment must be suitable and sightly or the pleasure is abated. * * *'. "

We believe that the county court, in the situation which you present, may proceed under Section 64.450 provided, of course, that the sum of money appropriated does not exceed five per cent of the county revenue fund which is the restriction upon expenditures set forth in Section 64.450. It would appear that Section 262.500 was aimed at an entirely different purpose, namely, the maintenance and support of a county or district fair. This, obviously, is not the purpose in the situation which you present but it is rather the object in that case to establish a county park. We believe that such expenditure by the county court

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would be legal and proper.

CONCLUSION

It is the opinion of this department that the county court of Vernon County, Missouri, may appropriate a sum of money, not to exceed five per cent of the county revenue fund, for the erection of a building upon land donated to the county for county park and recreational purposes.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Hugh P. Williamson.

Very truly yours,

John M. Dalton
Attorney General

HPW:lc