

VOLUME NO. 44

OPINION NO. 13

COUNTIES - Scope of authority of county to spend cash donations made in lieu of park land dedication;

PARKS - Improvement of municipal, county and state parks with funds received by county government through donations made in lieu of park land dedication under section 76-3-606;

SUBDIVISION AND PLATTING ACT - Interpretation of what types of projects are appropriately funded with cash donations in lieu of park land dedication under section 76-3-606;

MONTANA CODE ANNOTATED - Section 76-3-606, 76-3-606(2);

OPINIONS OF THE ATTORNEY GENERAL - 42 Op. Att'y Gen. No. 42 (1987), 40 Op. Att'y Gen. No. 49 (1984).

HELD: Cash donations received by Ravalli County in lieu of park land dedication under section 76-3-606, MCA, may be used by the county park board to fund restroom construction on the grounds of the Marcus Daly Mansion.

July 12, 1991

George H. Corn
Ravalli County Attorney
Courthouse Box 5008
Hamilton MT 59840

Dear Mr. Corn:

You have requested my opinion on the following questions:

May cash donations made in lieu of park lands be spent to build restroom facilities on state land that is located within the county, used as a park by county residents, and managed by a nonprofit organization? If so, for what other projects may these funds be used?

The questions you ask stem from the potential allocation of county park funds for the development of restrooms at the Marcus Daly Mansion. The Daly Mansion and the statute which controls the disbursement of the funds at issue are unique and have both been the subject of prior opinions of this office.

The legal status of the Daly Mansion was discussed in a 1987 opinion which determined that state open meeting laws pertained to this nonprofit private corporation. 42 Op. Att'y Gen. No. 42 (1987). That opinion recognized that the mansion and the 40 acres of grounds surrounding it were deeded to the Montana Historical Society on December 31, 1986. While a private trust administers the estate, the lands are now state-owned and the property is open to the public. A nominal admittance fee is charged to members of the public for entry to the grounds of the mansion. A separate fee is charged for tours of the mansion and the trust rents the home and grounds for private events such as weddings, concerts, and plays. The trust itself sponsors events and charges

admittance fees. These events include dinners, concerts, tours, and holiday celebrations.

The utility of the Daly Mansion for the various types of events that have been held on its grounds since its conveyance to the Historical Society in 1986 is limited by the absence of restroom facilities. Ravalli County questions whether cash donations it has received under section 76-3-606, MCA, may be appropriated for such a project. The cited statute is part of the Subdivision and Platting Act and establishes a requirement of park land dedication by the developers of residential subdivisions. In certain situations the dedication of park land is excused, provided the developers make specified cash donations to the local governing body. The statute provides in relevant part:

Where the dedication of land for parks or playgrounds is undesirable because of size, topography, shape, location, or other circumstances, the governing body may, for good cause shown, make an order to be endorsed and certified on the plat accepting a cash donation in lieu of the dedication of land and equal to the fair market value of the amount of land that would have been dedicated. For the purpose of this section, the fair market value is the value of the unsubdivided, unimproved land. *Such cash donation shall be paid into the park fund to be used for the purchase of additional lands or for the initial development of parks and playgrounds.* [Emphasis added.]

§ 76-3-606(2), MCA. Resolution of your questions involves interpretation of the last sentence of the above quotation. Two issues are present: (1) whether the Marcus Daly Mansion may be considered a "park" for purposes of the statute, and (2) whether the construction of restrooms may be considered the "initial development" of parks.

Resolution of the issues presented is not difficult in light of the facts presented. The Subdivision and Platting Act does not define the word "parks." As a practical matter, the Act does not limit use of the park funds to a particular type of park, *e.g.*, municipal or county, because the Act is applicable to both types of local government. In fact, the Montana Supreme Court has tacitly endorsed the use of county park funds received under section 76-3-606(2), MCA, for the development of a municipal golf course. Burgess v. Gallatin County Commission, 215 Mont. 503, 698 P.2d 862 (1985). In that case an individual unsuccessfully challenged the discretion of Gallatin County in allocating funds received through cash donations made in lieu of park land dedication for the development of a golf course on property acquired by the city of Three Forks and managed by a private nonprofit corporation. See Burgess, *supra*, Brief of Respondent at 6.

Generally where a word is not defined in a statute, its commonly accepted meaning is applied. 2A Sutherland Statutory Construction § 47.07 at 133 (4th ed. 1984). Webster's defines "park" as follows:

1. in English law, an enclosed area of land, held by authority of the king or by prescription, stocked and preserved for hunting.
2. an area of land containing pasture, woods, lakes, etc., surrounding a large country house or private estate.
3. an area of public land; specifically, (a) an area in or near a city, usually laid out with walks, drives, playgrounds, etc., for public recreation; (b) an open square in a city, with benches, trees, etc.; (c) a large area known for its natural scenery and preserved for public recreation by a state or national government.
4. a level, open area surrounded by mountains or forest.
5. in military usage, (a) an area set aside for vehicles, supplies, and other equipment; (b) things kept in such an area; as, a *park* of tanks.

Webster's New Twentieth Century Dictionary, Unabridged at 1303 (2d ed. 1979). This definition comports with definitions set out in case law whereby a park is defined as a place for recreation and enjoyment of the public. County of San Benito v. Copper Mountain Mining Co. of California, 45 P.2d 428, 430 (Cal. 1935).

The concept of a park need not be restricted to open space or playgrounds. As an early New York decision recognized:

A park may be devoted to any use which tends to promote popular enjoyment and recreation. Although primarily involving the idea of open air and space, the sentiment for artistic adornment of public places is such that the occupation in part by monuments, statues to heroes, art, museums, gallerys [*sic*] of painting and sculpture, free public libraries, and other agencies contributing to the aesthetic enjoyment of eye and ear is not a perversion of the lands from park purposes.

In re Central Parkway, City of Schenectady, 251 N.Y.S. 577, 579-80 (N.Y. 1931). See also Aquamsi Land Co. v. City of Cape Girardeau, 142 S.W.2d 332, 335 (Mo. 1940) (a "park" includes "buildings of architectural pretension which attract the eye and divert the mind of the visitor").

The Marcus Daly Mansion is a significant historical and architectural resource that Ravalli County residents, in conjunction with the Montana Historical

Society, have seen fit to preserve for the future enjoyment of all visitors. It is, based upon the foregoing, a park for purposes of section 76-3-606(2), MCA. The fact that the property is owned by a state agency does not defeat its status as a park located within and used by the residents of Ravalli County.

The second issue that must be resolved is whether the construction of restroom facilities constitutes "initial development of parks" for purposes of section 76-3-606, MCA. This phrase has never been judicially interpreted in Montana. In Burgess, *supra*, the Montana Supreme Court commented that the statute only tells the county commissioners in general terms how the "in lieu" donations are to be spent for park and recreation purposes: they are not told how each dollar is to be spent. In 40 Op. Att'y Gen. No. 49 at 199 (1984), an opinion which predated the Burgess decision, the Attorney General addressed the administration of those park revenues that are restricted pursuant to section 76-3-606, MCA. In addition to the cash donations received in lieu of dedication of land for park purposes, revenues received by a county from the sale, exchange, or disposal of dedicated park land must also be used in the manner prescribed by section 76-3-606(2), MCA. § 7-16-2324(4), MCA. The 1984 Attorney General's Opinion concluded:

Revenues from these sources are restricted in use to the sole purpose of the purchase of additional lands or the initial development of parks and playgrounds. [Statutory citations omitted.] While these revenues are a part of the park fund, they should be separated from unrestricted park fund revenues, either through separate bank accounts or through acceptable accounting procedures, so that the restricted revenues are used solely for the authorized purpose.

40 Op. Att'y Gen. No. 49 at 202.

The phrase "initial development" implies planning for new improvement or the actual construction thereof. The park dedication requirement found within section 76-3-606, MCA, and similar provisions found in the subdivision regulation statutes of other states, are designed in part to require subdivision developers to ease the burden that additional residents bring to existing parks. 4 Anderson, American Law of Zoning 3d § 25.39 (1986). The statutory intent of providing new facilities and park lands for increased population would clearly not be served if a county used restricted revenues for paying its general operating costs. However, the construction and provision of new facilities such as restrooms within a park, where none have previously existed, may be considered "initial development" consistent with the statutory language and intent of section 76-3-606(2), MCA. The expenditure of cash donations received by Ravalli County in lieu of park land dedication upon the Daly Mansion serves to develop the park and provide facilities that allow for more opportunities for county residents and others to enjoy its amenities. Under the circumstances, the provision of facilities not previously in existence, as part of

a long-term plan to improve the park, falls within the definition of "initial development" as that phrase is used in section 76-3-606, MCA.

You have further requested that I determine what other types of projects might be appropriately funded with cash donations made in lieu of park land dedication. Apart from the general guidance offered above I am unable to offer a definitive list of those types of projects for which the restricted park funds may be allocated. Consistent with the reasoning expressed above, initial park development clearly includes the provision of a capital improvement, *e.g.*, picnic shelter, softball field, or swimming pool, where such permanent facility is being added, as opposed to being replaced, in a park. When local governments are in doubt as to the appropriateness of a particular disbursement, they should examine whether the recreational and cultural opportunities for its residents are increased by the project under consideration.

THEREFORE, IT IS MY OPINION:

Cash donations received by Ravalli County in lieu of park land dedication under section 76-3-606, MCA, may be used by the county park board to fund restroom construction on the grounds of the Marcus Daly Mansion.

Sincerely,

MARC RACICOT
Attorney General