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DECLARATORY RULING #32
(Cite as I D.P.I. Dec. Rul. 77)

June 27, 1983

Superintendent Ben Halupnik
Garner-Hayfield Community School District
605 Lyons
Garner, Iowa 50438

Dear Superintendent Halupnik:

On June 2, 1983, you filed a "Petition for Declaratory Ruling" in my office on behalf of the Garner Area Project Surround Organization (hereinafter Project Surround). Project Surround is a community-based incorporated nonprofit organization concerned with the prevention of juvenile delinquency. It operates under the direction of an advisory board and a director, and provides several counseling, educational and preventative programs to the community's youth. Project Surround has been funded in the past by a variety of local governmental units, several organizations and individual donations. Persons supporting Project Surround are now investigating a firm financial base of support to enhance the stability of the program.

The specific questions raised in your Petition read as follows:

1. Would Project Surround qualify as an authorized activity for the Public Recreation and Playgrounds Tax?
2. Could the question submitted to the voters be a "clear cut" question of the levy being used to totally fund Project Surround? Thus, the voters would be deciding the future of Project Surround.

The answer to both questions is in the negative.

The authority for the levying of a recreations and playground tax is found in the Iowa Code chapter 300, 1983. The relevant sections of that chapter read as follows:

300.1 Public recreation. Boards of directors of school districts may establish and maintain for children and adults public recreation places and playgrounds, and necessary accommodations for the recreation places and playgrounds, in the public school buildings and grounds of the district. The board may co-operate under chapter 28E with a public agency having the custody and management of public parks or public buildings and grounds, and with a private agency having custody and management of buildings or grounds open to the public, located within the school district, and may provide for the supervision and instruction necessary to carry on public educational and recreational activities in the parks, buildings, and grounds located within the district.

300.2 Tax levy. The board of directors of a school district may, and upon receipt of a petition signed by eligible electors equal in number to at least twenty-five percent of the number of voters at the last preceding school election, shall, direct the county commissioner of elections to submit to the qualified electors of the school district the question of whether to levy a tax of not to exceed thirteen and one-half cents per thousand dollars of assessed valuation for public educational and recreational activities authorized under this chapter. If at the time of filing the petition, it is more than three months until the next regular school election, the board of directors shall submit the question at a special election within sixty days. Otherwise, the question shall be submitted at the next regular school election.

If a majority of the votes cast upon the proposition is in favor of the proposition, the board shall certify the amount required for a fiscal year to the county board of supervisors by March 15 of the preceding fiscal year. The board of supervisors shall levy the amount certified. The amount shall be placed in the schoolhouse fund of the district and shall be used only for the purposes specified in this chapter.

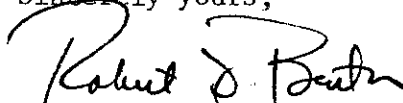
300.4 Community education. The tax levied under sections 300.2 and 300.3 may also be used for community education purposes under chapter 276.

These sections, read in their entirety, make it abundantly clear that the authority to levy the tax authorized in Chapter 300 is solely for purposes of "public educational and recreational activities," and "community education purposes." The term "educational" refers to the teaching and instruction related to the recreational activities. There is, therefore, no ability to levy the tax under Chapter 300 for counseling and preventative programs such as Project Surround.

While Project Surround is not part of a recreation program envisioned in Chapter 300, it could be made a part of a larger community education program envisioned in Chapter 276. A school district board of directors could establish a community education program for the district, appoint a community education director, establish a district-wide advisory council and provide for local advisory councils. In such an event, tax revenues authorized under Section 300.4 could be utilized for the community education program. If Project Surround became an activity of the community education program, tax revenues generated under Chapter 300 could be utilized for its support under the guidelines outlined in Chapter 276. However, voters would vote for a community education program generally, and not Project Surround specifically. There would be no "clear cut" question on the continuance of Project Surround.

In summary, my responses to the questions raised in the Petition are that tax revenues authorized in Chapter 300 could not be directly utilized to fund Project Surround, and that tax authorizations submitted to the voters under Chapter 300 could not result in a "clear cut" voter decision on the future of Project Surround.

Sincerely yours,



Robert D. Benton, Ed.D.

State Superintendent of Public Instruction

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