

**County Commissioners, Powers Of, County Fair Grounds.
Power of County to Purchase.**

A county does not possess the authority to purchase real estate for County Fair purposes.

Helena, Mont., August 24, 1906.

John H. Tolan, Esq., County Attorney, Anaconda, Mont.

Dear Sir—I give you the following opinion in reply to your request by telephone upon the following questions:

Can the County of Deer Lodge regularly make purchase of the Daly Race Track grounds for county fair purposes?

“The power of a county in such matters can only be exercised by and through its Board of County Commissioners.” (Section 4191, Political Code.)

“Boards of County Commissioners have no power or authority except that conferred by statute or incidental powers exercised by the boards, and are only attendants of the statutory powers enumerated. The board must look to the statute for its authority.”

Yeager v. Com'rs. (Mont.) 85, Pac. 740.

Williams v. Com'rs., 28 Mont., 360.

Com'rs. v. Bradford, 72 Ind. 455.

The board cannot take to itself a power not enumerated or included in the enumerated powers contained in the statute.

Section 4230, Political Code, contains the enumeration of the general and permanent powers of boards of county commissioners. This enumeration does not contain any power to purchase land for county fair purposes, unless such power is included in the sub-division 8 of said section, which reads in part:

“To purchase, receive by donation, or lease any real or personal property necessary for the use of the county.”

In the Yegen case above cited, the court in considering the question as to whether the board of commissioners has authority to erect a "detention hospital" said:

"However desirable it may be that they should have the power to provide separate hospitals for able-bodied and not dependent persons suffering from contagious and pestilential diseases, they are not empowered to erect and maintain them at the expense of the county. So they may, under sub-division 6, acquire farms for the support of the dependent poor—not others. So, again, they have the power to provide necessary county buildings under sub-division 7. But what are necessary county buildings? Manifestly, such as are required for ordinary county purposes, and as is indicated in these and similar provisions, as, for instance, in sub-division 9. Under this latter provision, they may cause to be erected a guard-house, jail, hospital, and such other buildings as may be necessary. The word 'hospital' evidently does not mean one or more hospitals for all classes of persons, but for that class of persons for whom the Board may provide at the expense of the people, viz, the indigent sick. The phrase 'such other public buildings as may be necessary' has no wider meaning, nor does it enlarge the class of purposes for which these Boards may erect and maintain buildings so as to include others not of the class already mentioned."

It appears from this language that the phrase "property necessary for the use of the county" found in said sub-division 8 at least so far as the erection of buildings is concerned, must be construed in connection with such buildings "as are necessary for ordinary county purposes" as is indicated in these and similar provisions, as, for instance, in sub-division 9.

The act of March 5, 1903 (Laws 1903, page 136), confers authority upon the county commissioners to create an agricultural county fair commission and to make an appropriation "for the purpose of paying the expenses of the county agricultural fair," but provides that no portion of such appropriation shall be expended for "horse racing and tests of speed or any shows or amusements of any kind whatever." And this act does not confer upon the Board of County Commissioners any authority to purchase real estate or to erect buildings.

However desirable it may be for the county to own its "fair grounds" it will require an act of the Legislature to confer powers upon the counties to make the purchase at the expense of the tax-payers, and you are, therefore, advised that the county does not have the authority to make the purchases named in your inquiry.

Respectfully Submitted,

ALBERT J. GALEN,
Attorney General.