

Fair Association, Condemning Land for Use Of. Eminent Domain Law, Applicable to County Fairs.

On a proper showing of facts land may be taken under the eminent domain law to be held and used by a county for the purpose of carrying on a county fair.

Helena, Montana, August 17, 1908.

Hon. John A. Matthews,
County Attorney,
Townsend, Montana.

Dear Sir:—

Your letter of the 14th inst. received, in which you request an opinion as to whether the establishment of a county fair is such a public use as entitles the fair association, a corporation, to acquire grounds for

county fair purposes under the eminent domain law.

This is a question that should more properly be determined by the court, as an opinion from this office would have no binding force or effect upon the person who objected to the taking of his land for such purposes.

However, it would seem that, under the provisions of paragraphs two and three, of Section 7331, Revised Codes (Section 2211, Political Code), fair grounds for the use of a county fair might be taken under the eminent domain law. In order to invoke this law, however, it is possible that the title to the land, when taken thereunder, would have to vest in the county, and not in some private fair association, who simply held the title to the land for the use of the county fair. Also, it would be necessary to show, under Section 7334, Revised Codes (Section 2214, Political Code), that the taking of such land is necessary for such use, and, of course, the necessity for condemning any particular tract of land would be a question of fact largely for the court to determine. The fact that the county desired a certain tract of land, and could not agree upon the price to be paid the owner for such land, would hardly be a sufficient showing of the necessity, if there were other tracts of land suitable for the purpose in the immediate vicinity, which could be purchased.

You are therefore advised that, in our opinion, upon a proper showing of facts, land may be taken under the eminent domain law, to be held and used by the county, for the purposes of carrying on a county fair.

Yours very truly,

ALBERT J. GALEN,

Attorney General.