

**County Attorneys. Public Officers. County Fair Commissioners, Action Against. Who May Prosecute.**

County fairs are county institutions and county fair commissioners may properly be considered county officers. In actions against the county fair commission for breach of contract in hiring a band, it would be the duty of the county attorney to defend the commissioners.

September 4th, 1913.

Hon. T. F. Shea,  
County Attorney,  
Deer Lodge, Montana.

Dear Sir:

Under date of August 28th you wrote to this office as follows:

"May a county attorney prosecute a claim against a county fair commission. Sec. 2927, Revised Codes, authorizes the appointment of a fair commission by the board of county commissioners. Would this fact constitute the fair commission a branch of the county government to such an extent that a county attorney would not be allowed to prosecute a claim against the fair commission?"

"Sec. 3, Chap. 30, of the Twelfth Session Laws provides that the board of commissioners may appropriate a certain sum for the benefit of the fair commission, but also provides that any money so appropriated shall not be expended for horse racing, contests of speed of any kind, or for any shows or amusements whatsoever. Would it make any difference under the last clause of the above section if the claim to be prosecuted is for a breach of contract in the employment of a "band?"

I am of the opinion that under the provisions of Art. IV, Chap. 2, Title 2, Part 4, of the Revised Codes of Montana, as amended by the provisions of Chap. 30 of the Session Laws of the Twelfth Legislative Assembly, that county fairs held under the provisions thereof are essentially county institutions, and that county agricultural fair commissions appointed and acting in pursuance thereof may properly be considered as county officers.

Reed v. Hammond, 123 Pac. 346 (Cal.).

11 Cyc. 414-415 N. 27.

These officers when so appointed constitute a commission to carry out what may be distinctly designated as a county purpose. They each receive salaries for their services as members of such commission, and these salaries are payable out of funds appropriated by the board of county commissioners out of the general fund of the county, and it is their duty to do all things necessary to hold "a successful county agricultural fair" between designated dates. Their powers are enumerated and restricted in that no money coming into their hands may be expended for horse racing, contests of speed or any shows or amusements of any kind whatever. I am not prepared to say that the hiring of a band by the fair commission is such an amusement as is contemplated within the prohibitory clause of the law, but however this may be, at least a question which may become the subject of litigation in regard thereto is presented. Under the provisions of Secs. 3053 and 3055 of the Revised Codes of Montana, it is made the duty of the county attorney to oppose all claims and accounts against a county which are unjust or illegal, and except for his own services he must not present any claim, account

or other demand for allowance against the county, nor in any way advocate the relief asked on the claim or demand made by another. It is true that the claim or demand of the "band" is not directly against the county as such, but it is true that if its contention that it is entitled to pay from the funds in the hands of the county fair commission be maintained, satisfaction of its claim would necessarily be made from funds appropriated by the county to carry out the provisions of the act. I am of the opinion that where provision is made that a thing may not be done directly, it may not be done by indirection, and if this band should bring action for breach of an alleged contract against the county agricultural fair commission, I believe it would be your duty as an officer of the county to defend the commission rather than to present, advocate or prosecute a claim against it.

You are, therefore, advised that, in my opinion, a county attorney should not prosecute a claim against such commission.

Yours very truly,

D. M. KELLY,  
Attorney General.