

County Fair Commissions, County Commissioners. Division of County Fair Moneys. State Fair, Exhibit at by Counties.

The board of county commissioners is authorized by Chapter 124, Session Laws of the Thirteenth Legislative Assembly, to levy a tax of one mill or less for county fair purposes; the money so raised is exclusively for county fair purposes, and no part thereof may be used for making exhibits at the state fair, other provisions being made by the code for this object.

February 25th, 1914.

Hon. Justin M. Smith,
County Attorney,
Bozeman, Montana.

Dear Sir:

I again have under consideration the matter of the proper apportionment of the fund raised by a quarter mill levy, made by your board of county commissioners for county fair purposes. I am still somewhat in doubt as to just who and what the Interstate Fair Association is, but for the purposes of this discussion I am assuming that they are the county fair commissioners provided for by Sec. 2927, Revised Codes of Montana, 1907. This is the only commission so far as I know provided for by the laws of this state to manage county fair matters. The question submitted by you was in a way answered by Mr. Wagner of this office at the meeting of the State Association of County Commissioners, held at Lewistown, Montana, January 21st, 22nd and 23rd, 1914. A question was submitted to him at that meeting about as follows:

"The commissioners of Gallatin County levied one-fourth mill assessment on all taxable property according to law for fair purposes. We paid our expenses for our state fair exhibit out of this money. The county fair directors demand the entire amount for the county fair. Can we spend part of this money for the state exhibit, or must it all be used for county fair purposes?"

In answering this question Mr. Wagner used the following language:

"The solution to that inquiry is found in the language of the statute itself. By virtue of the provisions of Chap. 124,

Session Laws of the Thirteenth Legislative Assembly, the board of county commissioners in any county is given the power to levy an ad valorem tax of one mill or less on each dollar of taxable property in such county for the purpose of securing, equipping and maintaining a county fair, including the purchase of lands for such purpose. Under the provisions of Sec. 2932 of the Revised Codes of 1907 the board of county commissioners in each county is authorized to appropriate each year the sum of one thousand dollars, or so much thereof as may be necessary, out of the general fund of the county, for the purpose of defraying the expense of collecting and transporting and taking care of any exhibit from such county to the state fair, such money to be expended under the direction of the board. It follows as a necessary conclusion that moneys derived by taxation for fair purposes can only be used for matters pertaining strictly to county fairs; and in this instance the board of county fair commissioners is entitled to all of the money raised by virtue of the levy and collection of that tax. If at any time the county commissioners of any county desire to make and exhibit in the state fair the proper method of securing funds for the purpose is to take it out of the general funds of the county by proper resolution."

This opinion given to the Association of County Commissioners, I think, states the law properly and may be adopted for the purpose of this opinion. A board of county commissioners can expend money only in such ways as they are authorized to do by statute. Chap. 124 of the Laws of the Thirteenth Legislative Assembly, certainly contemplates that the moneys raised by the tax therein authorized are to be used for **county fair purposes**. The language is plain and capable of no other interpretation, and use for county fair purposes does not contemplate a use in some other manner, especially when it is considered that the law has provided another means by which exhibits of a county may be made at the state fair. Sec. 2932, Revised Codes of Montana, 1907. This last mentioned section provides for an exhibit at the state fair, and prescribes that "such money to be expended under the direction of the board" (meaning the board of county commissioners).

You are, therefore, advised that the board of county commissioners have no right or authority to charge the exhibit at the state fair to the fund created by the levy made under the authority of Chap. 124 of the Session Laws of the Thirteenth Legislative Assembly, but that such exhibits, if made, must be paid for out of the general fund.

Yours very truly,

D. M. KELLY,
Attorney General.