

County Fairs—Funds—Receipts—County Treasurer.

County treasurer is the custodian of all county funds including receipts from county fairs. It is his duty to take charge of and account for the same. The county fair is a county agency under the provisions of the budget act.

Mr. R. N. Hawkins,
Assistant State Examiner,
Helena, Montana.

March 17, 1932.

My dear Mr. Hawkins:

You desire my opinion as to whether it is the official duty of the county treasurer to take charge of all revenues collected, such as gate receipts, receipts from concessions, percentage or share of moneys received from earnings of pari-mutuels and such other miscellaneous receipts resulting from the holding of county fairs, or whether the secretary or some other official is authorized to take charge of such receipts and deposit them in some bank subject to check by the commissioners.

Second, you inquire whether it is the duty of the county treasurer to take charge of and account for fair receipts, and whether the receipts should be kept in a separate fund and not commingled with the fair money raised by taxation or appropriated out of the general fund of the county by the board of county commissioners.

Third, in the matter of erecting buildings and other capital outlays for county fair purposes, is this a duty of the fair commission or a duty of the board of county commissioners?

Fourth, must the county fair board comply with and be governed by the provisions of the budget act? If so, does this require an estimate of all receipts and disbursements, that is, all receipts such as gate receipts, receipts from concessions, percentage from earnings of pari-mutuels, etc., as well as moneys raised by taxation or appropriated from the county general fund, and all disbursements such as moneys expended in con-

nection with horse races, vaudeville acts, etc., as well as moneys expended for premiums, capital outlay, etc. ?

Answering your first question, you are advised that the county fair commission is appointed by the board of county commissioners of each county. These may be appointed from the county fair association or horticultural or agricultural societies if there are such organizations in the county. The duty of the commission is to do all things necessary to hold a successful county agricultural fair in its respective counties and has charge of all fair grounds and fair property. The county fair commission is thus a county agency or a commission deriving all of its powers from and acting for the county creating it.

Section 4547, R.C.M. 1921, provides:

“Said commission shall organize by electing one of its members president and one of its members vice-president, and the county treasurer shall be *ex officio* the treasurer.”

Section 4750, R.C.M. 1921, provides:

“1. The county treasurer must receive all moneys belonging to the county, and all other moneys by law directed to be paid to him, safely keep the same, and apply and pay them out, rendering account thereof as required by law.

“2. Keep an account of the receipts and expenditures of all such moneys in books provided for the purpose, in which must be entered the amount, the time when, from whom, and on what account all moneys were received by him; the amount, time when, to whom, and on what account all disbursements were made by him.

“3. So keep his books that the amount received and paid out on account of separate funds or specific appropriations is exhibited in separate and distinct accounts, and the whole receipts and expenditures shown in one general or cash account.

“5. Disburse the county moneys only on county warrants issued by the county clerk, based on orders of the board of county commissioners, or as otherwise provided by law.”

Section 4751 provides:

“When any money is paid to the county treasurer, he must give to the person paying the same a receipt therefor, which must forthwith be deposited with the county clerk, who must charge the treasurer therewith and give the person paying the same a receipt.”

It is thus apparent that the county treasurer is the county official charged with the receipt and disbursements of all county moneys. He is under bond to the county and is required to deposit all public funds in banks which are qualified to receive the same. If he does not deposit them he is personally liable on his official bond for the loss of any such funds.

The county fair commission is a special commission appointed by the county commissioners by virtue of certain provisions of the statute and created for certain specific purposes. The fact that the county treasurer is made *ex officio* treasurer of the county fair commission is con-

clusive that it was the intention of the legislature that he should receive, account for and be responsible for all moneys received and paid out on account of any county fair.

The county fair is an institution conducted for the purpose of advertising, encouraging and creating interest in certain activities, such as agriculture, horticulture, livestock industry, etc. It is not possible for the receipts and expenses to be handled in the ordinary way in which they are handled by the county treasurer from the usual sources from which money is received. For this reason it is my opinion that the county treasurer may keep on hand sufficient funds to pay the current or necessary expenses of the fair from day to day, accounting for the whole after the fair is over. For this reason he may set up a special fund separate from funds set apart from the general fund or received from the tax levy for county fair purposes.

Answering your third question: while the commission has charge of the fair grounds and fair property, it is my opinion that they are not authorized to erect buildings or make other capital outlays except upon the approval and under the direction of the board of county commissioners. The county fair grounds and property are county property; the board of county commissioners has supervision over all county property and must determine the necessity of any capital outlay on new buildings.

Answering your fourth question in regard to the county fair commission being governed by the county budget act, will say that under date of March 10, 1931, this office rendered an opinion to Fred Lay, county attorney of Gallatin county, to the effect that,

“The holding of a county fair is a function of the county government and the county fair commissioners are in charge of that service or institution of the county, and inasmuch as the budget act provides that every county official, elective or appointive, in charge of an office, department, service or institution of the county must file with the county clerk and recorder the itemized estimates required by the act I can see no escape from the conclusion that the county fair board must comply with and be governed by the provisions of said budget act.”

It must follow, therefore, that the county fair commission is required to make an estimate as required by the budget act. Of course, in the nature of the enterprise these receipts and disbursements can only be determined in a general way. The amount of receipts would depend upon the kind and amount of activities proposed to be engaged in, and of course gate receipts may be greatly reduced or increased by weather conditions and by other matters which would be impossible for the fair commission to foresee. However, in my opinion it is necessary that they should make an estimate as nearly as possible of all receipts and disbursements which it will be necessary to make in order to conduct the fair on the plan that they contemplate.

Very truly yours,

L. A. FOOT,
Attorney General.