

3. Members of the county fair commission may only be removed from office, by the county commissioners, for cause.

June 14, 1935.

Board of County Commissioners
Valley County
Glasgow, Montana

You have submitted the following questions:

1. Can the fair board operate and put on a fair, using the County Fair grounds without the sanction and approval of the County Commissioners?

Section 4546, Revised Codes 1921, provides: "Said commission shall do all things necessary to hold a successful county agricultural fair in their respective counties, and shall have charge of all fair grounds and fair property."

Section 2 of Chapter 52, Laws of 1935, also provides: "Said County Fair Commission shall have control and operation of the fair and the supervision and management of the fair grounds and also the leasing of buildings and fair grounds and shall return to the fair fund of the county all revenue obtained from the leasing or renting of the same."

In view of these sections it is my opinion that the Fair Commission has the power to use the county fair grounds without the sanction and approval of the Board of County Commissioners.

2. The terms of two members of the fair board have expired and they have not been reappointed or any appointment or action taken on the vacancies. What would be your advice on this matter?

By Section 4545, Revised Codes 1921, it is the duty of the Board of Commissioners to make appointments to the Fair Commission at the regular meeting in December each year. Failing to do this, the members whose terms expire hold over until their successors have qualified. (Sec. 423, Revised Codes, 1921; Vol. 12 Official Opinions of Attorney General, page 116.)

See also 46 C. J. 968, Section 110, where it is stated that the general

Opinion No. 115.

Fairs—County Fairs—Fair Commission, Powers of—Term of Office—County Commissioners.

HELD: 1. The county fair commission has the power to use the county fair grounds without the sanction and approval of the board of county commissioners.

2. Members of the county fair commission, whose terms expire, hold over until their successors have qualified.

trend of decisions is to the effect that a public officer holds over until his successor qualifies even in the absence of a statute.

3. Can the Commissioners discharge the entire Fair Board of the County or in any way terminate the Fair Board?

Section 4545, Revised Codes, as amended by Chapter 30, Laws of 1927, provides for the appointment by the County Commissioners of a County Fair Commission, the term to be for two years. There is no provision for their removal. In *State ex rel. Nagle v. Sullivan et al.*, 98 Mont. 425, our Supreme Court said, page 438: "The power to appoint carries with it, as an incident, in the absence of constitutional or statutory restraint, the power to remove (*Touart v. State*, 173 Ala. 453, 56 So. 211; *Cameron v. Parker*, 2 Okl. 277, 38 Pac. 14; *Spongole v. Curnow*, 136 Cal. 580, 69 Pac. 255; *Sanders v. Belue*, 67 S. C. 171, 38 S. E. 762), but provision for appointment for a fixed term constitutes such restraint, and, in the absence of any provision for summary removal, one appointed for a fixed term can be removed only for cause. (23 Am. & Eng. Ency. of Law 437, and cases cited from many jurisdictions.)"

Since the Fair Commission members are appointed for a fixed term and there is no statute providing for their removal, they can only be removed for cause.

As to liability for the deficit, your question is general and not all of the facts are submitted. I call your attention, however, to the Budget Act found in Chapter 148, Laws of 1929, and particularly to paragraph 3 of Section 5 thereof. In general it is my opinion that the County is not liable for expenditures in excess of the budget or appropriation.