

No. 338

**COUNTIES—FAIRS—ADVERTISING—
APPROPRIATIONS**

Held: Counties may not appropriate money to private corporations for purpose of advertising their products and resources.

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Mr. Thomas R. Marron
County Attorney
Valley County
Glasgow, Montana

Mr. E. O. Overland
County Attorney
Sweet Grass County
Big Timber, Montana

Gentlemen:

The question presented is whether counties may contribute from the general fund of the county to Montanans Incorporated. Such contribution will presumably be to advertise the State of Montana and to a certain extent the contributing county directly.

The source of power, if it exists, is to be found in Section 4549, Revised Codes of Montana, 1935, which provides:

"The board of county commissioners of their respective counties may appropriate annually out of the general fund of the county treasury to the county fair commission a sum not to exceed two thousand five hundred dollars (\$2,500.00), to be expended by the county fair commission for the purpose of holding a county fair, or advertising the products and resources of their county. In addition to the appropriation above provided for, or in lieu thereof, the county commissioners of any county in Montana shall have the power to levy an ad valorem tax of one and one-half (1½) mills 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 land for such purpose, and the erection of such buildings and other appurtenances as may be necessary; provided, however, that no portion of said appropriation or tax levy shall be expended for horse racing."

In this connection it is appropriate to mention the method of expending such funds.

Section 4550, Revised Codes of Montana, 1935, provides, inter alia:

"The funds derived from such appropriation or tax levy shall be kept in a separate fund by the county treasurer, and shall hereafter be paid out by the said treasurer on orders signed by the president and secretary of the said fair commission. . . ."

This office has previously held a county could advertise its products and resources at a fair held in an adjoining county (No. 14, Vol. 14, Report and Official Opinions of the Attorney General) and at a fair or exposition held in another state (No. 364, Vol. 17, Report and Official Opinions of the Attorney General). The question here involves money appropriated by the county for advertising to be expended through the medium of a private corporation engaged in a commendable public enterprise, as distinguished from a subordinate state governmental agency. The authority to do so was not questioned in a former opinion of the Attorney General (No. 139, Vol. 18, Report and Official Opinions of the Attorney General).

Attention is now directed to Section 1, Article XIII of the Montana Constitution. The inhibition therein contained is:

"Neither the state, nor any county, city, town, municipality, nor other subdivision of the state shall ever give or loan its credit in aid of, or make any donation or grant, by subsidy or otherwise, to any individual, association or corporation, or become a subscriber to, or a shareholder in, any company or corporation, or a joint owner with any person, company or corporation, except as to such ownership as may accrue to the state by operation or provision of law."

Under similar state constitutional provisions, expenditures of the nature under consideration through private agencies have been condemned.

In *Harrington v. Atteberry*, 21 N. M. 50, 153 Pac. 1041, an appropriation by a county to the county fair association, a domestic corporation, was restrained under constitutional provisions similar to ours.

In *Hutcheson v. Atherton*, 44 N. M. 144, 99 Pac. (2nd) 462, a county, acting under authority of specific state statutes, sought to aid a private non-profit corporation in charge of a state exposition. The attempted financial appropriation was condemned by the court which stated that, although the corporation served a highly commendable public purpose, "that fact alone does not warrant the State or any county or city in making a donation or pledging its credit in aid of it."

Donations to the Atlanta Chamber of Commerce, Atlanta freight bureau and Atlanta convention and tourist bureau, by Fulton County, Georgia, were restrained in *Atlanta Chamber of Commerce v. McRae*, 174 Ga. 590, 163 S. E. 701.

In *Fluharty v. Board of County Com'rs.*, 29 Idaho 203, 158 Pac. 320, an attempt by the county, acting under express statutory authority, to appropriate money to the Northwest Live Stock Association, a non-profit corporation, was held violative of a provision of the Idaho Constitution similar to ours. The court pointed out the making of such an appropriation would place the county funds under the control of a corporation not amenable to the laws authorizing the expenditure of public moneys. This seems to be the practical basis underlying the cases denying the right to make the appropriation to corporations or private associations.

See also: *Johns v. Wadsworth*, 80 Wash. 352, 141 Pac. 892; *Wilkes-Barre City Hospital v. County of Luzerne*, 84 Pa. 55; *State ex rel. Mobile Broadcasting Corporation v. Stone*, 223 Ala. 426, 136 So. 727.

The question must be dealt with strictly as a legal one. The principles of the state constitution cannot be construed away so as to render them ineffectual, however meritorious the purpose might be.

I conclude counties may not appropriate or contribute funds to private corporations for the purpose of advertising the counties.

Sincerely yours,

JOHN W. BONNER
Attorney General