

Opinion No. 223.**County Commissioners—Counties—
Lands—Lease, County Fair Grounds,
etc.**

Held: County commissioners have authority to lease fair grounds and buildings thereon as authorized under Section 4513.3, Revised Codes of Montana, 1935 and the county fair commission may lease the same for periods when fairs are actually in session.

July 7, 1944.

Mr. W. M. Black
County Attorney
Toole County
Shelby, Montana

Dear Mr. Black:

You have requested an opinion from this office on the following:

Should the county commissioners or the county fair commissioners do the negotiating and leasing of the county fair grounds to an organization that wishes to stage a rodeo on the grounds?

You mention in your communication the possibility of a conflict between Section 4545.1 and Section 4513.3, Revised Codes of Montana, 1935, pertaining to the powers of county fair commission and the powers of county commissioners.

Section 4545.1 was enacted as Section 2, Chapter 52, Laws of 1935. Section 4513.3 was enacted as Section 1, Chapter 11, Extraordinary Session 1933-34.

Section 4545.1 is made up of a portion of Section 4545, Revised Codes of Montana, 1921 and Chapter 30, Laws of 1927, as amended by Chapter 52, Laws of 1935. Prior to said Chapter 52, the fair commissioners had no expressed authority to do any leasing at any time. They merely had authority to organize and carry on the county fair. Section 4545, Revised Codes of Montana, 1921, provided that persons appointed on the fair board should be well qualified to perform the duties of organizing and successfully carrying on the county fair. Chapter 30, Laws of 1927, likewise contained this provision. These forerunners to Section 4545.1 pertained only to the operation

of the fair and not to the operation of the fairgrounds or other equipment at any other time.

Section 4550, Revised Codes of Montana, 1935, provides the county commissioners may use moneys appropriated for county fairs to purchase lands and erect buildings and further provides as follows:

“ . . . which land may be used by the county fair commission for the purpose of promoting the interests of horticulture, agriculture and stock-raising.”

Section 4545.1, Revised Codes of Montana, 1935, carries out the general conditions of the former statutes, in that that portion of said statute which gives the county fair board the authority to lease buildings and fair grounds follows the specific power to control and operate the fair.

The general wording of Section 4545, Revised Codes of Montana, 1921, Chapter 30, Laws of 1927, and Section 4545.1 itself, leads to the assumption that the legislature intended said Section 4545.1 to apply only as to the leasing of buildings and fair grounds during the fair period; in other words, to persons who wished to operate some of the concessions in connection with the fair. Section 4513.3 takes this privilege into consideration in that it specifically provides that the county commissioners may not make a lease which will extend to within less than three weeks prior to the holding of any county fair.

Chapter 11, Laws of Montana, extraordinary Session 1933-34, is entitled as follows: “An Act to Permit Boards of County Commissioners to Lease County Fair Grounds and Buildings Thereon.” That chapter, which is now Section 4513.3, Revised Codes of Montana, 1935, specifically provides that the county commissioners be authorized to lease fair grounds, expressly provides when and during what period they may be so leased, and as before stated, specifically provides that no such lease shall interfere with the county fair. The present Section 4513.3 was in existence at the time of the enactment of the present Section 4545.1 and the legislative act creating said latter section did not expressly repeal or amend said Section 4513.3. If there were any repeal or amendment it would have to be by implication and of course our courts

on numerous occasions have said that repeals by implication are not favored if it is at all possible to read harmony into the apparently conflicting statutes. By interpreting Section 4545.1 to mean that the fair commission has only the right to lease the fair grounds or buildings during fair time, a conflict between that statute and Section 4513.3 is avoided.

It is therefore my opinion that the county commissioners have the authority to lease fair grounds and buildings thereon, as authorized under Section 4513.3, Revised Codes of Montana, 1935, and that the county fair commission has authority to lease fair grounds and buildings only in connection with the operation, supervision and management of county fairs and only for the period of time the fair is actually in session.

Sincerely yours,
R. V. BOTTOMLY
Attorney General