

Opinion No. 101.**Taxation — Carnivals, Taxation of —
County Fairs, Exemption of**

HELD: A carnival operated in connection with a county fair by private parties in which the county's only connection with the carnival is to receive a portion of the profits in return for the use of a portion of the fairgrounds is not exempt from the licensing requirements of Section 84-3201 (2), R.C.M., 1947, as amended.

November 18, 1954.

Mr. Smith McNeill
County Attorney
Lincoln County
Libby, Montana

Dear Mr. McNeill:

You have requested that I issue an official opinion upon a problem raised by the following statement of facts:

The County Fair Board, presumably for the purpose of attracting and holding larger crowds, has contracted

with the owner of a carnival, which consists of rides, food-dispensing booths, skill games, and other usual carnival attractions, to set up his carnival upon the fairgrounds for operation during the 1954 fair. The agreement provides that the Fair Board supply tickets and ticket takers (so that they may be able to determine the amount of gross receipts) but otherwise the carnival is under the control and direction of the owner. The Fair Board receives a percentage (15%) of the gross revenue from the rides for allowing the carnival to operate.

Based upon this statement, you have asked the following questions:

Does the fact that a carnival is operated upon the fairgrounds during the fair, under an arrangement such as that outlined above, relieve the operator from payment of the county license provided in Section 84-3201 (2), R.C.M., 1947?

Does the carnival, under such circumstances, become a part of the fair in such a way as to bring it within the exemption stated in that subsection?

The applicable statute is Section 84-3201 (2), R.C.M., 1947, as amended, which provides as follows:

"The manager or lessee of every theater (not a variety or concert theater) one hundred dollars (\$100.00) per annum; except that in towns of a population of three thousand five hundred (3,500) or less, in cases where no monthly license is paid, a license of two dollars (\$2.00) for each single performance must be paid; for each single exhibition of opera or concert singer (not exhibited in any theater where a yearly license is paid), three dollars (\$3.00); for minstrels, legerdemain, or shows not herein provided for, five dollars (\$5.00) for each single performance (when not in a theater where a yearly license is paid); for each variety or concert theater, whether an admittance fee is charged or not, seventy-five dollars (\$75.00) per month; for every traveling show exhibiting in tents, open air or other

than a regular theater, such as circuses, menageries, side-shows, carnivals, wild west shows, animal shows or tent shows, traveling in less than twenty - five (25) railroad cars, seventy-five dollars (\$75.00) per day, over twenty-five (25) railroad cars, two hundred dollars (\$200.00) per day, traveling on highways in ten (10) trucks or less, twenty-five dollars (\$25.00) per day, eleven (11) to twenty-five (25) trucks, fifty dollars (\$50.00) per day, more than twenty-five (25) trucks, seventy-five dollars (\$75.00) per day; but no license must be collected from any amateur exhibition or concert for school or charitable or religious purposes, from any county, district or state agricultural fairs, rodeo associations, or from any veterans' organizations not conducted for private gain.

Provided the county treasurer shall not issue any license for circuses, side-shows, carnivals, menageries, wild west shows, animal shows or tent shows to be held or performed within a period of thirty days just prior to or during the holding of any local, county, district or state fair or rodeo without first obtaining the written consent of the board of county commissioners of the county where application is made for such licenses to operate such shows."

The question concerns that portion of the exemption statute which relates to state, district and county fairs. The holding of county agricultural fairs is a county function under the jurisdiction of an official agency called the County Fair Commission (see Section 16-1401, R.C.M., 1947) and supported by an appropriation from the county treasury and tax levied upon property in the county.

The exemption of county fairs from the license tax provided for in Section 84-3201, supra, is, therefore, an exemption of an official county function and provides in effect that the county need not collect from itself money which it both pays and receives.

The situation outlined in your letter does not pertain to the county fair itself but to the carnival enterprise carried on in connection with the county fair. The arrangement does not make the carnival a part of the

fair, and it is not a function set up and carried on by the County Fair Commission. The only connection which the county has with the operation of this carnival is an arrangement to receive 15% of the gross receipts in return for a use of the portion of the fairgrounds—evidently a purely rental arrangement. The carnival is in no sense an official function of the county. The money required to pay the license must come out of the portion of the profits remaining after the county receives its share, since the county's share comes out of the gross. The carnival is therefore as completely a private operation conducted for private profit as is a theater, billiard parlor or any of the other establishments licensed under the section.

It has long been a rule in this State that taxation is the rule and exemption the exception. In *Cruse v. Fischl*, 55 Mont. 258, 175 Pac. 878, it was said:

“The taxing power of the state is never presumed to be relinquished unless the intention to relinquish is expressed in clear and unambiguous terms . . .

Every claim for exemption from taxation should be denied unless the exemption is granted so clearly as to leave no room for any fair doubt . . .”

Since the evident purpose of this statute is to exempt those fairs which are conducted by public bodies not for private gain, there is no reasonable presumption which can be found that the arrangement you have set out was intended to be exempt. The presumption is actually the other way, and since I can find no reasonable basis for an assumption that this exemption was intended, it must be denied.

It is therefore my opinion that a carnival operated in connection with a county fair by private parties in which the county's only connection with the carnival is to receive a portion of the profits in return for the use of a portion of the fairgrounds is not exempt from the licensing requirements of Section 84-3201 (2), R.C.M., 1947, as amended.