

OPINIONS OF THE ATTORNEY GENERAL

VOLUME NO. 39

OPINION NO. 58

COUNTY COMMISSIONERS - Authority to lease county fairgrounds;
COUNTY FAIR COMMISSIONERS - Authority to lease county fairgrounds;
COUNTY FAIR COMMISSIONERS - Duties and powers;
FAIRGROUNDS - Leasing of, for fair-related and nonfair-related purposes;
STATUTES - Construction of statutes relating to fairgrounds;
MONTANA CODE ANNOTATED - Title 7, ch. 21, pt. 34, sections 7-21-3401, 7-21-3403(1), 7-21-3406, 7-21-3407, 7-21-3408, 7-21-3409(1), 7-21-3410;
OPINIONS OF THE ATTORNEY GENERAL - 20 Op. Att'y Gen. No. 223.

- HELD: 1. The county commissioners have the sole authority to lease fairgrounds and related buildings for nonfair purposes.
2. "Limited periods of time" for which the county commissioners can lease fairground property under section 7-21-3409(1), MCA, means any and all periods of time excluding the time during the county fair itself and the three weeks prior to the fair.

9 April 1982

Bruce E. Becker, Esq.
Park County Attorney
Park County Courthouse
Livingston, Montana 59047

Dear Mr. Becker:

You requested an opinion concerning the following questions:

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1. Whether the county commissioners or the fair commissioners are responsible for the leasing of fairgrounds and related buildings for nonfair purposes.
2. The meaning of "limited periods of time" for which the county commissioners can lease fairgrounds property under section 7-21-3409(1), MCA.

The sections of the Montana Code Annotated which govern county fairs and fairgrounds are in Title 7, chapter 21, part 34. Section 7-21-3406, MCA, describes the powers of the county fair commission:

Powers of county fair commission. Said county fair commissioners shall have control and operation of the fair and the supervision and management of the fairgrounds and also the leasing of buildings and fairgrounds and shall return to the fair fund of the county all revenue obtained from the leasing or renting of the same. [Emphasis added.]

Section 7-21-3407, MCA, describes its duties:

Duties of county fair commission. Said commission shall do all things necessary to hold a successful county agricultural fair in their respective counties and shall have charge of all fairgrounds and fair property.

Section 7-21-3409(1), MCA, authorizes the board of county commissioners to lease county fairgrounds and buildings "for limited periods of time." The section further provides that "[n]o lease shall be executed to permit the use of said premises during any time within 3 weeks prior to the holding of a county fair." This section clearly intends the county commissioners to have authority to lease during nonfair periods. However, the sections do not expressly state whether the county fair commissioners have the same authority to lease for nonfair matters. In determining legislative intent all the statutes relating to the fairgrounds must be considered as a whole, to be harmonized wherever possible. Crist v. Segna, 38 St. Rptr. 150, 622 P.2d 1028 (1981).

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The statutes discussed above limit the duties and powers of the county fair commission to those necessary to hold a successful county fair. See, e.g., § 7-21-3407, MCA. The primary qualification of the county fair commissioners is that they "shall be well qualified to perform the duties of organizing and successfully carrying on the county fair." § 7-21-3403(1), MCA. The board of county commissioners, on the other hand, retains all other duties and powers regarding nonfair-related matters such as appointing the county fair commission (§ 7-21-3401, MCA); acquisition of fairgrounds (§ 7-21-3408, MCA); funding of fair activities, and levying taxes for purchase and upkeep of land, buildings and equipment for the fairgrounds (§ 7-21-3410, MCA).

The clear intent of section 7-21-3409(1), MCA, is that the county commissioners are responsible for leasing the county fairgrounds and buildings for nonfair-related matters. Leasing for county fair-related matters is the responsibility of the county fair commission. § 7-21-3406, MCA. See 20 Op. Att'y Gen. No. 223. This conclusion is consistent with the general view that concurrent jurisdiction of two or more agencies should not be construed when it can be avoided. See, e.g., Rochester Hospital Services Corp. v. Division of Human Rights, 401 N.Y.S.2d 413 (App. Div. 1977).

Your second question concerns the meaning of "limited periods of time" for which the county commissioners can lease county fair property under section 7-21-3409(1), MCA. This section does not further define the term "limited periods of time." The board of county commissioners has exclusive authority to lease the fairgrounds property during nonfair periods. Thus, the language in this section must be construed accordingly. The Legislature intended to limit the county commissioners' leasing authority when the fair itself is in session and up to the three week period before the fair begins. There is no indication that the Legislature intended to limit the county commissioners' leasing authority any further.

THEREFORE, IT IS MY OPINION:

1. The county commissioners have the sole authority to lease fairgrounds and related buildings for nonfair purposes.

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2. "Limited periods of time" for which the county commissioners can lease fairground property under section 7-21-3409(1), MCA, means any and all periods of time excluding the time during the county fair itself and the three weeks prior to the fair.

Very truly yours,

MIKE GREELY
Attorney General