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## Question Submitted by: The Honorable Maxine Kincheloe, Oklahoma House of Representatives

1981 OK AG 139

Decided: 07/16/1981

Oklahoma Attorney General

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Cite as: 1981 OK AG 139, \_\_ \_\_

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¶0 The Attorney General is in receipt of your request for an opinion wherein you ask, in effect, the following questions:

1. Are counties with populations of over 150,000 obligated to provide 4-H and FFA groups facilities at fairs in light of 2 O.S. 104(1) (1971)?
2. Are 4-H and FFA horse shows "agricultural shows or expositions" within the meaning of Title 2 of the Oklahoma Statutes regarding fairs?
3. Are counties with populations of over 150,000 authorized to conduct fairs operated by a non-profit corporation instead of a public trust, free fair, township fair or a fair association organized by authority of 2 O.S. 131.1 - 2 O.S. 131.18 (1971)?
4. Is a non-profit corporation managing a municipal park that receives obligated payments from a city for management fees, utility bills, and major capital improvements a public body subject to the provisions of the Open Meeting Act?
5. Is a non-profit corporation managing a municipal park that receives obligated payments from a city for management fees, utility bills, and major capital improvements subject to state competitive bidding statutes?

¶1 Title 2 O.S. 104(1) (1971), provides:

"It is provided that this Act shall not be applicable to counties having a population over One Hundred Fifty Thousand (150,000) according to the last Federal Census or any succeeding Federal Census."

¶2 The "Act" referred to in this provision was Laws 1937, p. 275, 12, an act of the Legislature establishing "County Free Fairs" today codified as amended at 2 O.S. 104(a) - 2 O.S. 104(m) (1971). Any limitation that the above provision creates would by its terms be restricted to obligations imposed within 2 O.S. 104(a) - 2 O.S. 104(m) (1971), for "free fairs." Under 2 O.S. 104(1), counties with populations over 150,000 would not be authorized to conduct such "free fairs" under the 1937 Act as amended.

¶3 "Free fair" as used in this Act, according to 2 O.S. 104(b) (1971):

". . . shall be construed to mean community and county fairs and livestock shows and other agricultural shows where admission to the grounds and all exhibit buildings is free and where no charge is made for entering exhibits on which premiums are offered...."

¶4 The exempted county with a population exceeding 150,000 would be under no obligation to provide free entry and admission to "free fairs" organized under the 1937 Act as amended, by virtue of 2 O.S. 104(1) (1971).

¶5 Your particular question assumes that there is an obligation to provide the 4-H and Future Farmers of America (FFA) organizations facilities at fairs. Because there are particular organizations, an answer to your question would require an application of facts to statutory law, a function that this office is unauthorized to carry out. 74 O.S. 18b(e) (1979).

¶6 You next ask whether 4-H and FFA horse shows are "agricultural shows or expositions" within the meaning of Title 2 of the Oklahoma Statutes regarding fairs.

¶7 Your second question also cannot be answered by this office because again it is a question of fact and not a question of law.

¶8 You next ask whether counties with populations of over 150,000 are authorized to conduct fairs operated by a non-profit corporation instead of a public trust, free fair, township fair or a fair association organized by authority of 2 O.S. 131.1 - 2 O.S. 131.18 (1971).

¶9 County governments have only such authority and power as has been granted them by the Oklahoma Constitution and Statutes. In *Tulsa Expositonal Fair Corporation v. Board of County Commissioners*, Okl., 468 P.2d 501 (1970), the Oklahoma Supreme Court said:

"Counties have only such authority as is granted by statute. *Johnston v. Conner*, 205 Okl. 233, 236 P.2d 987; *Herndon v. Anderson*, 165 Okl. 104, 25 P.2d 326. The Board of County Commissioners in exercising corporate powers is limited to those fields expressly assigned to such subdivisions of the state by the legislature. *Ingle v. Board of County Commissioners*, Okl., 274 P.2d 1021; *Board of County Commissioners v. Warram*, Okl., 285 P.2d 1034. Public officers possess only such authority as is conferred upon them by law and such authority must be exercised in the manner provided by law. *Brown v. State Election Board*, Okl., 369 P.2d 140; *Shaw v. Grumbine*, 137 Okl. 95, 278 P. 311; *National Surety Co. v. Sand Springs State Bank*, 74 Okl. 176, 177 P. 574.

"It is within the legislative power to define the duties among the several county officers and to regulate county governmental affairs. *Board of Comm'rs of Tulsa County v. News Dispatch Printing & Audit Co.*, 104 Okl. 260, 231 P. 250. Boards of County Commissioners derive their powers and authority wholly from the statutes, and acts performed by them must be done pursuant to authority granted by valid legislative action. *State ex rel. Tharel v. Board of Commissioners of Creek County*, 188 Okl. 184, 107 P.2d 542." 468 P.2d at 507-508.

¶10 If a county is not authorized by statute to grant and delegate to a non-profit corporation the management, control, maintenance and operation of a fair, such an arrangement is beyond the power of the county and would be unauthorized by law.

¶11 Currently, several means are available to establish fair-conducting entities. "County Fair Associations" may be formed under 2 O.S. 91 (1971) et seq., to conduct "county free fairs" and "township fairs." A "Free District Fair Association" is authorized by 2 O.S. 71 (1971) et seq., made up of officers from at least three "County Free Fair Associations" to conduct a "free district fair." The Free Oklahoma State Fair at Muskogee is conducted by the "Board of Directors of the Oklahoma Free State Fair," which is also the "Free Fair Board of Muskogee County." 2 O.S. 60 (1971). Agricultural Fair Corporations are authorized at 2 O.S. 31 (1971) et seq. Title 2 O.S. 131.1 (1971), provides that "County Free Fair Association" could convert to a "Fair Association" to hold an annual exposition. 2 O.S. 131.8 (1971). Finally, a county could lease the grounds, buildings,

equipment and facilities owned and acquired by the county for the purpose of holding fairs to a Public Trust Authority created pursuant to the laws of the State. 2 O.S. 157.3 (1971). Nowhere, however, has the Legislature specifically authorized the use of a non-profit corporation by a county as an entity which may be used to conduct a fair.

¶12 In *Tulsa Exposition and Fair Corporation v. Board of County Commissioners*, supra, the Oklahoma Supreme Court examined a lease agreement made between a Board of County Commissioners and a non-profit corporation. The lease provided that the county would pay \$25,000 annually to be used in the payment of premiums, salaries and other expenses incurred in the management, operation and conducting of the fair. The county delegated the maintenance, management and conducting of the fair to the nonprofit corporation. The Supreme Court found that the statute under question, the "Tulsa Fair Act," 2 O.S. 156 (1961), was a special or local law violative of Okla. Const., Article V, Section 59 then stated

"While we deem it unnecessary to decide whether 19 O.S. 1961 as a general proposition authorizes counties to lease lands owned by them, in our opinion the statute does not authorize the county commissioners to enter into the lease agreement under consideration. *The only statutory authority authorizing such lease agreement is that which we hold by this opinion to be unconstitutional.*" 468 P.2d at 508. (Emphasis added)

¶13 This Act had specifically authorized the lease by the Board of County Commissioners of "the grounds, buildings, equipment and facilities to a non-profit corporation of the State of Oklahoma for the purpose of holding in the Fall of each year the annual Agricultural and Industrial Exposition and Fair..." 2 O.S. 156(b) (1961).

¶14 The Supreme Court opinion is quite clear on this point. Absent an express statutory authorization to create with a non-profit corporation an agreement to operate a fair, it is not lawfully authorized. See also 11 Okl. Op. A.G. 139, No. 79-088 (April 11, 1979). No statutory authority can be discovered for such an agreement regardless of the population of the county.

¶15 You next ask whether a non-profit corporation managing a municipal park that receives obligated payments from a city for management fees, utility bills, and major capital improvements is a public body subject to the provisions of the Open Meeting Act.

¶16 This question was recently answered by 12 Okl. Op. A.G. 363, No. 80-215 (October 8, 1980).

¶17 Finally, you ask whether a non-profit corporation managing a municipal park that receives obligated payments from a city for management fees, utility bills, and major capital improvements is subject to state competitive bidding statutes.

¶18 This question was recently answered by 13 Okl. Op. A.G. \_\_\_\_, No. 81-130 (June 12, 1981).

**¶19 It is, therefore, the official opinion of the Attorney General that:**

- 1. Whether counties with populations of over 150,000 are obligated to provide 4-H and FFA groups facilities at fairs is a question that would require an application of facts and may not be answered as a matter of law.**
- 2. Whether 4-H and FFA horse shows are "agricultural shows or expositions" within the meaning of Title 2 of the Oklahoma Statutes regarding fairs is a question of fact and may not be answered as a matter of law.**
- 3. Counties, regardless of their population, are not currently authorized to conduct fairs operated by agreement with a non-profit corporation.**
- 4. The Open Meeting Act, 25 O.S. 301 (1977) et seq., applies to meetings of the board of directors of a nonprofit corporation, where such corporation has contracted with a city for the operation, maintenance and improvements of a municipal park and the city makes annual appropriations to the corporation as an operating fee, where such meetings are held for the purpose of discussing business concerning such matters.**
- 5. A city may not delegate to a non-profit corporation by contract or otherwise its power to contract for**

improvements to a municipal park, unless the city is a charter city and has a charter provision permitting such delegation to another party; and whether such a charter provision exists is a question of fact.

6. In the event a city charter provision permits the delegation to a non-profit corporation of a city's authority to contract for improvements to a municipal park, contracts entered into for such improvements must nevertheless be advertised, awarded and executed in compliance with the Competitive Bidding Act of 1974, 61 O.S. 101 (1974) et seq., provided the Act is applicable to the city in the first instance. Whether the Competitive Bidding Act of 1974, supra, is applicable to a "Home Rule" city is a question of fact, dependent upon a resolution of potential conflicts between the state law and charter provisions dealing with awarding contracts for public improvements and a determination of whether such charter provisions concern purely "municipal" affairs or affect a wider state interest.

JAN ERIC CARTWRIGHT  
ATTORNEY GENERAL OF OKLAHOMA  
MICHAEL AVANT-PYBAS  
ASSISTANT ATTORNEY GENERAL

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##### **Oklahoma Supreme Court Cases**

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<u>1954 OK 256, 274 P.2d 1021,</u>	<u>INGLE v. BOARD OF COUNTY COMMISSIONERS</u>	Cited
<u>1955 OK 198, 285 P.2d 1034,</u>	<u>BOARD OF COUNTY COMMISSIONERS v. WARRAM</u>	Cited
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<u>1933 OK 490, 25 P.2d 326, 165 Okla. 104,</u>	<u>HERNDON Judge v. ANDERSON et al.</u>	Cited
<u>1970 OK 67, 468 P.2d 501,</u>	<u>TULSA EXPOSITION &amp; FAIR CORP. v. BD. OF CO. COM'RS</u>	Discussed at Length
<u>1951 OK 262, 236 P.2d 987, 205 Okla. 233,</u>	<u>JOHNSTON v. CONNER</u>	Cited

##### **Title 2. Agriculture**

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<u>2 O.S. 156 to 156g,</u>	<u>Repealed</u>	Discussed
<u>2 O.S. 15-1,</u>	<u>Fair Corporations - Land, Buildings and Improvements - Purposes</u>	Cited
<u>2 O.S. 60,</u>	<u>Repealed</u>	Cited

<u>2 O.S. 15-21,</u>	<u>Free Fairs</u>	Cited
<u>2 O.S. 15-51,</u>	<u>County Free Fair Associations</u>	Cited
<u>2 O.S. 15-65,</u>	<u>Election - Permanent Free Fair Site - Buildings</u>	Discussed at Length
<u>2 O.S. 15-111,</u>	<u>Conversion of County Free Fair Association</u>	Discussed at Length
<u>2 O.S. 15-118,</u>	<u>Agricultural and Industrial Fair - Held Annually</u>	Cited
<u>2 O.S. 131.18,</u>	<u>Repealed</u>	Discussed
<u>2 O.S. 15-143,</u>	<u>Lease to Public Trust Authority - Powers and Duties of Authority</u>	Cited

**Title 25. Definitions and General Provisions**

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**Title 61. Public Buildings and Public Works**

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