

Opinion No. 57-80

April 24, 1957

BY: OPINION OF FRED M. STANDLEY, Attorney General Hilton A. Dickson, Jr.,
Assistant Attorney General

TO: Hon E. M. Barber, District Attorney, Seventh Judicial District, Truth or
Consequences, New Mexico

QUESTIONS

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1. May a county-fair "building be constructed on property not owned by the county but on which the county has ninety-year lease or less?"
2. "Does the land on which the proposed building is to be erected have to be outside the city limits?"

CONCLUSIONS

1. Yes.
2. No.

OPINION

ANALYSIS

In accordance with the provisions of § 15-36-1, N.M.S.A., 1953 Compilation, counties are generally empowered, in part:

"Second. To purchase and hold real and personal property for the use of the county.

"Third. To sell and convey any real personal estate owned by the county and make such order respecting the same as may be deemed conducive to the interests of the inhabitants.

"Fourth. To make all contracts and do all other acts in reference to the property and concerns necessary to the exercise of its corporate or administrative powers."

(Emphasis supplied.)

And, specifically, with regard to county fairs, § 45-21-1 provides:

"It shall hereafter be lawful for counties of this state to own, **maintain, operate** and sell, real and personal property for the purpose of maintaining and conducting county fairs for the teaching and advancement of agricultural, horticultural and domestic arts, and the breeding of improvement of meat cattle, horses, sheep, goats and hogs." (Emphasis supplied.)

Generally, it is found that counties as well as municipalities are authorized to become parties to contracts where it may be shown that public purpose and benefit are to be realized. The argument in opposition to a particular agreement premised on the theory that the term of a contract extends beyond that provided for the approving authority is generally not sustained.

Considering counties as lessees of realty, 20 CJS 1002 presents:

"A county has the power to enter into a lease and to become a tenant of real estate when the use thereof is needed to carry out any of its acknowledged powers and purposes,"

In Herberer v. Chaffer County, 88 Colo. 160, P. 349, the Colorado Court was confronted with a situation arising out of the lease of a building used as a court house. Here the statute provided " **to make all contracts, and do all other acts in relation to the property and concerns necessary to the exercise of its corporate or administrative powers.** " Except for the use of the word "reference" in place of "relation," the New Mexico provision is identical. The Court said in discussing the professed general rule: (Emphasis supplied.)

"It is said that the lease is void because it extends beyond the terms of the office of the present commissioners; that commissioners cannot bind their successors."

"There are some contracts that do not come within the reason of the general rule we are discussing. In **Liggett v. Board of County Commissioners of Kiowa County**, 6 Colo. App. 269, 40 P. 475, the court said (p. 275): The county is a continuous organization. Many contracts can be conceived and suggested which of necessity could not be performed during the term of office of an entire board of county commissioners. To hold contracts invalid because part of all of a board cease to exercise public functions would be to put these corporations at an enormous disadvantage in making contracts which are essential to the safe, prudent, and economical management of the affairs of a county."

The theory of the aforesaid case was also sustained in **Bennett v. Petroleum county**, 87 Mont. 436, 288 P. 1018; **People v. Earle** 47 How. Pr. 370, and in **Davis v. City of New York**, 83 NY 207.

The question as to location of county fair premises with reference to municipal or city limits is resolved by reference to §§ 15-36-2 and 15-46-5, N.M.S.A., 1953 Comp. By the former no limitations are imposed on the location of county owned property, and by the

latter, at least for first-class counties, title to realty situated within municipalities, acquired by gift or purchase, will vest in the county. It may logically be concluded by implication that the location of leased premises suffers no restriction. Other examples of county owned or controlled property located within municipal limits are court houses and county hospitals.

While not specifically asked, it is suggested that serious consideration be given by the county commissioners to the privilege and right of option to purchase any land ultimately decided upon as the fair site. The permanent and attached nature of most conceivable fair buildings is not suggestive of a beneficial lease arrangement.