

Opinion No. 57-27

February 14, 1957

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

TO: To.: Mr. E. M. Barber, District Attorney, Seventh Judicial District, Truth or
Consequences, N.M.

QUESTIONS

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1. May an incorporated municipality constitute or cooperate in the erection of a county fair building which has been approved at a provided for county bond election, and if so;
2. What governing body would control and manage the property acquired?

CONCLUSION

1. No.

OPINION

ANALYSIS

By the provisions of § 45-21-1, N.M.S.A., 1953:

"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 and improvement of neat cattle, horses, sheep, goats and hogs."

The question being instantly considered deals with municipal participation in a county fair, particularly with the ownership and management thereof.

Searching thoroughly the provisions specifying powers of cities and towns, we find at § 14-21-3, N.M.S.A. 1953:

"The city council and board of trustees in towns shall have the following powers: To control the finances and property of the corporation. To appropriate money for corporate purposes only and provide payment of debts and expenses of the corporation. . . .

To erect all needful buildings for the use of the city or town."

and following in § 14-21-4 Stats. supra:

"To contract an indebtedness on behalf of the city, and upon the credit thereof, by borrowing money or issuing the bonds of the city or town for the following purposes, to-wit: For the purpose of erecting public buildings; . . ."

and finally in § 14-21-37:

"To provide for the erection and care of all public buildings necessary for the use of the town."

Generally throughout the article wherein is specified the powers of cities and towns, there is found the continued theme of municipal need or use. Joint or cooperative efforts with other bodies politic are suggested first in Article X, § 4, New Mexico Constitution, wherein is provided a means for establishing a combined city and county municipal corporation, but such provision is premised with a requisite of a combined population of not less than fifty thousand persons, thus eliminating the herein considered situation.

In § 14-33-15, we find a specific instance where:

"Counties and municipalities are . . . empowered and authorized to become indebted for the purpose of constructing, maintaining and operating said county-municipal hospitals and to vote, issue and sell their respective general obligation or revenue bonds therefor. . . ."

But no constitutional or statutory provisions are found wherein is contemplated a municipal fair or participation by a municipality in the ownership or management of either a county or state fair as provided.

It is pointed out in 37 Am. Jur. 720:

"The view generally prevailing in this country is that the powers of municipal corporations are derived solely from the state, through the legislature, and that such powers may be enlarged, abridged, or entirely withdrawn by the legislature at its pleasure. . . ."

In conclusion, it is our opinion that a municipality may not contribute to a county fair fund, which has been approved by a vote of the county electorate, in the absence of specific legislative authority. It might be suggested, however, that we find nothing prohibiting the county from leasing part of the considered facilities to a municipality for purposes not inconsistent with the uses provided by the creating statutes.

The second and conditional question is not subject to reply in this opinion.