

OFFICIAL OPINION NO. 90-06, Purchase of land by South Dakota State Fair

January 17, 1990

Dean E. Wieczorek, Chairman
State Fair Commission
P.O. Box 1275
Huron, SD 57350

OFFICIAL OPINION NO. 90-06

Purchase of land by South Dakota State Fair

Dear Mr. Wieczorek:

You have requested an opinion from this Office regarding the following factual situation:

FACTS:

There are certain parcels of real estate across the street from the present South Dakota State fairgrounds that might be purchased by the State Fair and used for parking. Certain of these parcels have been leased in the past for a relatively low fee, such that it would not be economically feasible to purchase them. The owner of these parcels of real estate has, however, indicated that the rental fee will be increased for the next year. In the opinion of the South Dakota State Fair Commission, it might be economically feasible to purchase the real estate rather than to lease it as in prior years. The State Fair Commission would like to consider the possibility of purchasing these parcels of real estate.

Based upon the above facts, you have asked the following questions:

QUESTION NO. 1:

May the South Dakota State Fair Commission purchase property that contains buildings owned by third parties, which if purchased would produce rental income from sources outside the ordinary activities of the South Dakota State Fair?

QUESTION NO. 2:

May the South Dakota State Fair Commission purchase real estate without improvements on it?

IN RE QUESTION NO. 1:

One of my predecessors previously opined that the South Dakota State Fair Commission may purchase real estate for use of the Fair pursuant to the power granted in SDCL 1-21-7. See 1975-76 Report of the Attorney General at 540-541. This opinion also indicates that a motel business, located on real estate, could not be purchased and leased out, since such a purchase would violate Article XIII Section 1 of the South Dakota Constitution, which permits the purchases of property only for the "purpose of developing resources and improving the economic facilities of South Dakota." Other opinions from this Office have indicated that the power under Section 1-21-7 is quite extensive, and, for example, authorizes the purchase of a mobile home for an assistant manager, 1975-76 Report of the Attorney General at 539; authorizes purchase of insurance by the State Fair Board, 1951-52 Report of the Attorney General at 427; authorizes the State Fair Commission to allow the Beadle County Commissioners to build a permanent building on the State Fairgrounds, 1975-76 Report of the Attorney General at 61; authorizes the State Fair Commission to lease state land to private individuals for operation of concessions, 1983-84 Report of the Attorney General at 147; *Id.* at 185.

The only limitation contained in these opinions was that of purchasing an independent business. See 1975-76 Report of the Attorney General at 541. In my opinion, this may be distinguished from the purchase of property as indicated in your question no. 1. It appears to me that the primary purpose for purchasing the property with buildings upon it is for parking, rather than as a means to produce independent income. In addition, it could be that the leases with the other occupants of the property could be terminated at some point in the future. The property then would revert entirely to the State Fair, which could use the property for its own purposes. Although the Commission's power under SDCL 1-21-7 is broad, it may purchase, hold and sell property only for the purposes necessary to conducting the South Dakota State Fair. Clearly, providing parking space for Fair attendees is a necessary purpose. The fact that the property, when purchased, is encumbered by the terms of a valid lease does not limit the ability of the Commission to purchase the property. The question of what process must be followed when the lease expires is beyond the scope of this opinion.

I note from the attachments to your request that certain of the properties may now or have had oil companies situated upon them. An important risk arises in purchasing any such properties. Under SDCL ch. 34A-12 and 34A-13, the owner of property may be responsible for any discharge of petroleum products from such property, or tanks located on it, into the soils or waters of this State. Therefore, if any oil company properties, or any properties that have ever had oil companies situated on them, are considered for purchase, you should definitely require the occupants of such properties to indemnify the State from such damages. This could be accomplished by an insurance contract with a solvent insurer or an arrangement with another third party payor who would be able to take up the State's liability under these statutes should the need arise. If such an arrangement cannot be made, it might be better not to purchase such properties.

IN RE QUESTION NO. 2:

It is my opinion that the South Dakota State Fair Commission, under SDCL 1-21-7, may purchase real estate for purposes of parking or other uses in aid of holding the South Dakota State Fair. I would refer you to the prior opinions referenced above, regarding the State Fair Commission's authority to lease out property to third parties.

Respectfully submitted,

ROGER A. TELLINGHUISEN
ATTORNEY GENERAL

RAT:cfc