STATE OF NEBRASKA
Office of the Attorney General
2115 STATE CAPITOL BUILDING
LINCOLN, NEBRASKA 68509-8920
(402) 471-2682
FAX (402) 471-3297

DON STENBERG
ATTORNEY GENERAL

L. STEVEN GRASZ
SAM GRIMMINGER
DEPUTY ATTORNEYS GENERAL

92081

STATE OF NEBRASKA
OFFICIAL
JUN 12 1992
DEPT. OF JUSTICE

DATE: June 5, 1992

SUBJECT: Proprietary Funds of County Fair Boards and Audits by the Auditor of Public Accounts

REQUESTED BY: Terry E. Savage, Chase County Attorney

WRITTEN BY: Don Stenberg, Attorney General
Dale A. Comer, Assistant Attorney General

As Chase County Attorney, you were contacted by the Chase County Fair Board concerning some questions involving audits of the fair's proprietary funds by the Auditor of Public Accounts (the "State Auditor"). The fair board asked you to request our opinion on the issues raised. We do not represent county fair boards, and, generally, we do not provide opinions to them. However, in this instance we will respond to your opinion request since the issues raised involve the State Auditor, and also since the issues raised involve, at least to some extent, revenue matters. The questions at issue were presented in a letter to you from the Chase County Fair Board.

The first question raised by the fair board is whether the State Auditor has the authority to audit the proprietary funds of the fair, i.e., those non-tax and non-county budget funds which the fair receives as a part of its activities, such as funds from ticket sales, exposition space rental, etc. In our view, the State Auditor may audit those monies.

The state statutes concerning county agricultural societies and county fairs are found generally at Neb.Rev.Stat. §§ 2-201 et seq. (Reissue 1991). Those statutes establish two ways for citizens to create a county fair. First, under Sections 2-201 through 2-217, residents of a county may create a county agricultural society to manage a county fair. Second, under Sections 2-221 through 2-237, the county itself may maintain a

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county fair after an appropriate authorizing vote by county residents. In the latter instance, a county fair board is appointed by the county board, and the county fair board runs the county fair. It is our understanding that the Chase County Fair Board was organized by Chase County under the second procedure set out in Sections 2-221 through 2-237.

In Opinion of the Attorney General No. 201, January 21, 1980, we indicated that a county fair board created under Sections 2-221 through 2-237 is, unlike a county agricultural society, a "governmental body serving a political subdivision of the state." That conclusion is supported by Wilson v. Thayer County Agricultural Society, 115 Neb. 579, 213 N.W. 966 (1927). In that case, the Nebraska Supreme Court held that a county agricultural society was not a governmental agency entitled to sovereign immunity. However, in the course of its opinion, the court also stated:

> ...the defendants argue that the court erred in receiving any evidence over their objection, on the theory that the proceeding [against the county agricultural society] is one in reality against the county, and that this society is a part of the county organization and as such exercises authority of sovereignty and is a governmental agency. If the county itself had organized the society under authority of a vote of the people, by the power granted by the legislature..., that objection might have pertinence. That question, however is not before us....The legislature separately provided for agricultural societies organized by individuals and for agricultural societies organized by counties as conductors of fairs.

111 Neb. at 582, 213 N.W. at 968 (Emphasis added). As a result, we believe that the Chase County Fair Board, as a fair board organized by the county under Sections 2-221 through 2-237, is a governmental body. Since it was created by Chase County, it is a part of the Chase County governmental organization, and members of the board are county officers.

Neb.Rev.Stat. § 23-1608 (Reissue 1991) requires an annual audit of all the "books, accounts, records, and affairs of all county officers" in each Nebraska county, and the county board may contract with the State Auditor or with private accountants to perform that audit. We assume that this statute and the statutes detailing the State Auditor's general authority at Neb.Rev.Stat. §§ 84-304 et seq. (Reissue 1987) give the State Auditor the authority for the proposed audit of the Chase County Fair Board. Therefore, the question becomes, does the State Auditor have authority to audit proprietary funds as a part of that annual audit?

In our recent Opinion of the Attorney General No. 92057, April 3, 1992, we indicated that, in our view, "...revenues of municipal corporations derived from proprietary activities, including utility services, are required to be included in budget statements by virtue of express provisions of the Nebraska Budget Act." The Nebraska Budget Act applies generally to counties, and, there are also similar provisions in the County Budget Act. For example, Neb.Rev.Stat. § 23-904 (Reissue 1991) provides that the annual county budget document must include a general budget summary showing the total anticipated county income from "fees, license taxes, taxes to be levied, and all other sources of revenue." (emphasis supplied). Since the county fair board is a part of county government, we believe that the annual county budget document should contain information regarding the proprietary revenues of the county fair. This fact, together with the fact that the county fair board is a governmental entity and a part of the county government, leads us to conclude that the State Auditor may audit the proprietary funds of the fair board.

The second question raised by the Chase County Fair Board involves the duties of the county treasurer. Specifically, the fair board wishes to know if all fair funds must be processed through the county treasurer's office. Apparently, the fair board currently disburses some of its own proprietary funds, and the board is concerned that having to process those expenditures through the county treasurer and the county board would cause an "administrative nightmare."

There does not appear to be any clear statutory answer to the fair board's second question. On the one hand, Neb.Rev.Stat. §23-1601 (Reissue 1991) provides:

> It shall be the duty of the county treasurer to receive all money belonging to the county, from whatever source derived, and all other money which is by law directed to be paid to him or her. All money received by him or her for the use of the county shall be paid out by him or her only on the warrants issued by the county board according to law, except where special provision for the payment thereof is or shall be otherwise made by law.

(emphasis added). Since the county fair board is a governmental entity and a part of county government, it could well be argued under Section 23-1601 that the fair's funds, including proprietary funds, are county monies which should be placed with the county treasurer. This would subject those funds to the warrant process, since there does not appear to be another special statute which specifically allows payment otherwise.

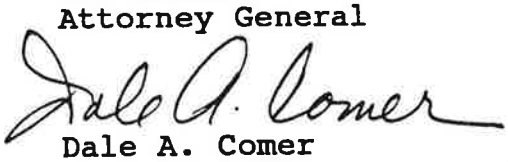
On the other hand, Neb.Rev.Stat. § 2-231 (Reissue 1991) states that, "[t]he county fair board shall cause to be filed with the county board from time to time all claims to be paid from money raised by taxation, and such claims shall be allowed and paid in like manner as general claims against the county." (emphasis added). This statute seems to imply that the warrant process for payments by the fair board should apply only to funds generated by taxation.

The county board has authority to "manage the county funds and county business..." Neb.Rev.Stat. §23-106 (Reissue 1991). Under the County Budget Act, the county board may classify county income and expenditures by fund, and authorize spending by fund. Neb.Rev.Stat. § 23-904 (Reissue 1991). The county board may also "establish a petty cash fund for [the] county for the purpose of making payments for subsidiary general operational expenditures and purchases." Neb.Rev.Stat. § 23-106 (Reissue 1991). The amount of money in that cash fund and the dollar limits on expenditures from that fund must be established by county board resolution.

We believe the various statutes cited above dealing with the fiscal authority of the county board may offer a way to reconcile the statutory provisions which require that all county funds be placed with the county treasurer and those provisions which seem to imply that non-tax fair revenues should somehow be handled differently. Since the county board can establish a cash fund for subsidiary general operational expenditures and other types of county funds, it seems to us that the county board could create a county fair fund as a part of the county cash fund. Proprietary monies from the fair could be placed in the fair portion of the cash fund in the possession of the treasurer, and expenditures could then be made from the cash fund as necessary. In this way, all county monies would be handled by the county treasurer. On the other hand, non-tax monies of the county fair board could be expended without the claims process.

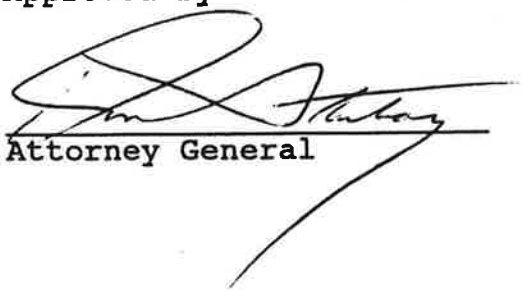
Sincerely yours,

DON STENBERG
Attorney General



Dale A. Comer
Assistant Attorney General

Approved by:



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