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January 11, 1960
Opinion No. 60-11

REQUESTED BY: Honorable James P. Boyle, Jr.
Yavapai County Attorney

OPINION BY: WADE CHURCH, The Attorney General

QUESTION: Can the Yavapai County Board of Supervisors enter into a twenty-five year lease with the Yavapai Fair Association (a non-profit organization) covering the County Fair Grounds facilities? If they cannot enter into such a lease for that length of time, what would be the longest term which they could legally grant to such an organization?

CONCLUSION: See body of opinion.

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While A.R.S. § 11-201 (4) grants to a county the power to make "such orders for the disposition or use of its property as the interests of the inhabitants of a county require", the Arizona Supreme Court has limited the use of this discretion in Hartford Accident, etc. Co. v. Wainscott, (1933), 41 Ariz. 439, 448, 19 P. 2d. 328, to only those specific powers which are otherwise granted to counties by our constitution or statutes.

With reference to the power of a county to lease its buildings or property, the holding of that case conforms with the general rule in the United States that,

"A county has no power to lease its property to private persons in the absence of a constitutional or statutory provision, expressly or impliedly authorizing it to do so."

14 Am. Jur. 208, Counties, § 36.

See also 20 C.J.S. 1002, Counties, § 170.

An examination of the powers of county boards of supervisors reveals that there is only one section in the Arizona Revised Statutes which allows the lease of such county buildings or property, and that is A.R.S. § 11-256, which reads as follows:

"§ 11-256. Lease of County Buildings

A. The board may lease any county building or any building under the control of the county and constructed with the aid of the United States government, or any agency thereof, other than the county courthouse and jails, for a period not to exceed ten years. All leases shall be made at public auction to the highest responsible bidder at the highest monthly rent.

B. Notice of a proposed lease shall be given by publication, once each week for four consecutive weeks, in a newspaper of general circulation in the county. The notice shall state the period and all material conditions of the proposed lease, and the day on which the auction will be held, which shall be not less than thirty days after first publication of the notice.

C. This section shall be construed as supplementary to and not in conflict with other statutes governing or regulating powers of boards of supervisors."

It would seem, therefore, that if the board of supervisors of any county desired to lease any buildings or structural facilities owned by the county, the only way they could lease said buildings or structural facilities would be pursuant to this statute calling for notice, publication and bid, and no lease made in this manner could be for a period exceeding ten years. While the statute specifically only includes county buildings, it certainly must, by necessary implication, be read to include the real property which is appurtenant to the building and necessary to its proper use.

Therefore, pursuant to A.R.S. § 11-256, it is the opinion of this office that the Yavapai County Board of Supervisors could enter into the type of lease set forth in the question, if it followed the provisions of this statute and if the lease does not exceed ten years.

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