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October 4, 1951  
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Mr. George W. Blake  
Secretary, Arizona State Fair Commission  
Phoenix, Arizona

Dear Mr. Blake:

We have your letter of September 18 wherein you ask for our opinion on seven questions. We shall answer your questions in the order propounded.

Your first question is:

"Can the Maricopa Turf Club, who at present hold a one year lease on the Fairgrounds horse racing plant, advance the money for the proposed club house and be repaid at conclusion of the 1951-52 race meet?"

The Fair Commission has such powers as are expressly or by implication granted by statute. Section 2, Chapter 60, Laws of 1941 (Section 8-703 Supplement to the Code) prescribes the powers and duties of the commission, and reads in part as follows:

"The Arizona state fair commission shall:

1. Have exclusive custody and direction of all state fair property, construct and maintain necessary improvements in connection therewith, and assist in raising funds therefor.

2. Direct and conduct state fairs, exhibits, contests and entertainments for the purposes of promoting and advancing the pursuits and interests of the several counties and of the state, and of producing revenue.

3. When deemed advisable, charge entrance fees and gate money, temporarily lease stalls, stands, booths, and sites, and give prizes or premiums for exhibits and contests.

4. Employ a secretary, who shall not be a member of the commission, and such other employees, and make such other expenditures, as may be proper in carrying out the provisions of this article. \* \* \* \* \*

6. Have power to lease the state fair grounds for rodeos, civic exhibitions, fireworks displays, and such other purposes as it may deem proper.

7. Have power to accept donations of money or other property from any source, and expend the same in accordance with the directions of the donor. Moneys received pursuant to this paragraph shall not be placed in the general fund."

You will note the absence of the power of the commission to accept loans or advances from anyone for any purpose.

Section 8-705 ACA 1939 Supplement creates the State fair fund and provides:

"All moneys coming into the hands of the commission shall be deposited promptly with the state treasurer, who shall credit such deposits to the state fair fund, which fund is created hereby and shall be under the full control and jurisdiction of the commission. Vouchers for authorized expenditures shall be signed by the chairman of the commission and attested by the secretary of the fair commission. All expenditures shall be made upon claims approved by the commission and presented to the state auditor, who thereupon shall draw his warrant against the state treasurer to be by him paid out of the said state fair fund. Balances remaining in the state fair fund at the end of a fiscal year shall not revert to the general fund." (Emphasis supplied)

Subdivision 69 of the general appropriation bill enacted in furtherance of the section reads:

"All collections received during the fiscal year when paid into the State Treasury are hereby appropriated for Personal Services, Current Expenditures and Capital Outlay." (Emphasis supplied)

Under these sections any revenues from leasing the race track at the fairgrounds must be paid into the State Treasury and all expenditures of the money must be on claims approved by the auditor and paid on warrants drawn on the state treasurer. This procedure precludes the commission from entering into an arrangement whereby a lessee would make an advance of money for construction and withhold the amounts advanced from lease money due to the commission because such an arrangement would prevent the revenue from going into the treasury and being paid out on claims and warrants.

Another reason we think the commission could not enter such an arrangement is that all appropriations to the commission should be construed in connection with the Budget and Financial Act of 1943.

Section 2 of the act (10-902 Supplement to the 1939 Code) defines a "budget unit" as follows:

"'Budget unit' means a department, commission, board, institution, or other agency of the state organization receiving or expending or disbursing state funds or incurring obligations against the state"

Section 9 of the act (10-920 of the Supplement) provides in part:

"Encumbrance documents shall be issued by the budget units to cover all obligations, actual or anticipated. Copies of these documents shall be submitted forthwith to the office of the state auditor, \* \* \*"  
(Emphasis supplied)

and Section 11 (10-922 Supplement) reads:

"In no event shall any budget unit approve any encumbrance document which will involve an expenditure of any sum in excess of the unencumbered balance of the allotment to which the resulting expenditure will be chargeable." (Emphasis supplied)

The obligation to repay an advance out of income due the commission is an obligation within the meaning of said section 9 and the obligation must be encumbered as required by said Section, but if the lease money is not paid to the commission, there would be no balance to be encumbered, and therefore the commission is precluded by Section 11 (10-922) from approving the encumbrance.

The legislature intended the state should always operate on a cash basis. The effect of accepting an advance or loan for

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the construction of the club house and an agreement to repay the same out of future income amounts to operating state business on a credit basis, in violation of the spirit, if not the letter of the budget law.

Because of the lack of authority in the commission to enter into the proposed arrangement, the manner prescribed for handling the funds of the commission the limitations imposed by the budget law, we do not believe the commission is empowered to accept an advance of money necessary to construct the club house, and agree to pay the same out of future income.

Your second question is:

"Can they be repaid one-half at conclusion of 1951-52 race meet and one-half at conclusion of 1952-53 race meet regardless of who holds 1952-53 race meet lease?"

The answer to question No. 1 answers this inquiry.

Your third question is:

"Can Fair Commission extend by vote now the present one year lease by Turf Club to a two year lease? (One year bids were called for before awarding 1951-52 lease)"

We think this question should be answered in the affirmative for the reason the statute defining the powers and duties of the commission gives that body exclusive custody and control of the fairgrounds and the property connected therewith and authorizes it to lease the grounds. There is no statutory requirements that the commission shall advertise or accept bids on leases on state fair property, the present lease could have been entered into without advertising and bids, and the present lease may be extended without advertising for bids, at the discretion of the commission.

Your fourth question is:

"If Turf Club constructs club house (estimated \$15,000 including furnishings) can Fair Commission reimburse at later date if construction is not advertised for bids?"

This question is answered in the negative. While the construction would be done by private citizens, it would be the construction of a public building for the state with public funds. Section 9-104 ACA Supplements reads:

"Bids by contractor--Estimates if work not done by contract.--Every proposal

for the construction of buildings shall be by bids for all of the proposed work, signed by a responsible contractor and accompanied by a certified check, or if the proposed work be not done by contract, the accepted, completed plans and specifications shall be estimated by a person qualified as 'quantity surveyor,' public estimator, or a person specially appointed."

If the lessee is permitted to construct the building for the state, with income due the state and without bids it circumvents the law and is doing indirectly what the commission could not do directly.

Your fifth question is:

"Can club house on state property be operated as private club with membership fee?"

This question must be answered in the negative. The property over which the commission exercises control is held for the benefit of the public and for public use. No where in the statute prescribing the powers and duties of the commission is it authorized to let fairgrounds property for private use. The commission has no more right to let the property for a private club than it would have to let the premises to an individual for a truck garden or any other private enterprise.

Your sixth question is:

"Can club house on state property be operated with admission charged?"

If the club is open to the public and is run in conjunction with some public enterprise being operated on the fairgrounds, an admission charge may be made for the use of the facilities of the club in the same manner as you may make a charge for box seats in the grand stand.

Your seventh question is:

"In case admission could be charged what could be classified as appropriate or admissable and what would be excessive \$1, \$2, \$5, \$10, \$25, \$50, \$100? (Purpose of club would be to provide comfortable lounge and tables for patrons and horse owners who require and support better accommodations.)"

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This question does not call for a legal opinion, but propounds an administrative question to be determined by the commission.

Yours truly,

FRED O. WILSON  
Attorney General

EARL ANDERSON  
Assistant Attorney General

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