



DEPARTMENT OF LAW
OFFICE OF THE
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STATE CAPITOL
Phoenix, Arizona 85007

BRUCE E. BABBITT
ATTORNEY GENERAL

March 10, 1978

Mr. Thomas E. Clark, Executive Director
Arizona Coliseum and Exposition Center Board
Post Office Box 6715
Phoenix, Arizona 85005

Re: 78-48 (R77-196)

Dear Mr. Clark:

You have requested our opinion whether the Arizona Coliseum and Exposition Center Board may allow the Arizona National Livestock Association to conduct, assume liability for, and derive sales commissions from market steer sales activity in connection with the annual livestock fair. Your request did not indicate whether you are concerned about the Arizona National Livestock Association's conducting steer sales activities as an independent entrepreneur simultaneously with the Board's annual livestock fair or whether you are concerned about the Board's retaining the services of the Arizona National Livestock Association as the Board's agent for conducting steer sales activities as part of the Board's annual livestock fair. Therefore, we shall deal with both situations.

The statutes creating the Board (A.R.S. §§ 3-1001 et seq.) are silent with respect to such Board action. A.R.S. §§ 3-1003 and 3-1007 grant the Board general powers, among which are the power to lease facilities, promulgate rules and regulations, and acquire, hold and dispose of personal property or rights therein. Also A.R.S. § 3-1006.B states that the Board shall constitute a "body corporate," which gives the Board the general powers of a corporation (see A.R.S. § 10-004), which would include the power to contract.

A.R.S. § 5-113.C directs the Board to conduct an annual livestock fair for the purpose of promoting livestock resources.

1. A.R.S. § 5-113.C provides:

C. The livestock, agriculture, and breeders' award fund shall be under the control of the governor, and, subject to the provisions of subsection D of this section, shall be used for the purpose of promoting the livestock and agricultural resources of the state, and for the purpose of conducting an annual livestock fair by the Arizona coliseum and exposition center board to further promote livestock resources. The direct expenses less receipts
(footnote continued on next page)

This statute is silent with regard to the Board's duties in conducting the fair, but we perceive no inconsistency between § 5-113.C and a livestock sale either as a part of or as an adjunct to a livestock fair. A contract with another organization under which that organization undertakes, on behalf of the Board, to conduct a livestock sale as part of the annual livestock fair, appears not to conflict with the Board's statutory duty of "conducting" the fair. Nor is a contract with another organization under which it conducts a livestock sale during the livestock fair on its own account and for its own benefit necessarily in conflict with the Board's duty of "conducting" the fair, unless you conclude that a livestock sale is an integral element of a livestock fair, in which case the sale must be conducted by the Board albeit under a contract with an agent of the Board. Moreover, the broad grant of authority to the Board to "conduct" a livestock fair supports the conclusion that it may do those things reasonably necessary to implement this objective which, we think, includes the execution of contracts with entities such as the Arizona National Livestock Association to conduct the fair on behalf of the Board or to conduct on its own behalf activities related to the fair, including a livestock sale.

If the Arizona National Livestock Association conducts a livestock sale as an entrepreneurial venture on behalf of its members rather than on behalf of the Board, the Association, rather than the Board, should bear the ultimate responsibility for any losses or other liabilities arising from the auction. If, on the other hand, the Arizona National Livestock Association conducts the livestock sale as the Board's agent, we think the Board should understand that it bears the ultimate responsibility for the conduct of the livestock sale even though the Board's agent may contract with the Board to assume that responsibility. Under either circumstance, the Association would be entitled to receive remuneration for its efforts. We find nothing objectionable in that remuneration taking the form of or being measured by commissions on sales.

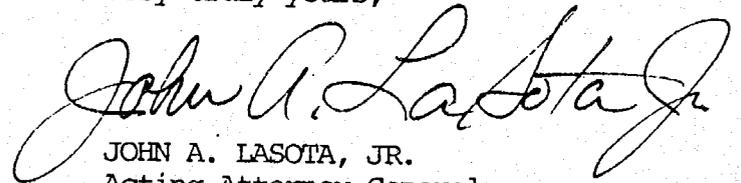
(footnote 1. continued)

of the livestock fair shall be paid from this fund, but such payment shall not exceed thirty per cent of the receipts of the fund for the preceding fiscal year. All expenditures from the livestock, agriculture, and breeders' award fund shall be made upon claims approved by the governor.

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We think the statutes cited above support the Board's authority to contract with the Arizona National Livestock Association to conduct, assume liability and derive sales commission for market steer sales activity during the annual livestock fair, either as an independent entrepreneur or as the Board's agent. We suggest that the Board consider in which capacity it desires to have the Association act and that the Board accomplish this by means of a written agreement.

Very truly yours,



JOHN A. LASOTA, JR.
Acting Attorney General

JAL:kd