

Fair association, lease of fairgrounds

Number: INFORMAL

Date: January 26, 2000

The Honorable Lisa Carlton
Senator, District 24
2127 South Tamiami Trail
Osprey, Florida 34229-9695

Dear Senator Carlton:

This is in response to your request for an opinion as to whether a county fair authority may enter into a long-term lease for use of a portion of the fairgrounds which in turn would benefit the overall use of the facility and generate a financial return for fair purposes. You also ask if a fair authority may lease facilities on a temporary basis for automobile dealer shows and, if so, whether an occupational license is required for each event.

Section 616.01, Florida Statutes, authorizes the creation of a not-for-profit association within a county for the purpose of conducting and operating public fairs or expositions. A "[p]ublic fair or exposition" is defined as

"a fair or exposition not for profit for the purpose of the benefit and development of the educational, agricultural, horticultural, livestock, charitable, historical, civic, cultural, scientific, and other resources of the state, any county or counties of the state, or any municipality or other community of any county of the state." [1]

Each fair association has the power to

"hold, conduct, and operate public fairs and expositions annually and *for such purpose* to buy, lease, acquire, and occupy lands, erect buildings and improvements of all kinds thereon, and . . . *to charge and receive compensation* for admission to those fairs and expositions, *for the sale or renting of space for exhibitions, and for other privileges*; . . . to promote the progress of the geographical area it represents and serves and stimulate public interest in the advantages and development of that area by providing facilities for agricultural and industrial exhibitions, public gatherings, cultural activities, and other functions which the association determines will enhance the educational, physical, economic, and cultural interests of the public; and generally to do, perform, and carry out all matters, acts, and business usual or proper in connection with public fairs and expositions; but this enumeration of particular powers shall not be in derogation of or limit any special provisions of the charter of the association inserted for the regulation of its business, and the conduct of its affairs of creating, defining, limiting, and regulating the powers of the association or its officers or members" [2] (e.s.)

It is a well established rule that statutorily created entities have only such powers as are expressly granted to them by law or those necessarily implied because they are essential to carry into effect those powers expressly granted. [3] Thus, as statutory entities, fair associations

possess no inherent power to act but rather may exercise such a power only when authorized to do so by law and then only in the manner, within the limits, and for the purposes prescribed.[4]

Fair associations are given the authority to charge and receive compensation for the sale or renting of space for exhibitions and other privileges. However, the enabling legislation links such authority to the association's purpose to hold, conduct, and operate public fairs and expositions. Accordingly, the leasing of a portion of the fairgrounds would have to necessarily be related to the fair association's purpose.

Section 616.12(1), Florida Statutes, requires that every person who operates under any agreement, including a lease agreement, a traveling show, exhibition, etc., within the grounds of and in connection with any fair or exhibition must pay the license taxes provided by law, unless the association fully qualifies with all of the provisions in Chapter 616, Florida Statutes, including securing the required fair permit from the Department of Agriculture and Consumer Services. Under these circumstances, the traveling show or exhibition operates under a tax exemption certificate issued by the department.[5] The department prescribes the forms and rules for carrying out the purpose and intent of allowing the tax exemption, including the necessary tax exemption certificate to be signed by the tax collector, showing that the traveling show, exhibition, or other show has met the requirements of the chapter.[6] Any fair association securing the required fair permit from the department is exempt from occupational license fees, occupation permit fees, or any occupational taxes assessed by any county, municipality, political subdivision, or agency, or instrumentality thereof.[7]

Accordingly, the temporary leasing of property for a trade show or automobile dealership sale operating outside a fair or exposition permit obtained from the Department of Agriculture and Consumer Services would be subject to occupational license fees and any other fee assessed by law.

I trust these informal comments are helpful in assessing the powers of a county fair authority.

Sincerely,

Robert A. Butterworth
Attorney General

RAB/tls

[1] Section 616.001(11), Fla. Stat.

[2] Section 616.08, Fla. Stat.

[3] See *Edgerton v. International Company*, 89 So. 2d 488 (Fla. 1956), *Forbes Pioneer Boat Line v. Board of Com'rs of Everglades Drainage Dist.*, 82 So. 346 (Fla. 1919); cf. Ops. Att'y Gen. Fla. 82-89 (1982), 80-55 (1980), and 76-200 (1976).

[4] *Cf.* Ops. Att'y Gen. Fla. 73-374 (1973) and 76-200 (1976).

[5] Section 616.12(1), Fla. Stat.

[6] *Id.*

[7] Section 616.12(2), Fla. Stat.