

640514.1

**MICHIGAN STATE FAIR AUTHORITY: Functions and powers of the Authority and of its general manager.**

The Michigan state fair authority is vested with the power to determine and establish policy for the operation of the fair and maintenance of the fairgrounds.

The general manager of the Michigan state fair is the chief administrative officer of the Michigan state fair authority and is empowered to direct its activities and conduct its affairs in accordance with the general policy determined by the authority.

The powers and duties of the Michigan state fair authority may not be improperly delegated to any person.

The authority must hire its director of publicity and advertising and other personnel through its general manager in conformity with civil service rules and regulations and such director of publicity and advertising would be subject to control of the general manager of the authority.

No. 4255

May 14, 1964.

Mr. Walter A. Goodman  
General Manager  
Michigan State Fair Authority  
State Fairgrounds  
Detroit, Michigan

In your letter you outline a difference of opinion existing between the Michigan state fair authority and you, as general manager of the authority, over the execution of a proposed contract for the employment of a director of publicity and advertising.

You enclose a draft of the proposed contract and submit two (2) questions, which, slightly reworded, are as follows:

1. Can the authority, acting independently of the administrative officer, hire by contract, a director of public relations and advertising, or any other department director for year-round or fair-time employment?
2. Can the authority arrange to direct and supervise the director of public relations and advertising?

The Michigan state fair authority was created pursuant to Act 224, P.A. 1962, being M.S.A. Cur. Mat. § 12.1280(21) et seq., which provides that the authority shall consist of 20 members, appointed by the governor, by and with the consent of the senate, for terms of 4 years each, and makes further provision for the appointment of a general manager.

The powers, duties, functions and responsibilities of the authority as a body corporate and those of the general manager are enumerated in the various sections of the act.

This office has reviewed a copy of the proposed contract between the Michigan state fair authority and Dick Frederick. This proposed contract provides for the employment of Dick Frederick by the state fair authority

for a period of one (1) year with payments to be made for his "personal services" at various intervals for the year and that Dick Frederick will assume the duties as director of publicity and advertising for the 1964 Michigan state fair. The contract describes the duties of Mr. Frederick as follows:

"It is further agreed that the work of the Director of Publicity and Advertising shall include the development of publicity ideas; handling of publicity releases; the supervision of publicity photography; the placement of advertisements in the various advertisement media; the contacting of newspaper editors and reporters for special press relations events, and such other publicity assignments which may be designated by the General Manager. The Directors of all other departments of the Michigan State Fair will work with the Director of Publicity and Advertising so that all press releases will be coordinated and will emanate from one source.

"It is further agreed and understood that in the placement of all advertising, whatever the media employed, the Dick Frederick Agency, being a bona fide advertising agency, shall receive the customary 15 per cent commission paid to advertising agencies.

"It is agreed that the Michigan State Fair Authority shall supervise the work of the Director of Publicity and Advertising. In the event that the latter does not satisfactorily carry out the duties as set forth in the contract, the Authority shall cancel the contract, and the compensation due thereunder be adjusted commensurate with the work performed to date of cancellation."

It is my opinion that the proposed contract is improper and cannot be legally entered into by the Michigan state fair authority for the following reasons:

Section 9 of Act 224, P.A. 1962, provides:

"The authority, through its administrative officer, shall hire all necessary personnel in conformance with the rules and regulations of the civil service commission. All classified employees of the Michigan state fair commission are hereby transferred to the authority and shall be deemed to have continuous employment under the civil service commission and shall retain all benefits and rights which have accrued to them."

It appears from the contents of the proposed contract that what is factually being undertaken by the authority is the creation of a new position of director of publicity and advertising as a part of the organizational structure of the authority. The proposed contract contemplates the filling of this position by the employment of Mr. Frederick for a period of one year. But it is a matter of common knowledge that the state fair is held on an annual basis and that the development of publicity, the creation of advertisements, the selection of advertising media and like matters will recur annually in connection with the holding of each state fair. It is therefore clear that the position of director of publicity and advertising is one of stability, having continuity in a reasonable relationship to the activities of the state fair authority. It thus appears unrealistic to classify this position as one which

must and can be created and recreated solely on an annual or short-term basis keyed to a specific state fair. This being so, the position is one which may be or is within the jurisdiction of the state civil service commission. In that regard the civil service commission may be of the opinion that the position of director of publicity and advertising is such that it is practical to establish a civil service register from which an employee can be selected to fill the position. Whether or not the position has such characteristics of stability and continuity as to fall within the jurisdiction of the civil service commission is the sole prerogative of that commission, subject to possible judicial review. It does not lie within the power of the state fair authority to make its own independent determination that the position may be established on a contractual basis without resort to civil service procedures. Since the proposed contract ignores the civil service jurisdiction over the newly created position, it is in violation of Article XI, Section 5, Constitution of 1963, and Section 9 of Act 224, P.A. 1962.

It is obvious from a review of the proposed contract that Dick Frederick has an interest in the Dick Frederick Agency. Assuming, *arguendo*, that the duly created position of director of publicity and advertising does not come under the jurisdiction of the state civil service commission, it would nonetheless be improper for Mr. Frederick to be employed under contract by the authority in the position of director and at the same time be in a position to benefit under the proposed contract because of the advertising commissions which would be paid or credited to the Dick Frederick Agency. There would be a conflict of interest between his duty to the authority and his financial interest in the Dick Frederick Agency. A man cannot serve two masters and the proposed contract would be violative of the rule of law that an employee cannot bargain with himself or with a concern whereby he will receive a direct benefit.

The proposed contract with Dick Frederick cannot be approved for the further reason that it contemplates an improper delegation of the duties and powers of the state fair authority. The proposed contract contemplates that the director of publicity and advertising shall have authority to place advertisements in the various advertisement media. This provision clearly contemplates the committing of the authority to payment of the cost necessarily incurred in the placing of such advertisements. Thus the proposed contract would empower the director to determine the manner and amount of expenditure of some portion of the funds appropriated to the authority. In so doing it is clear that the director would be exercising his discretion and judgment and would not be engaged solely in the performance of a ministerial act.

The following excerpts from the opinion of the Attorney General dated May 5, 1955 (O.A.G. 1955-56, Vol. 1, No. 2019, p. 237) on page 248 et seq. are pertinent:

“As a general rule official duties involving the exercise of discretion and judgment for the public good cannot be delegated. As heretofore stated, mere ministerial acts, on the other hand, may be delegated in the absence of statutory prohibition. \* \* \*

“ \* \* \*

"In *Sittler v. Board of Control*, 333 Mich. 681, it was contended that the board of control of the Michigan College of Mining and Technology had delegated the power to employ teachers to one Professor Bennett. Plaintiff sought to enforce an alleged employment contract made with Bennett. The court held the contract void and said:

"But the instant case involved the right by contract to bind the State in the operation of one of its educational institutions over a period of time and to expend public funds in greater or less amounts. Powers of the character vested by the above statutory provisions in a board of control of an educational institution maintained by the State cannot be delegated to some subordinate or representative." (p. 686)

"In *MacDougall v. Board of Land Commissioners of State of Wyoming*, 48 Wyo. 493, 49 P. 2d 663, the state board of land commissioners entered into a contract with an auditing company under which the auditing company was employed to make an investigation of the payment of royalties to the state and certain accounting practices. The court held the contract unenforceable, saying that the duty to make this investigation and that of supervision of accounting procedures were imposed upon the board of land commissioners and could not be lawfully delegated to the auditing company. The court said:

"\* \* \* where the performance of a duty is vested in a certain official or officials, a contract imposing that duty upon someone else is invalid." (p. 668)

"The case of *Ashton v. Cook County*, 51 N.E. 2d 161, involved the authority of the board of commissioners of Cook County, Illinois, to employ private attorneys to collect delinquent taxes and pay for their services on a contingent fee basis. Objection was made by the State's Attorney that no outside counsel could be employed and that such services could be rendered only through his office. The Supreme Court held the employment contracts void, and said:

"The law is well settled that when the constitution or the laws of the State create an office, prescribe the duties of its incumbent and fix his compensation, no other person or board, except by action of the legislature, has the authority to contract with private individuals to expend public funds for the purpose of performing the duties which were imposed upon such officer." (p. 167)

In attempting to delineate the specific duties and responsibilities of a director of publicity and advertising and in making such director subject to the supervision of the Michigan state fair authority, there is an improper interference with the duties and responsibilities of the general manager of the Michigan state fair. Reference is made to memorandum of the Attorney General dated August 15, 1963 which defined and distinguished between the duties and responsibilities of the authority and the general manager. It was stated therein that the function of the authority is to initiate and establish general policy for the operation of the fair and the maintenance of the fairgrounds, and that the general manager is empowered to serve as the chief administrative officer, to direct the activities,

and conduct the affairs of the authority in accordance with the general policy determined by the authority.

The Attorney General herewith restates and reaffirms the conclusion reached in the aforesaid memorandum which reads in part as follows:

“Relative to the powers of the general manager, consideration must be given to the provisions of Act 224, P.A. 1962, supra, Sec. 8 of which provides as follows:

“The authority shall appoint a general manager to direct its activities. The current general manager of the Michigan state fair shall continue to hold office until the expiration of his term of appointment. The general manager shall be the chief administrative officer of the authority and shall conduct the affairs of the authority as directed by the authority. The general manager shall receive a salary which shall be fixed by the authority.”

“A plain reading of Sec. 8 of the act is persuasive of the conclusion that the general manager of the Michigan State Fair Authority is empowered by the statute to serve as the chief administrative officer, to direct its activities and to conduct the affairs of the Authority in accordance with general policy determined by the Authority.

“My reading of the statute is supported by the ruling made by the Attorney General in opinion No. 1224, O.A.G. 1949-50, p. 576, in which the Attorney General held that the Michigan Employment Security Commission could not limit the powers and duties of their director to those enumerated in the resolution of the commission. The statute, as amended, specified that the director ‘shall perform such duties as shall be delegated by the commission.’ The opinion concluded that the director had inherent authority to manage and direct the departments and agencies of the commission, subject to the general policy established by the commission.

“It must be concluded, therefore, that the general manager of the Michigan State Fair Authority is empowered to manage and direct the affairs and activities of the Authority, subject to the general policy determined by the members of the Authority. In this regard it should be stressed that the general policy of the Authority must be adopted by the Authority, as a corporate body, pursuant to rules and regulations promulgated under Sec. 7 of Act 224, P.A. 1962.”

Pursuant to the provisions of Section 9 of Act 224, P.A. 1962, the employment of any director or other personnel of the Michigan state fair authority must be through its administrative officer. “Contracts for hire” of personnel cannot be used to evade civil service requirements and all employees must be appointed in accordance with the rules and regulations of the civil service commission even though the positions may be temporary or part-time in character.

The Michigan state fair authority derives its authority to contract from Section 13 of Act 224, P.A. 1962 (M.S.A. § 12.1280(33)) which provides:

“The authority may, in staging the state fair and other exhibits or events, enter into contracts for the various services and activities which

it deems necessary. Such contracts may be entered into for such period as deemed necessary and practical by the authority but in any event for not to exceed 5 years."

In answer to your first question, the Michigan state fair authority cannot in disregard of state civil service procedures "hire by contract" a director of public relations and advertising, or any other department director for year-round or fair-time employment. Such employment must be in accordance with established civil service rules and regulations through the general manager.

In answer to your second question, if the state fair authority establishes the position of director of public relations and advertising or some similar position, within its organization, then the supervision of employees of the authority, including the director, within any such division would be the responsibility of the general manager pursuant to his duty to hire all necessary personnel, in conformance with the rules and regulations of the civil service commission, as set forth in Section 9 of Act 224, supra. The statutory power to hire employees carries with it the concomitant duty to supervise their activities.

FRANK J. KELLEY,  
*Attorney General.*

640514.2

**CONSTITUTIONAL LAW:** City ordinances imposing income taxes.

**TAXATION:** Imposition of city income tax.

A city may by ordinance impose an income tax which gives recognition in the tax base to a differential between the amount of income earned or received from sources within the city by city residents and by nonresidents without violating Article IX, Section 7, Constitution of 1963.

A city ordinance designating one class of taxpayers as "resident individuals" and another class of taxpayers as "nonresident individuals" is a valid classification and does not violate the last sentence of Article IX, Section 3, Constitution of 1963.

No. 4295

May 14, 1964.

Hon. Paul M. Chandler  
State Representative  
The Capitol  
Lansing, Michigan  
and

Hon. Adam Sumeracki  
State Representative  
The Capitol  
Lansing, Michigan

Representative Chandler has requested the opinion of the Attorney General on the following question:

"Would an income tax levied by a city at a given rate upon the income of city residents; and at one-half that given rate upon the income