

LETTER OPINION
94-L-335

December 20, 1994

Mr. R. James Maxson
Attorney at Law
600 22nd Avenue N.W.
Minot, ND 58703

Dear Mr. Maxson:

Thank you for your letter concerning the validity of a lease entered into between the State Fair Association and a candidate for the office of county commission to display a campaign sign on a fence located on the state fairgrounds. N.D.C.C. ? 4-02.1-16 provides that:

The state fair association possesses all the rights, privileges, and liabilities pertaining to corporations under the corporation laws of this state except as may be limited or specified by this chapter. The association may purchase, hold, lease, exchange, trade, or sell real estate for the purpose of promoting and conducting a state fair. Buildings and real estate controlled by the state fair association may be leased, subleased, rented, or used for purposes other than the conducting of the fair during such times when the property is not needed for fair purposes. The state fair association may contract in its own name, but as an agency of the state. . . .

However, N.D.C.C. ? 16.1-10-01 states that "[a] person is guilty of corrupt practice within the meaning of this chapter, if he willfully engages in . . . the use of state services or property for political purposes."

N.D.C.C. ? 16.1-10-02(1) provides that "[n]o person may use any property belonging to or leased by, or any service which is provided to or carried on by, either directly or by contract, the state or any agency, department, bureau, board, or commission thereof, for any political purpose."

Political purpose is defined in N.D.C.C. ? 16.1-10-02 as:

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any activity directly undertaken by a candidate for any office in support of his own election to such office; or aid and assistance to any candidate, political party, political committee, or organization, but does not include activities undertaken in the performance of a duty of state office.

The object of a contract must be lawful when the contract is made. N.D.C.C. ? 9-04-02. "When a contract has but a single object, and such object is unlawful in whole or in part, . . . the entire contract is void." N.D.C.C. ? 9-04-03. Thus, to the extent that a lease agreement would violate N.D.C.C. ? 16.1-10-02(1), the lease would be void. N.D.C.C. ? 9-04-03.

It is clear that the state fairgrounds constitute public property. See Bolinske v. North Dakota State Fair Association, 522 N.W.2d 426, 431 (N.D. 1994). The State Fair Association is an agency created by state statute. Id.; N.D.C.C. ? 4-02.1-16. Further, the placing of a political sign on state property would appear to constitute a political purpose within the meaning of N.D.C.C. ? 16.1-10-02 in that it would constitute either an activity undertaken by a candidate for office in support of the candidate's election, or aid or assistance to a candidate.

Although the state fairgrounds do constitute state property, the historical or traditional use of such grounds, particularly during the fair itself, and the treatment of such grounds by the courts, are unique. As you note in your letter, political parties and other special interest groups rent space during the State Fair and political parties have leased buildings on the fairgrounds for political rallies. Courts have recognized a state fair as being "'a limited public forum in that it exists to provide a means for a great number of exhibitors temporarily to present their products or views, be they commercial, religious, or political, to a large number of people in an efficient fashion.'" Bolinske v. North Dakota State Fair Association, 522 N.W.2d at 432, citing Heffron v.

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International Society for Krishna Consciousness, Inc., 452 U.S. 640, 655 (1981). However, confining, for example, the circulation of initiative petitions to leased concession locations is permissible and such activities are subject to reasonable time, place, and manner restrictions. Id.; Letter from Attorney General Nicholas J. Spaeth to Douglas L. Mattson (July 28, 1992).

You further indicate in your letter that there is no such history or tradition of allowing the placement of political or other signs on state fairground fences by the State Fair Association. Cf. Letter from Attorney General Allen I. Olson to Raymond E. Holmberg (October 25, 1978) (permitting the use of painted banner across street at University of North Dakota to promote religious events and candidates for political office does not violate predecessor statute to N.D.C.C. ? 16.1-10-02 in that the statute is not intended to restrict academic freedom, including freedom of expression).

As you point out in your letter, N.D.C.C. ? 16.1-10-02(2)(b) does provide an exception to the prohibition of using state property for political purposes in that a candidate, political party, committee, or organization may use a public building for political meetings if required by law or if otherwise permitted by law. The State Fair Association is permitted to lease buildings for the purpose of conducting the fair and to lease or rent its buildings at other times. See N.D.C.C. ? 4-02.1-16.

Based on the foregoing, it is my opinion that a lease between the State Fair Association and a candidate for office for the placement of a political sign on the state fairgrounds fence would violate the proscription of N.D.C.C. ? 16.1-10-02(1), and thus would be an illegal contract void at its inception. It is my further opinion that N.D.C.C. ? 16.1-10-02 does not prohibit the State Fair Association from leasing its buildings to candidates, parties, committees, or organizations if done in a content-neutral, non-discriminatory manner consistent with the requirements of the First Amendment. The State Fair Association has the authority to permit the non-discriminatory use of any of its buildings on its real property. It likewise has the authority to

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impose reasonable time, place, and manner restrictions
on any such use.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

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