

1948

Lagoon Company, Saltair Beach Company, Cove Gas & Oil Company, Intermountain Theatres, Inc., and Uptown Theatre Corporation v. Utah State Fair Association, Aaron W. Tracy, Rulon S. Howells, Arthur L. Crawford, and Beehive Midways, Inc. :
Brief of Appellants

Utah Supreme Court

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In the Supreme Court of the State of Utah

LAGOON COMPANY, a corporation,
SALTAIR BEACH COMPANY, a
corporation, COVEY GAS & OIL
COMPANY, a partnership, INTER-
MOUNTAIN THEATRES, INC., a
corporation, and UPTOWN THE-
ATRE CORPORATION, a corpora-
tion,

Plaintiffs and Respondents,

vs.

UTAH STATE FAIR ASSOCIATION,
a public corporation, and AARON
W. TRACY, RULON S. HOWELLS,
ARTHUR L. CRAWFORD, compris-
ing the Utah State Board of the De-
partment of Publicity and Industrial
Development, and BEEHIVE MID-
WAYS, INC., a corporation,

Defendants and Appellants.

Case No.
7255

FILED
DEC 4 1934

CLERK, SUPREME COURT

BRIEF OF APPELLANTS

APPEALED FROM THE
THIRD JUDICIAL DISTRICT COURT,
SALT LAKE COUNTY, STATE OF UTAH
HONORABLE CLARENCE E. BAKER, JUDGE

ELIAS HANSEN
J. GRANT IVERSON
GROVER A. GILES

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SALT AIR BEACH COMPANY, a
corporation, COVEY GAS & OIL
COMPANY, a partnership, INTER-
MOUNTAIN THEATRES, INC., a
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tion,

Plaintiffs and Respondents,

vs.

UTAH STATE FAIR ASSOCIATION,
a public corporation, and AARON
W. TRACY, RULON S. HOWELLS,
ARTHUR L. CRAWFORD, compris-
ing the Utah State Board of the De-
partment of Publicity and Industrial
Development, and BEEHIVE MID-
WAYS, INC., a corporation,

Defendants and Appellants.

Case No.
7255

BRIEF OF APPELLANTS

STATEMENT OF CASE

The plaintiffs brought this action in pursuance to the Utah Declaratory Judgment Act, U.C.A. 1943, Title 104, Chapter 4. As we understand the purpose of the proceeding it was to have declared void a contract between the Utah State Fair Association and the Beehive

Midway, Inc., a corporation, which contract had been approved by the Utah State Board of the Department of Publicity and Industrial Development which, together with its members were made parties defendants.

The contract which was brought in question provides:

A G R E E M E N T

THIS AGREEMENT, executed this 22nd day of May, 1946, by and between the UTAH STATE FAIR ASSOCIATION, party of the first part, hereinafter referred to as the Fair Board, and the BEEHIVE MIDWAYS, INC., a corporation, hereinafter referred to as the Company, WITNESSETH:

That for the considerations hereinafter set forth, it is hereby mutually agreed by and between the parties hereto as follows:

1. That the Company shall have the exclusive right to operate and license others to operate all amusement rides, games and shows upon the Utah State Fair Grounds during the years 1947, 1948, 1949, 1950 and 1951. The Fair Board expressly reserves the right to operate transportation around the Fair Grounds, check stands, souvenir concessions for the sale of official Centennial souvenirs, and to conduct entertainments sponsored by the Fair Board in front of the grandstand, in the coliseum and in the theater upon the Fair Grounds which may be given for the purpose of attracting the public to the grounds. The Company is not granted the right to operate or license others to operate concessions for the sale of foods and refreshments but may give foods

as prizes incidental to the operation of its amusement concessions.

2. That the Company shall have the right to renew and extend the term of this agreement for an additional five-year period after the expiration of the five-year term aforesaid upon the same terms and conditions as any other responsible operator is willing in good faith to offer, subject to the right of the Fair Board to operate itself any amusement rides, games or shows operated by the Company during the aforesaid term.

3. That the Company shall construct, operate and maintain a midway which shall consist of concession buildings, show buildings, amusement rides and a children's playground. Said midway shall occupy an area not less than 800 feet long and 210 feet wide at a location upon the Utah State Fair Grounds to be agreed upon by the parties hereto. The Company shall lay a hard-surfaced walk at least twenty feet in width contiguous to the fronts of the concessions, amusements and show buildings around the entire midway and such cross walks as are necessary and desirable. The Company shall place below such hard surfacing underground electrical conduit, if available, and if not, some adequate substitute adequate to supply all electrical needs of the buildings, rides and playground so constructed and to adequately light the midway.

4. That included within the midway and placed as shown upon plot plan heretofore submitted by the Company, the Company shall erect a children's playground which shall operate the kiddy rides hereinafter men-

tioned as well as other attractions for small children and wherein shall be operated a service for the care of small children at all hours of the day.

5. That the plans and type of construction of the buildings to be placed upon said midway shall be agreed upon in writing by both parties before construction commences.

6. That the Company shall erect and maintain not less than twenty concession buildings upon said midway which shall have a total frontage of not less than eight hundred feet, for which the Company shall pay to the Fair Board upon all concessions operated by the Company for the year 1947 upon the following basis:

For concessions occupying a front footage of

5 feet or less.....	\$ 250.00
6 feet to 10 feet	500.00
11 feet to 20 feet	1000.00
21 feet to 30 feet	1500.00
31 feet to 40 feet	2000.00
41 feet to 50 feet	2500.00

For all space sold by the Company to licensee-concessionaires, the Company shall pay to the Fair Board fifty per cent of the amount charged by the Company to said concessionaires. No concessionaires shall be sold space for less than twice the above schedule, unless mutually agreed upon in writing by the parties hereto.

7. All contracts executed by the Company with licensee-concessionaires shall first be approved in writing by the Fair Board. The Fair Board reserves the right to reject any proposed licensee-concessionaire whose

shows or games are objectionable or whose reputation is questionable.

8. That the Company shall erect three show buildings to house the fun house, the penny arcade and the freak show and shall erect three more show buildings to house such other shows as are available for major attractions.

9. That upon all concession space within the midway to be occupied by the Company, fifty per cent of the schedule set forth in paragraph 6 above shall be paid to the Fair Board at least one week prior to the opening of the midway and one-seventh of the balance shall be paid each week after the opening of the midway for seven consecutive weeks. That for any space sold by the Company to licensees the Company shall pay to the Fair Board one-half of any amount received from the licensee upon the signing of any agreement or lease of such space to such licensee, and one-half of any balance when and as received by the Company from the licensee. The Company shall require that the licensee pay not less than one-fourth of the sale price of the space so sold at the time of the execution of the agreement or lease, not less than an additional one-fourth thereof one week before the opening of the midway and the balance in not less than seven equal installments payable each week after the opening of the midway.

10. That the Company shall pay to the Fair Board twenty-five per cent of the gross admission price of all admissions of twenty-five cents or less, twenty per cent of the gross admission price of all admissions between

twenty-five cents and fifty cents, and fifteen per cent of the gross admission price of all admissions over fifty cents for all shows operated within the aforesaid six show buildings and any other show buildings which may be erected and maintained in addition thereto. All State and Federal taxes upon admissions shall be first deducted before computing the amount payable to the Fair Board upon admissions.

11. That the Company shall operate and maintain the following rides and such other rides as may be added upon which the Fair Board shall be paid twenty-five per cent of the gross admission prices after deducting State and Federal taxes, to-wit:

- 1 No. 16 Ferris Wheel
- 1 No. 5 Ferris Wheel
- 1 3-abrest Merry-Go-Round
- 1 Octopus
- 1 Fly-O-Plane
- 1 Roll-O-Plane
- 1 Boomerang
- 1 Looper
- 1 Spitfire
- 1 Kiddy Auto Ride
- 1 Streamlined Train
- 1 Kiddy Merry-Go-Round
- 1 Kiddy Ferris Wheel
- 1 Moon Rocket
- 10 Scooters

12. In the event the Centennial Celebration extends through the year 1948, the Fair Board shall be paid a percentage of the admissions of all rides and shows and shall be paid for concession buildings upon the front

footage basis as hereinbefore set forth the same as for the year 1947. In the event the Centennial Celebration does not extend through the year 1948, the Fair Board shall be paid for the year 1948 and for the years 1949, 1950 and 1951, one-half of all charges made by the Company to concessionaries. For concessions operated by the Company during said years, the Fair Board shall be paid for concession space an amount equal to one-half the front-footage rental charged concessionaires and the the same percentage of admission prices received on rides and shows as for the year 1947.

13. That all sums payable to the Fair Board for sales of concession space shall be paid on the 1st and 15th days of each month hereafter prior to the opening of the Centennial Celebration, and all percentage of admissions shall be paid weekly to the Fair Board during the Centennial Celebration or during the operation of the midway.

14. That the Company shall erect and maintain a stage approximately in the center of the midway whereon free entertainment shall be furnished each day as nearly as possible during the Centennial Celebration at the expense of the Company.

15. That all rides to be operated by the Company shall be new or reconditioned as new. That in the event any other concessionaire offers to install and operate any ride which would be an asset to the Centennial Celebration or the Fair which the Company does not desire to itself purchase and operate, such concessionaire shall be granted space and a license to operate by the Company

upon terms mutually agreeable to the Company and the Fair Board and to said concessionaire. The Company may refuse to grant a license to any concessionaire whose equipment is not comparable in condition and appearance with the rides to be placed upon the midway by the Company.

16. That at the expiration of the term of this agreement or any extensions or renewals thereof, all buildings or other improvements placed upon the midway shall become the property of the Fair Board, unless prior to the commencement of the erection thereof it shall be agreed in writing by the parties hereto that the same may be removed by the Company at the expiration of the term of this contract or at any other time. All rides, games and equipment shall remain the property of the Company.

17. That any buildings constructed by the Company prior to the opening of the Fair season of 1946 may be used by the Fair Board during the Fair season of 1946 upon a rental to be agreed upon between the parties hereto prior to the opening of said Fair season.

18. That the Company shall remove all buildings now upon the area upon which the midway shall be erected at the expense of the Company. The Fair Board shall furnish without cost to the Company all labor necessary for removing such buildings.

19. All contracts executed by the Company with any licensee-concessionaire shall be subject to approval in writing by the Fair Board. All said contracts shall provide that the admission fees or other charges collected

by the concessionaire shall be subject to the approval of the Fair Board and the Company; that the concessionaire shall keep full and accurate books of accounts of all his operations upon the Fair Grounds, which said books shall be subject to audit by the Fair Board and the Company at any time; and the concessionaire shall be subject to all the rules and regulations published by the Fair Board for the conduct of the Centennial and the Fair; that the license granted to such concessionaire may be cancelled for a breach of any such rules and regulations; and the concessionaire shall pay his own power bill and ticket takers and cashiers.

20. That the Fair Board may, at its discretion, employ all cashiers for the sale of admissions to rides and shows or any percentage concession operated either by the Company or its licensees. Such cashiers shall be paid by the Company or its licensees.

21. That the Fair Board shall maintain all rest rooms within the midway, shall provide sewage disposal and other sanitary facilities for the public use. That the expense of garbage disposal shall be paid by the concessionaires served.

22. That the Company shall provide at its own expense public liability insurance for the protection of the Company and the Fair Board against liability arising out of the operation of the midway and shall require that all licensees of the Company shall provide such public liability insurance for the protection of the Company and the Fair Board against all acts and omissions of said licensees.

23. That the admission fees to the Fair Grounds during the Centennial shall not exceed twenty-five cents per person for adults and fifteen cents per person for children. That no admission fee shall be charged for admission to the midway.

24. That the Company shall be subject to all the rules and regulations published by the Fair Board for the operation of the Centennial and the Utah State Fair and in the event the Company shall violate any of said rules and regulations and shall fail for a period of five days after such violation is called to its attention to cure said violation, this agreement may be canceled for such violation of such rules and regulations by the Company.

25. That the Company shall not charge concessionaires for buildings erected upon the midway by the Company for such concessionaires a price which will net the Company more than a reasonable profit upon the construction of said buildings.

26. It is understood that the exclusive food and refreshment concessions have heretofore been granted by the Fair Board to the Western Service Company, a corporation. The Company shall provide reasonable and adequate space within the midway for such stands as the said Western Service Company shall require. Such space shall be mutually agreed upon by and between the Company, the Fair Board and the said Western Service Company. Said Western Service Company shall pay to the Company for such space the proportionate cost of the improvement of the grounds in front of the space to be occupied by the Western Service Company. The

cost of the preparation of said space shall include the cost of removal of buildings, leveling and preparation of the ground, laying the hard surface, installing the electrical conduit and any other incidental expenses. Said Western Service Company shall have the right to erect its own buildings but the same must harmonize with and equal the quality of the buildings erected upon the midway by the Company. The Western Service Company shall pay its proportionate share of electricity used to light the midway as well as the electricity used by it in the operation of its buildings.

27. That in the event the total attendance each year at the Fair Grounds during 1947 and 1948 is less than 1,200,000, the amounts payable hereunder by the Company and its licensees shall be reduced in that proportion which the deficit bears to the number of 1,200,000.

28. That the Company shall commence construction of the midway and the buildings to be placed thereon not less than thirty days after the execution of this agreement and shall continue the preparation of said midway and the construction of the buildings thereon with reasonable diligence. Failure to diligently prosecute the preparation and construction of said midway shall constitute a breach of this agreement and the Fair Board may, upon ten days' notice in writing to cure the default and failure of the Company to cure said default, cancel and terminate this agreement. The Company shall be excused from performance by strikes, inability to purchase materials, acts of God or other causes beyond the control of the Company. In the event the Company

is prevented from erecting the buildings planned to be erected upon the midway because of strikes, inability to obtain materials, acts of God or other reasons beyond the control of the Company, the Company shall furnish the next best facilities or accommodations available such as tents or other coverings.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by their officers duly authorized this 22nd day of May, 1946.

ATTEST:
S. R. BREWSTER

Secretary

UTAH STATE FAIR
ASSOCIATION

By D. H. THOMAS

President

(Party of the First Part)

ATTEST:
JOHN G. MACKENZIE

Secretary

BEEHIVE MIDWAYS,
INCORPORATED

By

APPROVED:
UTAH STATE DEPART-
MENT OF FINANCE

By GORDON TAYLOR
HYDE

Chairman

JERROLD P.
BEESLEY

CHASE C. McDERMOND

President

(Party of the Second Part)

APPROVED:
UTAH STATE DEPART-
MENT OF PUBLICITY
AND INDUSTRIAL DE-
VELOPMENT

By AARON W. TRACY

Commissioner

ARTHUR L. CRAWFORD

APPROVED AS TO
FORM

GROVER A. GILES

Attorney General

By S. D. HUFFAKER

Deputy

After the original agreement was executed a supplemental agreement was entered into which provides:

AGREEMENT

THIS AGREEMENT, executed this.....day of April, 1947, by and between the UTAH STATE FAIR ASSOCIATION, party of the first part, hereinafter referred to as the Fair Board, and the BEEHIVE MIDWAYS, INC., a corporation, party of the second part, hereinafter referred to as the Company, WITNESSETH:

THAT, WHEREAS, on the 22nd day of May, 1946, the Fair Board and the Company mutually executed and delivered a certain agreement in writing under the terms of which the Fair Board granted to the Company the exclusive right to operate and license others to operate amusement rides, games and shows upon the Utah State Fair Grounds during the years 1947 to 1951, inclusive, with an option of renewal, and,

WHEREAS, said agreement by its terms provides among other provisions that the Company shall erect and maintain not less than twenty concession buildings upon the midway described therein having a total frontage of not less than eight hundred feet, and further that the Company shall operate and maintain fifteen rides upon said midway upon which there shall be paid to the Fair Board twenty-five per cent of the gross admission prices after deducting state and federal taxes, and,

WHEREAS, said agreement by its terms further provides that in the event the total attendance each year

at the Fair Grounds during 1947 and 1948 is less than 1,200,000, the amounts payable by the Company and its licensees shall be reduced in that proportion which the deficit bears to the number of 1,200,000, and,

WHEREAS, the Utah Centennial Commission with the approval of the Department of Publicity and Industrial Development desires to assume possession and control of the Fair Grounds during the period of March 21, 1947, to September 20, 1947, subject to the aforesaid agreement as hereby amended, and desires to expend large sums of money in renovating, beautifying and improving the Fair Grounds, and as a condition precedent to the acceptance of possession and control of said Fair Grounds, desires a modification of the aforesaid agreement executed by the Fair Board and the Company to provide that the aforesaid provision concerning attendance shall not be operative unless and until there shall have been paid under the terms of said agreement to the Centennial Commission as assignee of the Fair Board a minimum of \$96,000.00, and,

WHEREAS, the Fair Board is willing to modify in favor of the Company the provisions of the aforesaid agreement in consideration of the modification of said provision concerning attendance,

NOW, THEREFORE, in consideration of the premises and the considerations hereinafter set forth, it is hereby mutually agreed between the parties hereto as follows:

1. That the Fair Board does hereby accept as full performance of the provisions of the aforesaid agree-

ment concerning the erection of buildings, the buildings now erected upon the midway upon the Fair Grounds by the Company with a front footage of approximately five hundred feet, and accepts as full performance of the provisions of said agreement concerning the purchase and maintenance of rides by the Company, the following rides:

- 1 Kiddy Merry-Go-Round
- 1 Kiddy Autos
- 1 Fly-O-Plane
- 1 Roll-O-Plane
- 1 Moon Rocket
- 1 Boomerang
- 1 Looper
- 1 16-car Octopus
- 1 3-Abreast Streamlined Merry-Go-Round

which have heretofore been purchased by the Company and which shall be placed and maintained upon the Fair Grounds during the year 1947.

2. That the Company shall be required to erect no more buildings except two show buildings to house the penny arcade now under construction, the freak show and two more show buildings to house such other shows as are available for major attractions. The erection of these buildings shall be subject to the granting of permission to erect the same by Civilian Production Administration.

3. That the Fair Board shall approve a proposed contract now under discussion to be executed by Velare Brothers of Long Beach, California, and the Company, under the terms of which said Velare Brothers will place

upon the midway and maintain during the season of 1947 the following rides:

- 1 Scooter Building and 20 Cars
- Kiddy Race Cars
- 1 Double Ferris Wheel
- 1 Tilt-A-Whirl
- 1 Caterpillar
- 1 Pony Ride

upon a percentage basis to be agreed upon, and the Fair Board agrees to accept one-half of said percentage or percentages in lieu of the percentages provided in the aforesaid agreement executed between the parties hereto, as its proportion of the admissions to be charged for all rides to be so placed upon the midway by the said Velare Brothers.

4. That the Company does hereby agree that for the year 1947 the provision of the aforesaid agreement executed between the parties hereto that in the event the total attendance at the Fair Grounds during the year 1947 is less than 1,200,000, the amounts payable by the Company and its licensees to the Fair Board shall be reduced in that proportion which the deficit bears to the number of 1,200,000 shall be waived until there has been paid as percentages upon rides, shows and the sale of concession space or any other income to the Fair Board from the operation of the aforesaid agreement the sum of \$96,000.00. In the event the total attendance during said period is less than 1,200,000, said provision of said agreement shall be operative and all sums, if any, in excess of \$96,000.00 payable under the terms of

said agreement shall be returned to or retained by the Company until there has been a full compliance with the provisions of said agreement relating to attendance.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by its officers duly authorized this.....day of April, 1947.

ATTEST:

Secretary

UTAH STATE FAIR
ASSOCIATION

By _____
President

ATTEST:

Secretary

(Party of the First Part)

APPROVED:

UTAH STATE DEPART-
MENT OF FINANCE

By _____
Chairman

BEEHIVE MIDWAYS,
INCORPORATED

By _____
President
(Party of the Second Part)

APPROVED:

UTAH STATE DEPART-
MENT OF PUBLICITY
AND INDUSTRIAL DE-
VELOPMENT

By _____
Commissioner

APPROVED AS TO
FORM

Attorney General

APPROVED:

UTAH STATE CENTEN-
NIAL COMMISSION

By _____

It will be noted that the Utah State Department of Finance approved both of the agreements and the Utah Centennial Commission also approved the supplemental agreement but neither of the two last mentioned commissions was made a party to the proceedings. R. 1 to 12.

It is in substance alleged in plaintiffs' complaint that the State Fair Board was without authority to enter into the agreements and that the same were executed in excess of authority granted to the Utah Fair Board and in violation of Title 85, Chapter 4, Utah Code Annotated, 1943. JR 1 to 12.

To the complaint defendants answered. By such answer defendants denied that the Utah State Fair Board was without authority to enter into the lease agreement and the supplement thereto, and that on the contrary, such authority is granted by U.C.A. 1943, 85-4-7.

It was further alleged in substance in the answer that it has been the custom of the Utah State Fair Association since it was created to lease and grant concessions for the purpose of furnishing entertainment to those who attend the Fair during the time the same has been held; that it is necessary to grant such leases and concessions during times fairs are being held in order to secure an attendance of a sufficient number of persons to make the fairs a success.

That in January, 1945 directors of the defendant, Utah State Fair Association, completed master plans and specifications for the improvement of the Utah State Fair Grounds, that such master plans and specifications

required the expenditure of large sums of money but the Utah State Fair Association was unable to secure funds to make the planned improvements, that the defendant Beehive Midways undertook to construct improvements on the leased portion of the Fair Grounds and had already at the time the action was commenced expended and obligated itself to expend in excess of \$150,000.00 and will probably be compelled to expend an additional \$50,000 pursuant to the contracts mentioned in the complaint. JR 19 to 21.

Thereafter a supplemental answer was filed. In such supplemental answer the duties and powers as fixed by Title 82c, Chapter 8, U.C.A. 1943, of the Centennial Commission of Utah are alleged and also that the Centennial Commission of Utah is an indispensable party to the proceeding and hence the court is wholly without authority or jurisdiction to hear or determine the cause unless and until the Centennial Commission of Utah is made a party to the proceeding. Defendants prayed that the action be dismissed. R. 39 to 42. No reply or other pleading was filed to the supplemental answer.

Upon the pleadings thus filed in the cause a trial was had and evidence was offered and received touching the allegations of the pleadings.

At the conclusion of the trial the respective parties filed briefs, after which the trial court made its findings of fact, conclusions of law and entered judgment in favor of the plaintiff and against the defendants. In such judgment the trial court found the lease agreement and

the supplemental agreement void and of no force and effect. R. 71-76.

From the judgment so entered the defendants jointly and separately prosecute this appeal.

ASSIGNMENTS OF ERROR

The defendants jointly and severally assign the following errors upon which they and each of them rely for a reversal of the judgment appealed from:

1. The trial court erred in denying the petition of the Centennial Commission of the State of Utah to intervene in the cause. R. 38.

2. The trial court erred in making that part of its finding numbered 8 wherein it found: "That the defendants named herein are all the persons who claim or assert any interest or whose rights will be affected by the determination hereof." That such finding is wholly without support in the evidence. R. 73.

3. That the trial court erred in making its conclusion of law numbered 2 wherein it concluded: "That the Utah State Fair Association had neither the implied nor express authority by statute or otherwise, to enter into the agreement designated as plaintiffs' Exhibits "B" and "C" and that said agreements are beyond the power of said Utah State Fair Association and are void and are of no force and effect." That such conclusion of law is without support in the evidence and is likewise without support in the findings of fact. R. 73-74.

4. That the trial court erred in making paragraph 1 of its decree wherein it decreed that the lease agree-

ment, plaintiffs' Exhibit "B" is void and of no force or effect. That such part of the judgment is without support in either the evidence or the findings of fact and is contrary to law. R. 75 and 76.

5. The trial court erred in making that part of its decree in paragraph 2 wherein it decreed that the supplemental agreement, plaintiffs' Exhibit "C", is void and of no force and effect. That such part of the decree is without support in the evidence and is likewise without support in the findings of fact and is contrary to law. R. 76.

6. The trial court erred in making paragraph 3 of its decree wherein it decreed that plaintiffs have and recover their costs. That such part of the judgment is contrary to law. R. 76.

7. The trial court erred in failing to find on all of the issues and particularly erred in failing to find that the defendants had expended large sums of money, namely in the neighborhood of \$150,000 in improving that part of the fair grounds which were leased to it by the other defendants in this action. R. 20 and 76.

8. The trial court erred in failing to find that the lease agreement and the supplemental agreement were and are valid.

ARGUMENT

The principal question presented on this appeal is:

Did the defendant Utah State Fair Association have authority to enter into the lease agreement, plaintiff's Exhibit "A" and the supplemental agreement, plaintiff's Exhibit "B". At the outset we direct the atten-

tion of the court to the provisions of our statutory laws which we deem have a bearing upon such question. For the convenience of the court we quote at length the following:

Powers of State Fair Board, U.C.A. 1943, 83-4-1 provides that:

“The Utah State Fair Association is continued a body corporate with perpetual succession subject to the direction, supervision and control of the commissioners of the department of publicity and industrial development. It may have and use a corporate seal, and by the aforesaid name may sue and be sued, contract and be contracted with, and take and hold by purchase, gift, devise or bequest, real and personal property required for its uses. It may also, with the approval of the department of finance, convert such property, when not suitable for its uses, into other property which may be suitable for its uses, into other property, or into money provided, however, that money received from such conversion shall be paid into the state treasury and placed to the credit of the state fair association maintenance fund. The Utah State Fair Association shall be deemed a public corporation, and its property shall be exempt from all taxes and assessments.”

U.C.A. 1943, 85-4-7 provides:

“The purpose of the association shall be to promote in the state of Utah stock breeding, agriculture, horticulture, mining, manufacturing, and the domestic sciences and arts; and the association shall have the authority to use and to lease the property of the association, during any portion

of the interval between the holding of the annual or biennial exhibitions, for private stock exhibitions, shows, racing meets, and for other legitimate purposes, upon terms and conditions to be prescribed by the board of directors. All moneys received from such leases shall be covered into the state treasury at the end of each month and placed to the credit of the state fair maintenance fund."

U.C.A. 82C-8-1 contains this provision:

"It (Centennial Commission) may contract and be contracted with, take, hold and dispose of property, real and personal, requisite or appropriate for its uses."

U.C.A. 1943, 82C-8-2:

Subsection 1: "To acquire with the approval of the commission of publicity and industrial development and to hold possession of necessary properties; to improve, reclaim, beautify, illuminate and develop the same, to erect and maintain buildings and other structures thereon for the display and protection of exhibits or for the use, comfort, convenience, service, pleasure and entertainment of those attending."

Subsection 3: "To provide or arrange for public entertainment both at the exposition grounds and at other places throughout the state of Utah consisting of historical pageants, musical, dramatic, educational programs, and athletic and sports attractions."

Subsection 6: "To secure funds to cover the costs of the centennial observance through private contributions and public appropriations, from admission charges where entertainment and other attractions are provided by or under the direc-

tion of the commission, from charges to exhibitors and concessionaires exhibiting or operating in the grounds under the control of the commission, and by other lawful ways and means."

Subsection 8: "To have general control, management and supervision over all activities, relating to the preparation and conducting of the Centennial observance; to decide within the limits of the funds available and under the conditions imposed by this act, the number and location of the various grounds, buildings, camps, and attractions that may be used to entertain and instruct those persons who shall visit the state of Utah or otherwise join in the centennial observance."

Subsection 13: "To limit the character and size of the exposition so as to keep within the resources available for the purpose, taking account of appropriations made by the federal government or its agencies, the state, or political subdivisions thereof, and of private contributions, admission, concessions and other charges."

U.C.A. 1943, 82C-8-5:

"All property, whether real or personal, and all money acquired, possessed or received by the commission from whatever source and all profits earned in the administration of this act shall be the property of the state of Utah, and all property purchased, expenses, disbursements and liabilities incurred by the commission in connection with its activity under this act shall be paid for by the commission from the money received by the commission. The commission shall deposit its funds with the state treasurer. After the closing of the centennial observance the commission shall proceed to wind up its affairs and all real estate and

personal property held by it shall be disposed of in such manner as the legislature may provide.”

U.C.A. 1943, 82C-8-7 provides:

“To initiate the purchase of grounds, erection of structures and general preparation for the Utah centennial observance in 1947 and to effectuate the purposes of this act there is appropriated the sum of \$10,000 out of any money in the general funds of the state of Utah not otherwise appropriated.”

EXTENT OF POWERS OF MUNICIPALITIES AND STATE AGENCIES

It is the established law in this state that a municipality (or city) is limited to those powers expressly granted, to those necessarily or fairly implied or incident to the powers expressly granted, and to those essential to the declared objects and purposes of the corporation.

American Fork City vs. Robinson, 77 Ut. 168, 292 Pac. 249.

Tooele City vs. Elkington, 100 Ut. 485; 116 Pac. (2d) 406.

Ogden City vs. Boreman, 20 Ut. 98; 57 Pac. 843.

Salt Lake City vs. Sutter, 61 Ut. 533; 216 Pac. 234.

The foregoing rule is relaxed when a municipality or governmental agency is not acting in a governmental capacity.

Fritz vs. Edmond, 66 Okla. 262; 168 Pac. 800, L.R.A. 1913, C. 465.

City of Colorado Springs vs. Colorado City, 42 Colo. 75, 94 Pac. 316.

City of Henderson, 119 Ky. 224; 83 S.W. 583.

Illinois Trust and Savings Bank vs. City of Arkansas, 76 Fed. 271.

Numerous other cases to the same general effect will be found collected in the cases above cited.

The case of Muir vs. Murray City, 55 Utah 388; 186 Pac. 433 lends support to such doctrine.

The distinction is thus expressed in the case of City of Henderson vs. Young, *supra*:

“A statute conferring sovereign and governmental powers upon a city must be strictly construed, but powers given for the private advantage of it and its inhabitants are to be construed in accordance with the general rules that apply to private individuals or corporations.”

It is of course the well settled rule of law that if a power is conferred upon a municipality or other agency of the state and the manner of its exercise is not prescribed the municipality or agency may elect any appropriate means to carry out the authority conferred. 43 C. J. page 248, Sec. 249 and cases cited in footnote numbered 85.

With these principles in mind let us apply the provisions of our statutory law above quoted:

It is provided in *U.C.A.* 1943, 85-4-1:

“The Utah state fair association * * * * with the approval of the department of finance (may) convert such property (real and personal property) when not suitable for its uses into other property which may be suitable for its uses, into other property, or into money provided, however, that money received from such conversion shall be paid into the state treasury and placed to the

credit of the state fair association maintenance fund.”

In our view the statute just quoted, if and when properly construed, authorizes the state fair association to do what was done.

It is made to appear that the portion of the fair grounds where the midway is constructed was not needed for the purposes of conducting a fair. Tr. 114. In its condition before the ground was leveled off it was fit for use as a place to put sheds for horses but there is ample room elsewhere for the barns or sheds. Tr. 115-118. Assume that there had been a tract of land adjoining the fair grounds with improvements thereon similar to the improvements which the Midway placed on the land leased to it and that the fair board had entered into an agreement with the owner of the adjacent improved land to exchange the land covered by the lease for the privately owned improved land with a provision that the owner of the adjacent improved land should retain possession thereof for five or ten years and should also take immediate possession of the land covered by the lease such an arrangement would be within the expressed authority granted to the fair association by the provisions above quoted. The lease here involved accomplishes substantially the same end, excepting by the arrangement provided for in the lease the fair association receives a substantial portion of the income derived from the use of the property during the time it is being occupied by the midway. To further illustrate our position suppose the fair association should actually convey

the property covered by the lease to the Midway with the right reserved in the conveyance to require the reconveyance of the property back to the fair association after the expiration of five or ten years, together with certain specified improvements to be placed thereon by the Midway. Such an arrangement would be within the authority conferred upon the fair association to convert the property covered by the lease which without the improvements was not suitable to its uses into other property which is suitable to its uses. It will be noted that the law does not specify the manner that the fair association shall exercise its authority in accomplishing the desired end of securing property suitable for its uses. That being so the courts are without power to direct the fair association in the method it shall employ in reaching the desired end.

Town of Perry vs. Thomas, 82 Utah 159; 22 Pac. (2d) 343.

If we look at the provision of *U.C.A.* 1943, 85-4-7 it will be seen that the association is granted authority to use and to lease the property of the association during any portion of the interval between the holding of the annual or biennial exhibitions, for private stock exhibitions, shows, racing meets, and for other legitimate purposes, upon terms and conditions to be prescribed by the board of directors.

It was argued by plaintiffs in the court below: first, that the provisions of the statute just quoted contains two limitations; First: It limits the uses for which any

part of the fair grounds may be leased and second: It limits the time during which any part of the fair grounds may be leased. As to the first ground it was argued that under the doctrine of "ejusdem generis" the board was without authority to lease the property in question for purposes other than those enumerated. The purpose of that doctrine is to prevent general words loosely used in connection with specific terms from extending a law or contract into a field not really intended. The rule is only a rule of construction to aid in arriving at the true intention of the parties or law making power and it never overrules an intention that is clear.

Phillipss vs. Houston Natl. Bank, C.C.A. Tex. 108, Fed. (2d) 134.

People vs. Silver, 108 Pac. (2d) 4.

Association of Franciscan Sisters of Sacred Heart vs. Vermillion County, 26 N.E. (2d) 162, 304 Ill. App. 243.

David vs. Sullivan, 27 N.E. (2d) 82; 84.

City of Caruthervillie vs. Tosis, 145 S.W. (2d) 80, 86.

Anderson and Kerr Drilling Co. vs. Brechemeyer, 136 S.W. (2d) 800, 804.

State of Texas vs. U. S., 6 F. Supp. 63, 65.

Jefferson County Fiscal Court vs. Grauman, 128 S.W. (2d) 230; 232, Ky. 68.

Lobel vs. Steelcraft Piston Ring Sales, 292 N.W. 862, 866.

Standard Accident Ins. Co. vs. National Fire Proofing Co., 176 N.E. 591, 593; 39 Ohio App. 1.

In re: Freitag Estate, 107 Pac. (2d) 978, 980.

Bell Telephone Co. vs. Public Service Commission, 181 A. 73, 85.

Stevenson vs. Record Publ. Co., 107 S.W. (2d) 862, 864.

It will be noted that the statute expressly permits the leasing of the property for shows, etc. and for other legitimate purposes. It is of course a matter of common knowledge that the shows, as well as the rides, etc. which the Midway was to conduct on the leased premises are all forms of amusement. If the doctrine of ejusdem generis is to be applied with the narrow construction contended for by the plaintiffs the words "for other legitimate purposes" would be rendered meaningless.

It is held by the trial court that in the leasing of the land to the defendants the fair association was acting in a governmental capacity and therefore the language granting authority to the board should receive a strict construction.

It may be doubted if the Fair Association has any powers which may be called governmental as distinguished from proprietary. The Fair Association is not created for the purpose of preserving the health, peace or general welfare of the state or any part thereof, except as such measures may be incidental to carrying out the objects of the act, namely: to promote in the state of Utah stock breeding, agriculture, horticulture, mining, manufacturing and the domestic sciences and arts.

If it be contended that the activities which the lease contemplates the Midway would engage in do not pro-

mote the purposes enumerated in the act the answer will be found in numerous adjudicated cases.

It is said in 2 Am. Jur., Sec. 52, page 445 that:

“In connection with these activities, (naming the industries enumerated in the Act) the furnishing of appropriate entertainment and amusement is properly within the powers of such societies.”

The following cases are cited in a footnote to the text and support the doctrine announced in the text:

Carswell vs. State, 118 Fla. 72; 159 So. 15.

Williams vs. Dean, 134 Iowa 216; 111 N.W. 931.

Thornton vs. Maine State Agri. Soc., 97 Mo. 108, 53 A. 979.

The law is thus expressed in 3 C.J.S., page 395:

“A fair consists not only of the exhibits and performances under the society’s own direction but includes the shows, exhibits and attractions of all kinds permitted by the society on its grounds.”

Cases in support of the text will be found collected in a footnote to the text.

That it is and has been the uniform practice in Utah and elsewhere in the various states of the union to furnish amusement to the public such as that contemplated in the lease to the Midway is made evident by the testimony of Sheldon R. Brewster, secretary and general manager of the Utah State Fair Association. (See Tr. 38). The fact that amusements such as those contem-

plated by the lease here brought in question are uniformly furnished to visitors to a fair is of such general knowledge that the court will probably take judicial notice of such fact without any evidence.

An attempt to hold a fair without furnishing amusements to attract the public would doubtless result in a failure. It is because of such fact that the courts have held that the entertainment provided for the visitors to a fair is as much a part of the fair as the exhibits themselves. It is reasonable to assume that the legislature in enacting U.C.A. 1943, 85-4-7 were fully aware that when it provided for an annual or biennial fair it did not deem it necessary to limit the kinds of amusements that the fair board might provide. That being so the Board has the authority to provide for such amusements as it may deem advisable and the courts are without authority to interfere with the actions of the fair board so long as their acts do not transcend that which is customarily done by fair boards. It is the fair board and not the courts which has the duty to conduct fairs.

It seems to be the contention of the plaintiffs that the lease to the Midway is objectionable because it extends throughout the year. So also the trial court seems to take the view that the fair board should, if they desire to lease a part of the fair grounds, have executed one lease during the period that the fair was being held and another lease during the interval between fairs. We confess our inability to conceive any sound basis for such a contention. If, as we contend, the fair board has the authority to lease the part of the fair grounds during the

time a fair is being operated and also has the authority, as we contend it does have, to lease a part of the fair grounds during the period between fairs it would seem to be immaterial whether the instrument granting the lease or leases were contained in one, two or more instruments. To hold that there must be two or more instruments to accomplish the leasing of a part of the fair grounds throughout the year would be to magnify the shadow and ignore the substance. It will be observed that there is nothing in the law which makes such a requirement. The fair board has the implied authority to lease part of the fair grounds during the time the fair is being conducted and the express authority to lease the fair grounds or a part thereof during the time a fair is not being held. Such authority may be exercised and the evidence of the same having been exercised may, it seems to us, be contained in one instrument as well as in two or more. It may well be that the fair board was able to make a more favorable deal to the state by including in one contract a lease covering an entire year or more, than it could have done by granting one lease for the period when the fair was in progress and another lease covering the period when there was no fair. Indeed the evidence in this case shows that no one would have entered into a lease as favorable to the state as is the lease in question unless the same extended through the year and for a period of more than one year. (See testimony of Mr. Pett (Tr. 72-73) and Mr. McDermond (Tr. 91-92).)

Nor is the power to execute a lease such as that here questioned limited to the fair board. It will be seen from

the provisions of U.C.A. 1943, 82C-8-1 "that the Centennial Commission may contract, be contracted with, take, hold and dispose of property, real and personal, requisite or appropriate for its uses; and in U.C.A. 1943, 82C-8-2 the Centennial Commission is given authority with the approval of the Commission of Publicity and Industrial Development to hold possession of necessary properties to improve, reclaim, beautify, illuminate and develop the same, to erect and maintain buildings and other structures thereon for the display and protection of exhibits or for the use, comfort, convenience, service, pleasure and entertainment of those attending."

In sub-section 3 of U.C.A. 1943, 82C-8-1 there is given to the Centennial Commission authority to provide for public entertainment at the exposition grounds (state fair) and in the other statutory provisions above quoted broad powers are conferred upon the Centennial Commission. The Centennial Commission it will be observed became a party to the contract and approved the same. It was from the money derived from the lease with the Midway that the Centennial Commission obtained a part of the funds to carry out the purposes for which it was created. To say that the Centennial Commission was without authority to enter into a contract of lease such as the lease to the Midway would be to ignore the broad authority granted to it by the provisions heretofore quoted. The fact that the Centennial Commission has ceased to exist does not nullify the contracts that were entered into for the purpose of making the centennial celebration a success. Nor does the fact that the Cen-

ennial Commission was denied the right to intervene in this cause preclude this court from taking notice of the law touching the authority of that commission to authorize and approve the lease agreement to the Midway.

THE STATE FAIR BOARD HAD AUTHORITY TO ENTER INTO THE LEASE AGREEMENT

We have heretofore in this brief directed the attention of the court to the provisions of U.C.A. 1943, 85-4-1 wherein the state fair association is expressly granted authority to sell, buy or exchange property. If, as the statute provides, the fair association had the authority to sell or exchange the property leased to the Midway it necessarily follows that it had authority to enter into the lease here brought in question. The whole includes all its parts. The power to sell includes the power to lease. Cases which defendants claim support the authority to enter into the lease agreement are :

Worden vs. City of New Bedford, 131 Mass. 23,
41 Am. Rep. 185.

Gillman vs. City of Milwaukee, 55 Wis. 328; 13
N.W. 266.

City of New Orleans vs. Louisiana Construction
Co., 140 U.S. 654; 11 Sup. Court 968, 35 L. Ed.
556.

Bryant vs. Logan, 56 W. Va. 141, 49 S. E. 21, 3
Am. Cas. 1011.

Little vs. City of Holyoke, 177 Mass. 114, 58 N. E. 170, 52 L.R.A. 417.

Davis vs. Inhabitants of Rockport, 213 Mass. 279, 100 N. E. 612, 43 L.R.A. (N.S.) 1139.

Dodge vs. North End Improvement Association, 189 Mich. 16; 155 N.W. 438. Am. Cas. 1918 E 485.

Harter vs. City of San Jose, 141 Cal. 659, 75 Pac. 344.

Stockton R. R. Co. vs. City of Stockton, 41 Cal. 147.

Los Angeles County vs. Dodge, 51 Cal. App. 492; 197 Pac. 403.

The doctrine of the above cases is to the effect that a municipal corporation, or fair board, may lease property devoted to a public use when there is no public need therefore and that it may also lease such property for purposes which conduce to or aid in the discharge of such public use. Under the line of cases above cited it is within the province of the city or similar tribunal such as a fair board to determine that its property devoted to a public use is not needed for such use either for a limited time or as a part of its acreage and to determine what purposes to be administered by private agencies will aid in the discharge of such use and to make leases thereof accordingly. When that body has solved such a question the courts must be satisfied with the solution unless it is plainly apparent to them that it is unjustified.

STATE OFFICERS MAY ENTER INTO CONTRACTS SUCH AS THE LEASE AGREEMENT HERE INVOLVED EXTENDING BEYOND THE TERM OF THEIR OFFICE.

In its memorandum of opinion, the trial court held that the contract here involved was the exercise of a governmental function and as such the board of the state fair association was without authority to enter into such contract because the same extended beyond the term of office of its members.

At the outset the defendants do not concede that the execution of the agreement is or in any sense was the exercise of a governmental function. The lease agreement was executed solely for the purpose of raising revenue. If the fair association has authority to exercise any governmental function, which we doubt, the execution of the lease was a strictly revenue measure and in no sense the exercise of a governmental function. Of course a municipality exercises both governmental and proprietary powers. A discussion of the dual capacity in which municipalities function will be found discussed in 70 A.L.R. 794, Vol. 3, Sec. 1356, Second Edition of McQuillan on Municipal Corporations. See also Spalding vs. U. S. 17 Fed. Sup. 937; J. B. Cory Co. vs. Town of Winfield, 40 Fed. Supp. 427.

As we have heretofore pointed out when a municipality is exercising a proprietary function its powers are not strictly construed but on the contrary it is subject to the same rules that are applicable to a private corporation engaged in a similar business.

In this connection counsel for the plaintiff in the court below argued that because a fair board is not liable for its torts that therefore it is exercising a governmental and not a proprietary function. The difficulty with such argument is that the weight of authority is against such contention. In 3 C.J.S. page 397 it is said:

“Although organized only for a public purpose and agricultural society as distinguished from a public corporation which has the same immunity as the state is subject to the same liability for private injuries as natural persons.”

In support of the text the case of Hadler vs. Northwest Agr. Livestock and Fair Ass'n. 24 NW 193, 57 N.D. 872 is cited. See also Higgins vs. Franklin County Agricultural Society, 62 A. 708, 100 Mo. 565 are cited. Other cases to the same effect will be found in the footnotes to the text of paragraph 19 entitled Liability for Torts, 2 C.J. 996. It will be noted that under our statute the State Fair Association may sue and be sued.

THE PRESENT STATE FAIR BOARD MAY BIND THEIR SUCCESSORS IN A LEASE CONTRACT SUCH AS THAT HERE INVOLVED.

The trial court seems to have taken the view that the present officers of the state board may not enter into a contract such as the lease agreement which extend beyond the term of the officers who participated in making the lease. The authorities do not, as we construe them, support such contention. At the outset the attention of the court again is called to the undisputed testimony of

Mr. Brewster and Mr. McDermond to the effect that the fair association was without funds with which to improve the fair grounds in the manner that the same were improved and that in order to secure funds with which to construct buildings such as those that were constructed it was necessary to enter into a long term lease. That no one would make such improvements unless a long term lease was granted. As far back as 1939 the legislature of Utah created the Utah Centennial Commission. Laws of Utah, 1939, Chapter 132. That commission was granted very broad authorization as will be seen from the statutory provisions heretofore quoted. It was contemplated that the state of Utah and its people were planning to put on a great "splurge" in 1947. There was talk of a Worlds Fair to celebrate the coming of the Pioneers to the state of Utah in 1847. At that time the legislature appropriated only \$10,000.00 towards paying the expenses of the venture. The Centennial Commission was given authority to secure money from various sources, expenses and liabilities incurred by the Commission should be paid for from the money received by the Commission and any property or money left after paying the expenses of the undertaking should be disposed of as the legislature might provide. (See U.C.A. 1943, 82C-8-5).

In order to provide amusements and recreation for those who attended the celebration and particularly the fair grounds it was necessary to improve the same. To help accomplish that end the fair board, by and with the request and approval of the Centennial Commission,

entered into the lease agreement which plaintiffs now seek to have this court declare void because it appears that the plaintiffs did not make as large a profit out of the Centennial Celebration as they anticipated. In that particular it may be observed that the stockholders of the Midway too are disappointed because they have not received and probably will not recover back the money which they expended towards making the Centennial celebration a success. They desire to salvage if possible a portion of the money so expended and they, as well as the state fair association, seek to carry out the contract between the association and the Midway which was entered into in the utmost good faith and for a worthy cause and as they then believed and still believe in compliance with law.

The law with respect to officers entering into contracts extending beyond their term of office is thus expressed in 37 Am. Jur., Sec. 66, page 679:

“With respect to the power of a municipal council to enter, in behalf of the municipality, into a contract which will extend beyond the term for which the members of the council were elected, a distinction is drawn based upon the subject matter of the contract—whether legislative or governmental, or whether business or proprietary. Thus, where the contract involved relates to governmental or legislative functions of the council, or involves a matter of discretion to be exercised by the council unless the statute conferring power to contract clearly authorizes the council to make a contract extending beyond its own term, no power of the council so to do exists, since the

power conferred upon municipal councils to exercise legislative or governmental functions is conferred to be exercised as often as may be found needful or politic, and the council presently holding such powers is vested with no discretion to circumscribe or limit or diminish their efficiency, but must transmit them unimpaired to their successors. But in the exercise of the business powers of a municipal corporation, the municipality and its officers are controlled by no such rule, and they may lawfully exercise these powers in the same way, and in their exercise the municipality will be governed by the same rules which control, a private individual or a business corporation under like circumstances. Under this distinction, it is generally held that a municipal council may contract for water supply, street lighting, gas supply, etc. and bind subsequent boards, such contracts being made in the exercise of the city's business or contracts being made in the exercise of the city's business or proprietary powers. A contract of this kind, however, must be reasonable in the length of time for which it is to extend. The council may lease its property for a term extending beyond the term of the council, or it may lease property from others. It has been held that it may provide for the public printing, although the opposite conclusion has been reached as to the latter power."

Numerous cases will be found in footnotes to the text in support of the same. We have examined some of the cases and find that they are authority for the doctrine indicated in the text.

THE STATE OF UTAH AND ITS FAIR ASSOCIATION IS ESTOPPED FROM QUESTIONING THE VALIDITY OF THE LEASE AGREEMENT AND THE PLAINTIFFS MAY NOT WAIVE SUCH ESTOPPEL.

It will be noted that notwithstanding defendants alleged and proved that the defendant Beehive Midway expended large sums of money in improving the Fair Grounds the trial court made no finding with respect thereto. We have assigned as error the failure of the trial court to so find. J.R. 20, Assignment 7.

If the State Fair Association were here seeking to have the lease agreement declared void it would be estopped from attacking the validity of the lease agreement. After the stockholders of the Midway have expended in excess of \$100,000 in placing permanent improvements on the fair grounds which will revert to the fair association after the expiration of the lease it would be unconscionable to set aside the lease and declare that the improvements presently revert to the fair association.

The state of Utah may not be as wealthy as we would like it to be but to add to its wealth by such a means as is here suggested by the plaintiffs is unthinkable.

If the state fair board does not live up to its contract but should seek to rescind the same it would be required under the laws applicable to rescission to place the Midway in status quo. The improvements placed on the Midway may not all be removed and the cost and the deterioration that would result from the removal of the pro-

perty that can be removed would be so great as to make it doubtful if such an undertaking would be worth while to the stockholders of the Midway. Such an undertaking would not aid the fair association because, as the evidence shows, the improvements placed on the fair grounds are such as the fair board has planned to place on the fair grounds and such as the fair association needs. Of course if the stockholders of the Midway could be reimbursed by an order of this court to that effect the stockholders of the Midway would welcome such a result but the fair association would not and could not concur in such a result. That a municipal corporation as well as the state and its agencies may be estopped finds support in the following cases :

Winer Haven vs. State, 125 Fla. 392; 170 So. 100.

State ex rel Washington Paving Co. vs. Clausen,
90 Wash. 450; 156 Pac. 554.

L.R.A. 1917 A. 436, State ex rel Atty.

Gin vs. Janesville Water Co., 92 Wis. 496; 66 N.W.
512; 32 L.R.A. 391.

Fletcher vs. Peck, 6 Cranch (U.S. 3 L. Ed. 162.)

Chicago St. P.M. & O.R. Co. vs. Douglas County,
134 Wis. 1947; 114 N.W. 511, 14 L.R.A. (U.S.)
1074.

Such is the doctrine announced by our own Supreme Court in the case of Muir vs. Murray City, 55 Utah. 388, 186 Pac. 433.

If the State Fair Association is estopped, or if as appears in this case the state fair board seeks to comply with the elementary principles of honesty and fair deal-

ing the plaintiffs may not be heard to complain because of such attitude of the Fair Association because of some real or imaginary pecuniary loss that they might sustain. The plaintiffs have no vested right to be free from competition or to a monopoly on the amusement business in the state of Utah. If they claim such a monopoly it is high time that they are judicially informed that such is not the law in this jurisdiction.

THE TRIAL COURT ERRED IN DENYING THE PETITION OF THE CENTENNIAL COMMISSION TO LEAVE TO INTERVENE IN THE CAUSE.

After the parties to the original action had filed their pleading and before trial the Centennial Commission of Utah filed a petition for leave to intervene in the cause. (R25 to 27), together with a proposed complaint in intervention. R. 30 to 37.

The trial court denied the petition to intervene. R. 38.

By their assignment numbered 1 the appellants have attacked the order of the trial court in refusing to permit the Centennial Commission to intervene. JR-38.

U.C.A. 1943, 104-3-24 provides:

“That any person may before trial intervene in an action or proceeding who has an interest in the matter in litigation, in the success of either of the parties or an interest against both.”

The Centennial Commission obviously had in interest in the subject matter of the litigation. It was a proper party, if not an indispensable party, as will be seen from the powers conferred upon that commission by the pro-

visions of Chapter 8, Title 82c, a part of which chapter has heretofore been quoted in this brief.

In this connection the attention of the court is directed to U.C.A. 1943, 104-64-11 wherein it is provided that when declaratory relief is sought all persons shall be made parties who have or claim any interest which would be affected by the declaration," etc.

In its finding numbered 8 it is found that the defendants herein are all the persons who claim or assert any interest or whose rights will be affected by the determination hereof. Appellants have also attacked such finding by its assignment number 2.

A casual reading of Chapter 8, Title 82c, shows that the Centennial Commission has a vital interest in the subject matter of this litigation and that upon its termination its rights pass to the State to be disposed of in such manner as the legislature may provide. See U.C.A. 1943, 82c-8-5.

We direct the attention of the court to the provisions of the law dealing with the Centennial Commission, its duties and powers because it will be seen from the provisions of such law that commission was clearly empowered to do or to direct or approve what was done in the matter of making the lease and supplemental agreement involved in this litigation. To hold otherwise would be to ignore the provision of U.C.A. 1943, 82c-8-5.

The defendant submit that the court should enter judgment declaring that the lease agreement here

brought in question be declared valid and that plaintiffs have no just cause for complaint.

Respectfully submitted,

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