

LINCOLN COUNTY FAIRGROUNDS
HIGHEST & BEST USE ANALYSIS

LEGAL ANALYSIS

This legal analysis is presented as the first section of this report because it defines what the Lincoln County Commission is legally allowed to do in using the publicly-owned fairgrounds for the development and operation of private business enterprises, either through leases, partnerships, joint ventures or other organizational structures. Washington laws are comparatively restrictive in allowing for the use of public credit, properties or other resources for private purposes. It was decided to resolve these issues and establish the legal capabilities and/or requirements for the County Commission to utilize the fairgrounds for revenue-producing economic development initiatives in the analyses that follow in subsequent sections. This section of the report was researched and written by Douglas C. Macbeth, JD

The legal parameters and requirements for potential uses of the fairgrounds in Davenport involve analysis of:

- I. Statutory provisions governing County Fairgrounds
- II. Leasing public property for private use in Washington
 - A. Constitution
 - B. Statutes
- III. Possible creation of independent authorities
 - A. Public Development Authority
 - B. Port District
- IV. Analysis

I. Statutory provisions governing County Fairgrounds

Two sections of the Revised Code of Washington (RCW) deal with Agricultural Fairs and fairgrounds. Chapter 76 of Title 15 (Agriculture) declares such fairs to be in the public interest, establishes funding mechanisms to defray fair costs, and provides capital for health and safety improvements at fairgrounds (15.76.165).

Chapter 37 of the County Code (Title 36) also declares county fairs to be in the public interest and authorizes expenditures to support fairs. One section regarding management is particularly pertinent to this analysis:

36.37.040. The board of county commissioners of any county may appropriate and expend each year such sums of money as they deem advisable and necessary for (1) acquisition of necessary grounds for fairs and world fairs, (2) construction, improvement and maintenance of buildings thereon, (3) payment of fair premiums, and (4) the general maintenance of such fair.

The board of county commissioners of any county may also authorize the county auditor to provide a revolving fund to be used by the fair officials for the conduct of the fair. The board of county commissioners may employ persons to assist in the management of fairs or by resolution designate a nonprofit corporation as the exclusive agency to operate and manage such fairs. (Emphasis added)

At present, the Lincoln County Fair is managed by a County Board appointed for that purpose. There is also a 501(c)(3) non-profit active in the County which raises funds for the fair. The Lincoln County Economic Development Council is also a 501(c)(3) non-profit corporation that would be eligible to manage business development on the fairgrounds. This statute gives the Commissioners wide discretion in providing Fair management.

II. Leasing public property for private use in Washington

A. Constitution

The first factor in considering private use of public land is a limitation found in the state's Constitution, Art. VIII sections 5 and 7. Article 7 provides in part "...no County...shall give any money or property, or loan its' money or credit to...any individual, association, company or corporation, except for the necessary support of the poor or infirm..." In determining whether a public expenditure constitutes a prohibited gift, the Washington Supreme Court applies a two factor test. First, if the expenditure carries out a fundamental government purpose, then no prohibited gift is possible. However, if no fundamental purpose is served, the Court must examine whether a "gift" has occurred by looking at the consideration which the government receives in return.

The two cases which outline the factors to be examined are CLEAN v. State, 130 Wn.2d 782, 928 P2d 1054 (1996) and King County v. Taxpayers of King County, 133 Wn.2d 584, 949 P2d 1260 (1997); both of which involve the lease of public property for Safeco Field. Once the legislative body of the government entity concludes that it is receiving an adequate return, the Court will not interfere unless it finds proof of donative intent or grossly inadequate return. Thus to avoid any constitutional issue around lease of the County fairgrounds, all that is required is a fair deal which benefits both parties.

B. Statutes

There are specific statutes governing County property set forth in Chapter 36.34 RCW, with various provisions for leasing property. The standard open lease has a series of requirements set out in 36.34.150 -200, which include publication, various restrictions on lease terms, and award to the highest responsible bidder. A county may avoid the restrictions of Chapter 36.34 by establishing “comprehensive procedures for the management of county property consistent with the public interest” pursuant to RCW 36.34.05.

There are also specific statutes governing leases for airports, forest lands and affordable housing; along with an interesting provision regarding leases for agricultural fairs, which is set forth here:

36.34.145. Leases of county property to nonprofit organizations for agricultural fairs.

The legislative authority of any county owning property in or outside the limits of any city or town, or anywhere within the county, which is suitable for agricultural fair purposes may by negotiation lease such property for such purposes for a term not to exceed seventy-five years to any nonprofit organization that has demonstrated its qualification to conduct agricultural fairs. Such agricultural fair leases shall not be subject to any requirement of periodic rental adjustments, as provided in [RCW 36.34.180](#), but shall provide for such fixed annual rental as shall appear reasonable, considering the benefit to be derived by the county in the promotion of the fair and in the improvement of the property. The lessee may utilize or rent out such property at times other than during the fair season for non-fair purposes in order to obtain income for fair purposes, and during the fair season may sublease portions of the property for purposes and activities associated with such fair (emphasis added). No sublease shall be valid unless the same shall be approved in writing by the county legislative authority: PROVIDED, that failure of such lessee, except by act of God, war or other emergency beyond its control, to conduct an annual agricultural fair or exhibition, shall cause said lease to be subject to cancellation by the county legislative authority. A county legislative authority entering into an agreement with a nonprofit association to lease property for agricultural fair purposes shall, when requested to do so, file a copy of the lease agreement with the department of agriculture or the state fair commission in order to assure compliance with the provisions of [RCW 15.76.165](#).

This statute appears to provide for many of the County’s objectives for the fairground. In combination with the above cited statute on the management of fairs, it would allow the delegation of the entire management of the Fair and the Fairgrounds to a non-profit entity. The specific provision allowing the property to be rented for non-fair purposes during the off season, without any restrictions on how such leases are negotiated, is a very useful power. This statute is subject to two limitations. The first is that the lessee must have “demonstrated its qualification to conduct agricultural fairs”. There are no cases construing this requirement. It is suggested that whatever entity the County would choose should have some members from the Fair Board on it. The other limitation is that income from sub-leases be for “fair purposes”.

It is suggested that drafting the base lease with the non-profit so that any sublease income which exceeds fair expenses be paid over to the County general fund would meet this limitation, since the County is given wide discretion in funding the fair.

III. Possible creation of independent authorities

Washington statutes provide for the creation of independent legal entities to promote development. The two most widely employed are Public Development Authorities (PDAs) and Port Districts (PDs). These entities vary in their degree of independence from the political body creating them, with Port Districts being far more autonomous.

A. Public Development Authorities

PDAs are public corporations created by a city or county to perform a particular public purpose, which is specified in the resolution creating it and in its' charter. While the purposes vary widely, many are created to receive and administer federal or private funds. PDAs are often created for a specific purpose, and can be chartered for limited duration. The statutes governing PDAs (RCW 35.21.730 et seq.) set forth powers and limitations, but generally provide considerable flexibility in the creation of these entities.

PDAs may contract and sue or be sued in their own name; they can also issue tax free bonds (which typically must be guaranteed by the creating municipality to be salable). The creation of public private partnerships is frequent in PDA operations. They do not have taxing authority or the power of eminent domain. PDAs may hold real property, and the county may deed parcels to the PDA without consideration, but such transfers must specify how the property can be used by deed restrictions. The PDA may not sell or encumber any property so acquired without approval of its' creating municipality.

The composition, size and nomination process of the PDA's governing body is not specified by statute, leaving wide discretion in the creating municipality. There is no requirement for election to the governing Board; presumably the initial members would be appointed by the County and subsequent membership governed by the Charter. While the Authority will act as a separate entity, the County must continue to oversee and control the PDA's operations and funds in order to correct any deficiency and assure the Authority's purposes are reasonably accomplished. The County would have wide discretion in specifying the level of control and accountability it exercises over the PDA through provisions in its' charter and in any contracts, leases, etc. which it may execute.

Strictly speaking, the PDA as a separate entity will not create liability for the County by its' activities. Some care must be taken in the establishment and oversight so that separation of the entities is maintained. Apart from a possible bond guarantee mentioned above, there is the provision for correction of any deficiency in funds or operations in RCW 35.21.745. No case has been found addressing this provision.

B. Port Districts

Port Districts are distinguished from PDAs in several respects; they are far more autonomous and independent, have greater powers including eminent domain, and are typically created for indefinite periods to continuously develop parcels within their districts. PDs have a long history in Washington, and their purposes have expanded over time beyond the improvement of ports and airports to the general development of lands for industrial and commercial needs. A basic procedure that many port districts would employ: Acquire and prepare an industrial site, attract a business to occupy it, and use the resulting revenue to develop more sites, creating a cycle of increasing jobs and growth.

The powers of PDs are far more extensive than PDAs, and their form and operations are extensively defined by law. Title 53 of RCW is comprised of statutes related to PDs. These have the power to levy taxes and assessments, and operate much like any other municipality.

The effort to create such a port district is initiated by the filing of a petition with the county auditor calling for the creation of such a port district, describing the boundaries of the proposed port district, designating either three or five commissioner positions, describing commissioner districts if the petitioners propose that the commissioners represent districts, and providing a name for the proposed port district. The petition must be signed by voters residing within the proposed port district equal in number to at least ten percent of such voters who voted at the last county general election. If the Auditor certifies the petition, the County must hold an advertised public hearing to determine if creation of the district is in the public interest. If so, a ballot proposition authorizing creation of the district is then submitted to the voters within the district. This procedure is outlined in RCW 53.04.023 and related sections.

There is a requirement in this section that the District contain at least \$150,000.00 in assessed valuation if it is to be less than the whole county in size. A statutory change will preclude the establishment of a port district comprising less than the whole county in counties without an existing port district after 2020. There are currently six counties in the state without a port district, including Lincoln and Spokane. No port district has been established in the state since 1988.

Additional comments inserted into the Legal Analysis by Elesco LLC: A secondary advantage of forming a Port District in Lincoln County would be the provision that the Port could also create an Industrial Development District within the same boundaries as the Port District *without a vote of the citizens unless challenged*. The IDD would be limited to a tax rate of \$0.45 per \$1,000 of assessed value which would be levied for six years unless renewed. The IDD is normally used for capital improvements that can be amortized by the six-year levy and/or generate sufficient general revenues to fill any gaps in the tax revenues.

IV. Analysis

The four legal frameworks outlined above are: 1. County ownership with delegation of responsibilities (the status quo); 2. Lease of the premises to a non-profit; 3. Creation of a PDA (with or without transfer of title to fairgrounds); and 4. Creation of a PD with transfer of title to that entity. These scenarios create a continuum of decreasing control, economic responsibility and liability for the County. The status quo has not been satisfactory and the expense and political difficulty in creating a Port District render it probably an over-sized tool for the improvement of just one parcel. Should the County intend to continue development beyond the fairground, a Port District becomes a more suitable vehicle. Thus the most likely solution will be in the middle two options, either a lease or creation of a PDA.

With a lease, the County would remain in title, thus ultimately liable for its operation. Improvements to the property would accrue to the County. Presumably the revenues from public/private partnerships or sub-leases would be sufficient to improve the property, maintain the fairground and perhaps generate additional revenues for the County. The identity and composition of the tenant nonprofit would be a matter of negotiation.

Creation of a PDA would present a range of possibilities given the flexibility of the authorizing statutes. A lease to a PDA might look like the lease to a non-profit, except that the County would likely dictate at least the initial Board of the Authority. If the County were to deed the fairground over to the PDA there would be an attendant lessening of liability, although improvements would accrue to the new owner. The County would continue to oversee the operation and finances of the PDA. Whether the capital requirements of the PDA would justify a bond issue would have to be examined; that appears to be the primary finance method but is by no means required.

FAIRGROUND OPTIONS AT A GLANCE

Impacts on Lincoln County Commission

	STATUS QUO	LEASE TO NON-PROFIT	PUBLIC DEVELOPMENT AUTHORITY	PORT DISTRICT
Retain Property and Improvements	Yes	Yes	Option	No
Creates Entity	N/A	N/A	Commissioners	Petition/Referendum
Funding	County	Private	Various/Bond	Bond/Taxes/Assessment
Liability (general)	Yes	Limited	Various	No
Liability (financial)	Yes	No	Possible	No

Other legal issues, such as planning and zoning requirements, required studies and permitting are discussed in the Site Assessment section or other sections of this report.