WILLIAM J. SCOTT
ATTORNEY GENERAL
STATE OF ILLINOIS
SPRINGFIELD

September 28, 1976

FILE NO. S-1163

STATE MATTERS:
Construction of Buildings
on State Fairgrounds By
a Private Exhibitor

Nick Stone
Acting State Fair Superintendent
P. O. Box 576
Illinois State Fairgrounds
Springfield, Illinois 62705

Dear Mr. Stone:

This is in response to your predecessor's letter concerning the status of ownership of a certain building located on the Illinois State Fairgrounds. In 1969, pursuant to an agreement between the State Fair Agency and an exhibitor, the exhibitor constructed a building on the fairgrounds for exhibition purposes. The building remains on the fairgrounds at the present time. There appears to be no written evidence of the 1969 agreement. Your predecessor's letter asks three questions:

"1. What are the minimum legal requirements necessary for us to allow construction of a permanent structure on the Illinois State Fairgrounds by outside parties?

2. Does the State of Illinois, Illinois State Fair Agency, own the permanent building erected in part by the exhibitor; and

3. If so, whether the exhibitor can be compensated for its expenditures in the erection of the building, and if so, the manner or method which they can be reimbursed?"

It is my conclusion that the State Fair Agency is without authority to grant a long-term lease of space to an exhibitor. Any structure owned by an exhibitor which is left upon the fairgrounds by permission of the State Fair Agency is left there under a license which is revocable at any time. The ownership of the particular building in question is dependent upon a determination of whether the building is a fixture. This is a mixed question of law and fact which I am unable to answer because of a lack of sufficient factual information. If the building is a fixture, the title thereto is vested in the State and there is no legal obligation to compensate the exhibitor who constructed it.

The first question appears to contemplate a long-term leasing arrangement between the State Fair Agency and the

private exhibitor whereby the parcel upon which the building is placed is leased to the exhibitor while the building itself will remain the personal property of the exhibitor pursuant to agreement. See Isham v. Cudlip, 33 Ill. App. 2d 254. Prior to the enactment in 1965 of "AN ACT relating to the Illinois State Fair, creating a State Fair Agency, defining its powers and duties, etc." (Ill. Rev. Stat. 1975, ch. 127, pars. 401 et seq.) the Illinois Department of Agriculture was the agency which administered and held the State Fair and had custody of the State Fairgrounds. (Ill. Rev. Stat. 1949, ch. 127, par. 40.) The statutory language which authorized the Department of Agriculture to hold the State Fair and which set forth the Department's powers and duties in this regard is substantially similar to that under which the State Fair Agency was created and empowered to hold the Fair. In opinion No. 214, issued on April 30, 1951 (1951 Ill. Att'y. Gen. Op. 84), one of my predecessors concluded that the Department of Agriculture did not have authority to enter into an agreement with a private exhibitor whereby permanent buildings would be constructed by the exhibitor on State Fairgrounds under a long-term lease

arrangement; the rationale being that the Department had authority to lease space on the fairgrounds only for short periods of time, not in perpetuity or for a long period of years. Each administrative agency of the State must find the source of its power in the statute concerning it, and can only exercise the power conferred in conformity with the statute. (People v. Righeimer, 298 Ill. 618.) Because there are no statutes expressly granting the power to enter long-term leasing agreements, and the powers and duties of the State Fair Agency outlined in the Act are substantially similar to those which were considered in opinion No. 214, the reasoning and holding of that opinion are applicable. I therefore conclude that the State Fair Agency does not have the power to enter into long-term leasing arrangements with private exhibitors.

Because the State Fair Agency cannot grant a long-term interest in the realty to an exhibitor, any building or other property of the exhibitor which is left upon the fairgrounds by permission of the State Fair Agency after the State Fair would be left there under a license. A license with respect to realty is a permission or authority to do an act upon the land of another without possessing any estate or

interest in the realty. (Lang v. Dupuis, 382 Ill. 101.) When a license is not coupled with an interest in the land, as would be the case here, the license may be revoked at any time. (Stoddard v. Fulqur, 21 Ill. App. 560.) Therefore, even if a permanent structure is erected upon the fairgrounds and is agreed to remain personalty of the exhibitor (Isham v. Cudlip, 33 Ill. App. 2d 254), the license may be revoked at any time.

I now turn to the second and third questions. Under the early common law and early decisions of the Illinois courts, buildings and other permanent structures were deemed, prima facie, to be fixtures and to belong to the owner of the real estate to which they were attached, and it was up to the person who claimed such buildings or other structures to be personalty and removable to prove affirmatively that they were not intended to be a part of the real estate. (Dooley v. Crist, 25 Ill. 551; Matson v. Griffin, 78 Ill. 477; Sword v. Low, 122 Ill. 487, 497.) Under the law of Illinois, in determining whether an article or structure attached to land is to be regarded as a part of the land, that is, as a fixture, there are three tests or considerations which are pertinent: (1) Real or constructive annexation of the article or structure to the realty; (2) Adapta-

tion of the article or structure to the use or purpose to which the realty is adapted; and (3) The intention of the party making the annexation to make the article or structure a permanent accession to the freehold. The most important test or consideration is the intention of the parties, as shown either by express agreement or inferred from surrounding circumstances. (White Way Sign Co. v. Title and Trust Co., 368 Ill. 482; Bank of Republic v. Wells-Jackson Corp., 358 Ill. 356; Dooley v. Crist, 25 Ill. 551.) Where personal property is attached to real estate so that it becomes a fixture, title thereto passes to the owner of the freehold. (White Way Sign Co. v. Title and Trust Co., 368 Ill. 482.) Title to the fairgrounds is in the State of Illinois. Ill. Rev. Stat. 1975, ch. 127, par. 42.

The trend of recent decisions has been more favorable to persons in possession of premises under leases, licenses, and similar grants, and the tendency of the courts has been to hold that buildings and other structures are personal property when erected by lessees, licensees, and other persons who have no interest in the real estate, where that intent can be gathered from the conduct or action of the parties. (Bank of Republic v. Wells-Jackson Corp., 358 Ill. 356; Hopwood v.

Green, 310 Ill. App. 411; C. & A.R.R. Co. v. Goodwin, et al., 111 Ill. 273.) While the courts and some other authorities have made general statements to the effect that where a person who has no title to the land involved erects a house or other building upon the land of another with the latter's consent, the building will be the personal property of the builder (C. & A.R.R. Co. v. Goodwin, et al., 111 Ill. 273; 22 Am. Jur., sec. 64, p. 780), such generalizations are not borne out by the general rule for the determination of fixtures, as indicated above, and must be based upon the particular facts in each case. As has been shown above, it is the intention of the parties, either expressed or implied, which controls and the presence or absence of an interest in the real estate involved is not sufficient in and of itself to determine the ownership of articles or structures placed thereon. Further, even in a case where it can be inferred that the intention of the parties was that the building should remain personalty and should be the property of the lessee, or other builder, in the absence of a special agreement, there is no obligation upon the owner of the land to reimburse the builder for buildings so erected. See, Kutter v. Smith, 69 U.S. 491; Nicholson v. Altona Corp.,

320 F. 2d 8.

The determination of whether personal property which is affixed to real estate constitutes a fixture is, in each instance, a mixed question of law and fact. (Davis Store Fixtures, Inc. v. Cadillac Club, 60 Ill. App. 2d 106.) Because I do not have sufficient information to determine the parties' intent, and to otherwise apply the above tests for the determination of whether the structure in question is a fixture, I am unable to provide a conclusive answer to the second question. If indeed the building is a fixture, as its permanent nature indicates, the title thereto is vested in the State. If it is determined not to be a fixture, title thereto remains in the party who built it.

In the absence of an express agreement, there is no obligation upon the owner of land to reimburse a person having no title in the premises for constructing buildings upon the land of the former, even though such buildings are constructed with the permission of the owner of the land. (Kutter v. Smith, 69 U.S. 491; Nicholson v. Altona Corp., 320 F. 2d 8; 1947 Ill. Att'y. Gen. Op. 85.) It therefore follows that if the building in question is determined to be a fixture, title thereto is vested in the State and there is no legal obligation upon the State to compensate the party who placed the building

upon the fairgrounds. The exhibitor's recourse is to approach the General Assembly and request an appropriation as compensation. On the other hand, if the building is determined not to be a fixture, it remains the personal property of the builder.

Very truly yours,

ATTORNEY GENERAL