

makes it a misdemeanor for any person to violate any provisions of the act (G. C. Sec. 9884-5 to 9884-11).

Sections 9884-5 to 9884-11, inclusive, were enacted by Amended Senate Bill No. 260 in the year of 1923 (110 O. L. 454). The title of such act reads:

“To license concessionaries at County and Independent Fairs for the purpose of preventing immoral exhibitions, lottery devices, games of chance and gambling *at said fairs.*” (Italics the writer’s.)

In the event a county agricultural society leases their fair grounds owned by the county to an individual, firm or corporation for the purpose of conducting a street fair or carnival, it is my opinion from a reading of the title and the provisions of the act, given supra, that these laws which provide for the regulation of county agricultural societies do not apply to the parties having a lease and operating street carnivals, etc. Consequently the lessee under such an arrangement does not have to obtain a license from the Director of Agriculture. However, if he permits such games as you describe above, it is the duty of the Sheriff and the Prosecuting Attorney to prosecute such lessee for violation of the general criminal statutes, Sections 13062 to 13067, inclusive.

Specifically answering your inquiries, it is my opinion that:

1. The County Agricultural Societies or Independent Agricultural Societies do not have the right to permit paddle wheels, pool selling, corn games and other games of chance to be operated during the time they are conducting their fair.

2. Even though a County Agricultural Society does not ask for state aid under Section 9880, General Code, they are not permitted to allow the above mentioned games to operate on the fair grounds during the time they are conducting their fair.

3. Under Section 9884-9, General Code, it is the duty of the Director of Agriculture to enforce all the provisions of the act (G. C. Sec. 9884-5 to 9884-11). It is also the duty of the Sheriff and the Prosecuting Attorney to enforce Section 9884-11, General Code.

4. In the event the County Agricultural Society leases their fair grounds owned by the County to an individual, firm, or corporation for the purpose of conducting a street fair or carnival, these laws (G. C. Sec. 9884-5 to 9884-11, inclusive), do not apply to the lessees, but the provisions of Sections 13062 et seq., of the Criminal Code, with regard to gambling, should be enforced by the Sheriff and the Prosecuting Attorney, at such fairs and carnivals.

Respectfully,

JOHN W. BRICKER,
Attorney General.

1601.

APPROVAL, PAYMENT OF VOUCHERS FOR EQUIPMENT OF CONCESSION STAND IN NEW STATE OFFICE BUILDING.

COLUMBUS, OHIO, September 22, 1933.

HON. JOSEPH T. TRACY, *Auditor of State, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your communication which reads as follows:

"This office has presented to it for payment two vouchers, amounting in the aggregate to \$312.50 for equipment of concession stand in the lobby of the new State Office Building.

This involves a construction of a Lease for space for a concession stand made by T. S. Brindle, Director of Public Works. The particular clause in said lease reads as follows:

"The party of the second part hereby agrees to erect fixtures on the floor space herein leased within two (2) months from the date of the approval of this lease, the same to cost not less than \$1500.00, and upon the failure of said second party, her heirs, executors, administrators or assigns, to comply with this provision, it is agreed that if no fixtures are erected thereon before the first day of June, 1933, the Superintendent of Public Works, as Director thereof, may, at his option, cancel said lease, it being mutually agreed that all counters, show cases or other fixtures permanently fastened to the building, shall become the property of the State of Ohio, on and after installation and upon the expiration of this lease."

Question: Under the terms of said lease, are payments for

1 Large Ezy Rug mat for cigar stand 8' 6" x 4'.....\$47.50

Furnishing and installing 1 Wood rolling door 9' 9" x 6' 6" 265.00

legally payable from state funds?

The question presented is whether or not the lessee, under the terms of said lease, is required to put in this equipment."

The concession stand referred to by you is one conducted by the lessee named in the lease referred to in your communication, for the sale of lunches, cigars and refreshments to employes in the state office building and others. This concession stand has been installed in a recess or alcove formed by the interior walls at the north end of the state office building which was originally designed for use as a telephone and telegraph booth.

The rolling door referred to in your communication, as well as the cylindrical metal housing in which the same is installed, is attached as a permanent fixture to an arched interior wall, and the door when the same has been pulled down and fastened in place rests upon the show case and, together with the show case shuts off the alcove in which such stand is located from the hallway which forms the approach to the stand. This rolling door as well as the mat above referred to was constructed on the order and direction of the Director of Public Works according to designs and specifications furnished by the State Architect. This mat is constructed of sections of hard black rubber as a background to the word "Ohio" formed of sections of hard rubber which are of a red color. The purpose of the mat is primarily to protect the hard rubber tiling in the floor of the hallway which forms the entrance to the stand and to prevent the scuffing and deterioration of the same which would be caused by persons congregating before the stand while consuming the food and refreshments there furnished.

It is noted from your communication that in the lease therein referred to the lessee of this concession stand is required to erect "fixtures" on the floor space covered by the lease to cost in the aggregate not less than fifteen hundred dollars, and that all counters, showcases or other fixtures permanently fastened to the building shall become the property of the state upon the termination of the lease. It seems from these provisions that it was not contemplated that all of the equipment which the lessee was required to install in connection with the

operation of the stand up to the aggregate cost of fifteen hundred dollars should be such equipment as is permanently attached to the building. As to this, I am informed by the Director of the Department of Public Works that including a counter and showcase which has been built in so as to become permanently attached to the building, the lessee has installed equipment at a cost of more than fifteen hundred dollars, and thus, in this respect, has complied with the provisions of the lease. In any event, there is nothing in the provisions of this lease which required the lessee to install in connection with the operation of this stand the particular articles and equipment referred to in your communication which, as above noted, were furnished and installed by the Director of Public Works, acting for and on behalf of the state. This is, perhaps, a sufficient answer to the question presented by you which is one with respect to the obligation of the lessee to furnish and install the particular equipment here in question. As above indicated, this question is to be answered in the negative.

I assume that the real question here presented for determination is whether on proper vouchers therefor you are authorized to issue warrants covering the contract prices of these articles of equipment which, as above stated, were made and installed on contracts therefor made by the Director of Public Works. Under the provisions of section 154-40, General Code, the Director of the Department of Public Works is authorized, among other things, to make contracts for and supervise the construction and repair of buildings under the control of the state government or any department, office or institution thereof. Following the practical construction which has been given to the provisions of this section, no difficulty is encountered in finding that the Director of the Department of Public Works had the necessary power and authority to furnish and install these articles as a part of the permanent equipment of the building, and if the requirements of the law have been observed by the Director of Public Works in entering into contracts for this equipment and there is an appropriation available therefor, no reason is seen why proper vouchers and warrants should not be issued covering the cost of the same.

Respectfully,

JOHN W. BRICKER,
Attorney General.

1602.

COUNTY BOARD OF ELECTIONS—UNAUTHORIZED TO REDUCE RATE OF COMPENSATION PAYABLE TO PRECINCT JUDGES AND CLERKS BELOW THAT PROVIDED BY SECTION 4785-28, GENERAL CODE.

SYLLABUS:

Boards of elections of counties are unauthorized to establish a lower rate of compensation to be paid to precinct judges and clerks than that provided for by section 4785-28 of the General Code.

COLUMBUS, OHIO, September 22, 1933.

HON. GEORGE S. MYERS, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—Your recent inquiry reads as follows: