

1700

EXPERIMENT FARMS, COUNTY — MANAGEMENT — DIRECTOR, OHIO AGRICULTURAL EXPERIMENT STATION HAS DISCRETION TO DETERMINE AT WHAT TIMES AND IN WHAT AMOUNTS SURPLUS ARISING FROM SALE OF PRODUCE SHALL BE PAID TO COUNTY TREASURY FOR CREDIT TO COUNTY GENERAL FUND—SECTIONS 1177-4 TO 1177-8 G. C.

SYLLABUS:

Under the provisions of Sections 1177-4 and 1177-8, General Code, relating to the management of county experiment farms, the director of the Ohio agricultural experiment station has the discretion to determine at what times and in what amounts the surplus arising from the sale of produce of any such county experiment farm shall be paid in to the county treasury to be placed to the credit of the general fund of the county.

Columbus, Ohio, March 18, 1947

Mr. Edmund Secrest, Director, Ohio Agricultural Experiment Station
Wooster, Ohio

Dear Sir:

I have before me your communication requesting my opinion, and reading as follows:

“Section 1177-5 of the Ohio General Code specifies that the management of county experiment farms shall be vested in the director of the Ohio Agricultural Experiment Station.

Section 1177-8 provides that the money derived from the sale of produce shall be used for the purchase of various things needed in the management and maintenance of the farm. Also any surplus beyond these requirements shall be covered into the county treasury and placed to the credit of the general fund of the county.

The war years have been the cause of some unusual conditions. First, the income from farm sales has been greatly increased. Second, it has been nearly impossible to purchase machinery and to maintain buildings and equipment in adequate repair.

This combination has created an unexpended balance at the Hamilton County Experiment Farm of approximately \$25,000,

all of which can judiciously be spent as labor, machinery, materials and equipment become available to maintain the standing of this Experiment Farm and to increase its value as a research farm.

The director of the Experiment Station is charged by law with the management of county experiment farms. Does this same law give him sole responsibility to determine what part, if any, of an unexpended balance is to be 'covered into the general fund of the county'?

May I have an official opinion to the above question? I have used the Hamilton Farm as a specific example, although your answer will apply to other county experiment farms where the problem is similar but the unexpended balances are much smaller."

The statutes relative to the county experiment farms are contained in Sections 1174 to 1177-9, inclusive, of the General Code. The general purpose of these experiment farms is stated in Section 1174, as follows:

"In order to demonstrate the practical application under local conditions of the results of the investigations of the Ohio agricultural experiment station, and for the purpose of increasing the effectiveness of the agriculture of the various counties of the state, the commissioners of any county in the state are hereby authorized and empowered to establish an experiment farm within such county as hereinafter provided for."

The scope of the experimental work is further set forth in Section 1175, which reads as follows:

"The county experiment farms established under this act (General Code Sections 1170 to 1177-11) shall be used for the comparison of varieties and methods of culture of field crops, fruits and garden vegetables; for the exemplification of methods for controlling insect pests, weeds and plant diseases; for experiments in the feeding of domestic animals and in the control of animal diseases; for illustrations of the culture of forest trees and the management of farm woodlots; and for the demonstration of the effects of drainage, crop rotation, manures and fertilizers, or for such part of the above lines of work as it may be practicable to carry on."

The process of establishing such experiment farms is outlined by Section 1176 et seq. and consists in the filing of a petition with the county auditor signed by not less than five per cent of the electors of the county, the holding of an election, the levying of a tax not exceeding one-fifth of

one mill, and the issuance of bonds in anticipation of the collection of such tax. Section 1177-2 provides that the proceeds of such bonds are "to be applied by the county commissioners to the purchase and equipment of an experiment farm containing 80 acres or more as hereinafter provided for."

Under the provisions of Section 1177-3, the selection of a farm is to be made by the county commissioners, with the approval of a majority of the board of control of the Ohio agricultural experiment station, which board, under the terms of Section 1170, General Code, is to consist of the director of agriculture and the members of the board of trustees of the Ohio State University.

Section 1177-4 makes provision for the purchase of the equipment for such farm and also provides for an annual appropriation for the continued operation of the same. That section reads as follows:

"The equipment of an experiment farm shall consist of such buildings, drains, fences, implements, live stock, stock feed and teams as shall be deemed necessary by the board of control at any time for the successful work of such farm, and the initial equipment shall be provided by the county in which the farm is established, together with a sufficient fund to pay the wages of the laborers required to conduct the work of such farm during the first season. The county commissioners shall appropriate for the payment of the wages of laborers employed in the management of such farms as may be established under this act (General Code Sections 1079 to 1177-20), and for the purchase of supplies, materials, implements, live stock, stock feed and teams, and for the construction of buildings, drains and fences, necessary to the proper conduct of such farms, such sums not exceeding two thousand dollars annually for any farm, as may be agreed upon between such county commissioners and the board of control."

Section 1177-5 relates to the management of such experiment farms, and reads as follows:

"The management of all county experiment farms established under authority of this act (General Code Sections 1079 to 1177-20) shall be vested in the director of the Ohio agricultural experiment station, who shall appoint all employes and plan and execute the work to be carried on, in such manner as in his judgment will most effectively serve the agricultural interests of the county in which such farm may be located, the director and all employes being governed by the general rules and regulations of the board of control."

Section 1177-8, General Code, provides for the disposition of the monies arising from the sale of the produce of such a farm, and reads as follows:

“The produce of each county experiment farm as may be established under this act, over and above that required for the support of the teams and live stock kept on the farm, shall be sold and the proceeds applied to the payment of the labor and to the purchase of the supplies, materials, *implements, live stock, stock feed and teams, and to the construction of buildings, drains and fences* required for the proper management of the farm as contemplated by this act (General Code Sections 1170 to 1177-11), and for the maintenance of its equipment. Any surplus beyond these requirements shall be covered into the county treasury and placed to the credit of the general fund of the county, except in the case of the use of farms already belonging to the county, in which case the proceeds shall be placed to the credit of such fund as the county commissioners may designate.”

(Emphasis added.)

I deem it worthy of note that that portion of the section last quoted which I have italicized, was not in the act by which the system was originally set up, but was inserted by an amendment in 1921 (109 O. L. 46). In the same act the same addition was made to Section 1177-4 supra. The effect of this amendment was to broaden considerably the list of things to which the proceeds arising from the sale of the produce could be applied. Prior to that amendment, one of my predecessors in construing these sections had held that the proceeds arising from the sale of produce of county experiment farms could not be used for the erection of dwelling houses for employes or for farm buildings. (1919 Opinions of the Attorney General, page 1614.) The broad purpose to which these funds can now be devoted appears to me to have some bearing, as I shall later point out, on the legislative intent in providing for the disposition of the surplus.

The essential question raised by your inquiry appears to be whether under the statutory provisions above quoted and referred to, the director of the Ohio Agricultural Experiment Station is required to turn in to the county treasury annually the surplus remaining in his hands after the payment of the purchases made by him during the current year, or whether he may permit such funds to accumulate and retain them under his control in anticipation of the future requirements of the farm. It appears to me that the provisions of Section 1177-4 to which I have referred, which

limits the amount which the county commissioners may appropriate annually to \$2,000, has an important bearing in determining the intent of the law as to the disposition of the surplus in question. If the director is obligated at the end of each year to turn in to the treasury all the surplus remaining in his hands after paying for the purchases of that year, then it would be impossible for him to make provision for large expenditures which might obviously be needed for the coming year because the appropriation to be made by the commissioners in the coming year would be limited to the sum of \$2,000, which might be wholly inadequate, particularly since the General Assembly has broadened the uses of such surplus to include large and expensive improvements and additions such as implements, buildings, drains, fences, etc. These might require a considerable capital outlay. It will be noted that the statute authorizes the use of these monies for the purchase of the various items mentioned and for the construction of buildings, etc., "*required* for the proper management of the farm." This language, it appears to me, contemplates that the director may look forward to the improvements and additions that will be required in the near future.

If the General Assembly had intended to require the director to pay in to the county treasury each year the surplus thus arising, it would have been easy to have so provided in explicit language. The General Assembly saw fit to give to the director the full management and control of these experiment farms, and having in mind the nature of the work sought to be accomplished and the benefits accruing to the agricultural interests of the county, I cannot believe that it was the intent to handicap him by imposing an arbitrary duty to make such accounting and payment annually. On the contrary, it would appear to be entirely consistent with the terms of the law and plainly more in accord with the intent of the whole plan to conclude that the General Assembly intended to leave the matter to his sound discretion.

If the surplus reaches an amount which he believes is in excess of the requirements for the near future, the director may then determine what portion of such surplus should be "covered into the general fund of the county."

Specifically answering your question, it is my opinion that under the provisions of Sections 1177-4 and 1177-8, General Code, relating to the management of county experiment farms, the director of the Ohio agri-

cultural experiment station has the discretion to determine at what times and in what amounts the surplus arising from the sale of produce of any such county experiment farm shall be paid in to the county treasury to be placed to the credit of the general fund of the county.

Respectfully,

HUGH S. JENKINS,
Attorney General.