

937.

BOARD OF AGRICULTURE—COUNTY AGRICULTURAL SOCIETIES—WHEN BOARD MAY WITHHOLD CERTIFICATE FOR PER CAPITA TAX FROM COUNTY SOCIETY—SECTION 9884 G. C. AS TO NOTICE TO SECRETARY OF BOARD OF AGRICULTURE CONSTRUED—SECTION 9884.4 G. C. AS TO DISBURSING OF FUNDS CONSTRUED—WHEN ELECTION OF DIRECTORS OF COUNTY SOCIETY MUST BE HELD—SECTION 14571 G. C. INOPERATIVE.

1. *Under the provisions of sections 9884-4 G. C. the state board of agriculture may withhold its certificate for per capita tax from a county society when it appears that the annual exhibition is not conducted along moral, or agricultural lines or is not of sufficient educational value to justify the expenditure of the said per capita tax.*

2. *Section 9884 G. C. requires the notices provided for therein to be filed with the secretary of the board of agriculture on or before the first Tuesday after the second Monday in January of each year, and the county treasurer is unauthorized to pay any fund to said county society until the secretary of the board of agriculture has certified to the county auditor that said reports have been made. "Subsequent payment" as used in this section relates to all payments to be made by the county treasurer to a county society after the expiration of the date fixed in said section, on or before which the reports mentioned therein shall be made.*

3. *Section 9884-4 G. C. does not authorize the state board of agriculture to withhold any funds appropriated by the county from a county society. However, the county treasurer is unauthorized to make any payments to a county society until the certificate of the secretary of the board relative to the proper notices being filed is presented to the county auditor as provided in section 9884.*

4. *When an election for the directors of a county society is not held on or before the first Saturday in December, no valid election can be held for that year and the present incumbents hold over until their successors are elected and qualified.*

5. *Section 14571 G. C. was intended to apply to counties containing cities of the second grade of the first class and is inoperative.*

COLUMBUS, OHIO, January 15, 1920.

HON. N. E. SHAW, *Secretary of the Board of Agriculture, Columbus, Ohio.*

DEAR SIR:—Your communication of recent date requesting my opinion, reads as follows:

"Section 9880 of the General Code provides for the organization of county agricultural fairs and the means whereby such fairs may receive financial aid.

Section 9884-4 forbids county agricultural fairs from conducting games of chance, gambling, etc., on their grounds with threat to withhold certificates for per capita tax as provided in section 9880 from those who transgress. Section 9894 provides for county appropriations through county commissioners.

The state board of agriculture desires that all Ohio fairs be conducted in conformity to law and rules of said board, especially as regards section 9884-4. We request an opinion from your department as to the extent of authority of said board of agriculture in withholding support (if it becomes necessary to enforce compliance). Can the state board of agriculture refuse to issue certificate for per capita tax? Can the state board of

agriculture have the county appropriation withheld from any fair which violates section 9884-4?

Section 9884-2 specifies that the regular annual election of directors shall not be held later than the first Saturday in December. The president of the Champaign County Agricultural society writes under date of December 11, 1919, 'We have been proceeding here under a custom that has prevailed from time immemorial of holding an election the last Saturday in January—under the new law passed by the legislature a new order of things is laid out, but we have never got the advanced sheets and consequently knew nothing of the law until within the last few days. What we want you to do is to advise us exactly what we should do in the way of elections under the circumstances.'

We will be pleased to have your opinion on this situation that we may advise accordingly.

Section 9884, the closing part 'No subsequent payment shall be made from the county treasury unless a certificate be presented to the county auditor from the secretary of agriculture showing that such reports have been made.

Give interpretation of this paragraph.

Section 14571—What is present status?"

Sections 9880 and 9884-4 which are pertinent to your first inquiry, are as follows:

"Section 9880. When thirty or more persons, residents of a county organize themselves into a county agricultural society, which adopts a constitution and by-laws, selects the usual and proper officers, and otherwise conducts its affairs in conformity to law, and the rules of the state board of agriculture, and when such county society has held an annual exhibition, in accordance with sections 9881, 9882 and 9884 of the General Code, and made proper report to the state board, then upon presentation to the county auditor, of a certificate from the president of the state board attested by the secretary thereof, that the laws of the state and the rules of the board have been complied with, the county auditor of each county wherein such agricultural societies are organized, annually shall draw an order on the treasurer of the county in favor of the president of the county agricultural society for a sum equal to two cents to each inhabitant thereof, on the basis of the last previous national census. The total amount of such order, shall not exceed one hundred per cent of the amount paid in regular class premiums, and shall not in any county exceed two cents for each inhabitant as aforesaid or the sum of eight hundred dollars, and the treasurer of the county shall pay it."

"Section 9884-4. County agricultural societies shall not sell or grant to any person or persons, or permit in any manner, the privilege of selling, dealing, or bartering, in spirituous, vinous or malt liquors, allow, or tolerate immoral shows, lottery devices, games of chance, or gambling of any kind, including pool selling and paddle wheels, in or about any building or anywhere on its fairgrounds, at any time. If it be shown from the report of any county agricultural society, from witnesses or otherwise, that the annual exhibition held by such society was not conducted along moral or agricultural lines or was not of sufficient educational value to justify the expenditure of the per capita tax as provided by section 9880 of the General Code, the certificate for such financial aid may be withheld by the state board of agriculture."

Under the provision of section 9884-4 you are advised that the state board of agriculture may withhold its certificate for financial aid when it appears from the report of any county agricultural society, or from witnesses or otherwise, that the annual exhibition was not conducted along moral or agricultural lines, or was not of sufficient educational value to justify the expenditure of the per capita tax. Inasmuch as the language of the statute is not mandatory, it follows that the state board of agriculture may use its discretion as to whether it will withhold the certificate in a given case. Also the facts of each case must determine whether under the provisions of said section the state board of agriculture is justified in withholding the said certificate; that is to say, it must be established in the manner provided that the annual exhibition was not conducted along moral or agricultural lines, or was not of sufficient educational value to justify the expenditure. It is evident that it was the intent of the legislature to enable the state board of agriculture to withhold said certificate in case a county board of agriculture grants permits in violation of the provisions of said statute, and for the other reasons therein mentioned.

Your fourth inquiry will next be considered. Section 9884, upon a part of which you desire an interpretation, provides as follows:

“County societies shall publish annually an abstract of the treasurer’s account, in a newspaper of the county, and make a report of their proceedings during the year. Also make a synopsis of the awards for improvement in agriculture and household manufactures which shall be made in accordance with the rules and regulations of the state board of agriculture, and be forwarded to the secretary of agriculture on or before the first Thursday after the second Monday in January of each year. No subsequent payment shall be made from the county treasury unless a certificate be presented to the county auditor, from the secretary of agriculture showing that such reports have been made.”

Said section requires that the notices provided for therein shall be filed with the secretary of agriculture on or before the first Thursday after the second Monday in January of each year, and the treasurer of the county is unauthorized to pay any funds to said county society unless the certificate of the secretary of the state board of agriculture is filed with the county auditor certifying to the fact that said reports have been made. “Subsequent payment” as used in the paragraph to which you refer, relates to all payments to be made for any year to a county society by the county treasurer after the expiration of the date fixed in said section on or before which the reports mentioned therein shall be made. However, this section being passed April 17, 1919, the first report shall be made in January, 1920, and said section does not apply to payments made by the county treasurer prior to the date of filing the first report.

Replying to your second inquiry, you are advised that section 9884-4 does not authorize the state board of agriculture to withhold the payment of any funds or appropriations of the county from the county society. The certificate issued by the state board of agriculture under the provisions of said section relates solely to the per capita tax provided for in section 9880 supra, and the county auditor is without authority to pay said per capita tax unless the certificate is issued. Under this section said certificate should be issued by the president and attested by the secretary.

On the other hand, in so far as the county appropriations are concerned, the certification is not required, and it shall be the duty of the county treasurer to pay the appropriation of the county to said county society upon the order of the county auditor, provided that the secretary of the state board of agriculture has issued

his certificate to the county auditor to the effect that said society has made the proper reports as provided in section 9884.

Section 9884-2 which is pertinent to your third question, reads as follows:

"The board of directors shall consist of at least eight members, and the county agent and county school superintendent may be members ex-officio. The terms of office shall be determined by the rules of the state board of agriculture. Any vacancy, caused by death, resignation, refusal to qualify, removal from county, or other cause, may be filled by the board until the next annual election when a director shall be elected for the unexpired term. The annual election of the directors shall be by ballot at time and place fixed by the board; provided, however, that this election shall not be held later than the first Saturday in December. The secretary shall give notice of the director's election for three weeks prior to the holding thereof, in at least two newspapers of opposite politics, and of general circulation in the county, or by letter mailed to each member. Only persons holding membership certificates at the close of the fair, or at least fifteen calendar days before the date of election, as may be fixed by the board of directors, shall be entitled to vote, unless such election is held during the time of the holding of the annual county fair. If the said election is held on the fairgrounds during the continuance of the county fair, then all persons holding membership certificates of the date and hour of the election shall be entitled to vote. When the election is to be held during the continuance of the annual county fair, notice of such election must be prominently mentioned in the premium list, in addition to the notice required in newspapers. The terms of office of the retiring directors shall expire, and that of the directors-elect shall begin not later than the first Saturday in January of each year."

The section is explicit in its provisions that the annual election of the directors of the county society shall not be held later than the first Saturday in December. It is evident that the board to which you refer cannot now comply with the law relative to the time at which its annual election shall be held, and there can be no legal election for the year 1919. However, it is a well established rule that where there is no election held, that the present incumbents hold over until their successors are elected and qualified, which rule undoubtedly would apply in this case. There is nothing in the law designating the time when the election must be held, except that there must be three weeks notice given prior thereto, and must not be held later than the first Saturday in December.

It would therefore seem that an election may be legally held at any time fixed by the board after proper notice, previous to the first Saturday in December 1920. In the meantime, the present incumbents will hold over until their successors are properly elected and qualified.

In your fifth question you inquire as to the status of section 14571, which provides as follows:

"When a county society in a county containing a city of second grade of the first class has purchased or leased for a term of not less than twenty years, real estate as a site whereon to hold fairs, or when the title to the grounds is vested in fee in the county, but the society has the control and management of the lands and buildings the county commissioner may if they think it for the interests of the county and society, pay out of the county treasury the same amount of money for the purchase or lease and improvement of such site or either of them as is paid by such agricultural

society or individuals for such purpose or either of them, and such commissioners may levy a tax upon all the taxable property of the county sufficient to meet the provisions of this section."

This act was passed March 8, 1889 (86 O. L. 69) and was originally section 3702a of Bates' Revised Statutes. It was intended to apply to counties containing "cities of the second grade of the first class." Section 1, Article XVIII of the amended constitution of 1912 provides as follows:

"Section 1. Municipal corporations are hereby classified into cities and villages. All such corporations having a population of five thousand or over shall be cities; all others shall be villages. The method of transition from one class to the other shall be regulated by law."

Inasmuch as there are now no cities of the second grade of the first class in Ohio, it is believed that section 14571 G. C. is inoperative.

Respectfully,

JOHN G. PRICE,

*Attorney-General.*

938.

MUNICIPAL CORPORATION—DIRECTOR OF PUBLIC SERVICE—MAY PUBLISH NOTICES TO WATER CONSUMERS RELATIVE TO TIME FOR PAYMENT OF WATER BILLS.

*The director of public service may legally publish notices to water consumers relative to the proper time and payment of water bills, and that payment for such publication may lawfully be made as an expense of conducting and managing the municipal waterworks.*

COLUMBUS, OHIO, January 15, 1920.

*The Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.*

GENTLEMEN:—Acknowledgment is made of your request for the opinion of this department as follows:

"Is a notice to consumers relative to the proper time and payment of water bills in place of notification by mail a legal publication chargeable to public funds?"

Sections 3955 to 3981 are pertinent to your inquiry. General statutory power of council of a municipality to acquire, own and operate municipal waterworks, is given in section 3955. Since 1912, by the adoption of section 4, article XVIII, such power is granted by the constitution to municipalities. The management, conduct and control of the municipal waterworks is placed by section 3956 in the director of public service. By section 3957 he is empowered to make and enforce such by-laws and regulations "as he deems necessary for the safe, economical and efficient management and protection of the waterworks."

Section 3958 empowers the director to assess and collect water rents "for the purpose of paying the expenses of conducting and managing the waterworks."

Section 3959 provides: