

1205

1. FAIRGROUNDS AND BUILDINGS—MONEY PAID BY UNITED STATES GOVERNMENT—COUNTY COMMISSIONERS—SETTLEMENT, DAMAGE IN USE OF GROUNDS FOR ARMY CAMP—MAY NOT BE TRANSFERRED TO COUNTY AGRICULTURAL SOCIETY.
2. BUILDINGS ERECTED ON COUNTY OWNED FAIRGROUNDS FOR COUNTY FAIR PURPOSES ARE “PUBLIC BUILDINGS”—SECTIONS 2343 AND 2362 G. C.

SYLLABUS:

1. Money paid by the United States Government to the county commissioners in settlement for loss and damages resulting from the occupation and use by the government of the county-owned fairgrounds and buildings as an army camp, pursuant to the terms of the lease under which the government occupied and used the grounds and buildings, may not be transferred to the county agricultural society.

2. Buildings erected by the county commissioners on county-owned fairgrounds for county fair purposes, are “public buildings” within the meaning of Sections 2343 and 2362, and related sections of the General Code.

Columbus, Ohio, September 23, 1946

Hon. Leo J. Scanlon, Prosecuting Attorney  
Bucyrus, Ohio

Dear Sir :

This will acknowledge receipt of your letter which reads as follows :

“Crawford County, Ohio, holds the fee simple title to the Crawford County Fairgrounds. For several years preceding 1941 no fairs were conducted in Crawford County and the Agricultural Society of Crawford County had dissolved and turned everything pertaining to their duties over to the Board of County Commissioners of Crawford County, Ohio, including their indebtedness, which was subsequently paid by the Board of County Commissioners.

On or about the 31st day of March, 1942, the Board of County Commissioners of Crawford County, Ohio, leased the entire fairgrounds and all buildings thereon to the United States Government for use as an army camp. The lease provided that at the termination thereof the United States Government was to put all buildings, equipment, and the grounds in the same shape they were in as of the date of the lease, or they would pay cash for any damages to said grounds and buildings thereon.

Pursuant to said lease, buildings were erected and substantial changes were made to the grounds to make the same suitable for use as an army camp.

On or about June 1st, 1946, the United States Government terminated their lease and turned the fairgrounds back to Crawford County, Ohio, and at said time the United States Government offered to restore the fairgrounds and buildings thereon to the same condition they were when the United States Government took them over, or in lieu thereof, they offered to make a cash settlement for all damages, and for the restoration of the grounds and buildings.

The Board of County Commissioners elected to take a cash settlement, and the proceeds of this settlement, which amounted to about \$63,000, was placed in the Crawford County Treasury, and was designated ‘Crawford County Fairgrounds Restoration Fund.’

The Crawford County Agricultural Society reorganized during the year 1946, and they now plan to hold a regular county fair in 1947. In order to hold a fair it is necessary to construct on said fairgrounds a new race track to replace the one destroyed

when the fairgrounds were used as an army camp, and the estimated cost of this race track is \$15,000.00.

Question 1: May the Board of County Commissioners of Crawford County, Ohio, appropriate and transfer to the Crawford County Agricultural Society any part or all of the Fund which is now in the County Treasury which has been earmarked for the restoration of the Crawford County Fairgrounds?

Question 2: In the event that it is not possible to transfer any part or all of this fund to the Crawford County Agricultural Society, and in the event that the Board of County Commissioners of Crawford County should desire to proceed with such work as may be necessary to rebuild and to repair the Crawford County Fairgrounds, and put the same in the same condition as they were when the United States Government took over, must the Board of County Commissioners comply with the statutory requirements which pertain to the building of county buildings, etc., by employing architects, preparing plans and specifications, and submitting all work to bids after due publication of notice?"

Your letter discloses that Crawford county was the absolute owner of the county fairgrounds, including the site and buildings thereon, at the time it leased the same to the United States for use as an army camp, and that when the government turned the property back to the county, it paid \$63,000 to the county commissioners in settlement of all its obligations and liability under the lease. This money was placed in the county treasury to the credit of a special fund, designated as the "Crawford County Fairgrounds Restoration Fund."

In your first question you inquire as to the authority of the county commissioners to transfer all or any part of the special \$63,000 fund to the newly organized county agricultural society, for the purpose of being used by it to erect and repair buildings and make other improvements on the fairgrounds, including a new race track. If the county commissioners may do this, their authority must be found in some statutory law of this state which either expressly or by necessary implication confers the authority upon them. The following quotations will confirm this statement.

In 32 O. Jur., page 933, section 74, it is said:

"As a general rule, public officers have only such powers as are expressly delegated to them by statute, or such as are necessarily implied from those so delegated."

In *State, ex rel Locher v. Menning*, 95 O. S., 97, the court at page 99, used the following language:

“The legal principle is settled in this state that county commissioners, in their financial transactions, are invested only with limited powers, and that they represent the county only in such transactions as they may be expressly authorized so to do by statute. The authority to act in financial transactions must be clear and distinctly granted, and, if such authority is of doubtful import, the doubt is resolved against its exercise in all cases where a financial obligation is sought to be imposed upon the county.”

In *Jones, Aud., v. Commissioners of Lucas County*, 57 O. S., 189, the following appears in the syllabus:

“The board of county commissioners represent the county in respect to its financial affairs, only so far as authority is given to it by statute.”

County commissioners, the same as the taxing authorities of the other subdivisions, are authorized by Section 5625-13, and by Sections 5625-13a to 5625-13g, General Code, to make certain transfers of public money to be used for purposes other than those for which the money was originally received. These statutes, however, are confined to transfers from one fund to another fund of the same subdivision, and cannot be extended to include transfers to corporations not for profit, which this office and the courts have held county agricultural societies to be. *Licking County Agricultural Society v. Commissioners*, 48 O. App., 628; *Opinions of the Attorney General for 1944*, pages 238, 241.

The authority of county commissioners to appropriate and turn over public moneys to a county agricultural society for the purpose of erecting and repairing buildings on the county fairgrounds, and making other improvements thereon, is limited to moneys appropriated from the county general fund under Section 9887-1, General Code, which imposes an aggregate limit of \$10,000 in any one year, and also to public funds which are the proceeds of a tax levy which has been approved by the electors of the county. With respect to such funds your attention is respectfully directed to the provisions of Section 9887-1, General Code, enacted by the 96th General Assembly, which reads as follows:

“\* \* \* When such appropriation is made by the county commissioners or tax is collected by the county treasurer, the auditor shall place the same in a special fund, designated ‘county agricultural society fund,’ indicating the purpose for which it is available, and on application of the treasurer of the county agricultural society, said auditor shall issue his order for the amount thereof to the said treasurer of the county agricultural society, provided that said agricultural society has secured the certificate required under section 9884 of the General Code, on his filing with the auditor a bond in double the amount collected with good and sufficient sureties, to be approved by the auditor, conditioned for the satisfactory paying-over and accounting of such funds for the uses and purposes for which they were provided. Said funds shall remain in the special fund in which they are placed by the county auditor until applied for by the treasurer of the county agricultural society, and bond given as hereinbefore provided, or are expended by the county commissioners for the purposes for which said fund was created. In the event a county agricultural society ceases to exist or releases said fund as not required for the purposes for which said fund was created, the county commissioners may by resolution transfer said fund to the general fund of the county.”

It is quite apparent that Section 9887-1 has no possible application to the \$63,000 which the United States Government paid to the county commissioners in settlement of its obligations and liability under the fairground lease, and there being no statute which either expressly or by necessary implication authorizes its transfer to the newly organized county agricultural society, you are advised that your first question must be answered in the negative.

In your second question you inquire if the county commissioners must comply with the statutory requirements which pertain to the building and repair of county buildings, etc. Inasmuch as Crawford County is the absolute owner of the county fairgrounds and the buildings and other improvements thereon, I think it may safely be assumed that any buildings erected thereon by the county commissioners for county fair purposes, would be properly classed as public buildings, and that the county commissioners would therefore be governed by the applicable provisions of Section 2343 et seq., General Code, and other related sections, governing the erection and repair of public buildings.

Section 2343, so far as pertinent, reads as follows :

“When it becomes necessary for the commissioners of a county to erect or cause to be erected a public building, \* \* \* or an addition to or alteration thereof, before entering into any contract therefor or repair thereof or for the supply of any materials therefor, they shall cause to be made by a competent architect or civil engineer the following: full and accurate plans showing all necessary details of the work and materials required with working plans suitable for the use of mechanics or other builders in the construction thereof, so drawn as to be easily understood; accurate bills, showing the exact amount of the different kinds of material necessary to the construction to accompany the plans; full and complete specifications of the work to be performed showing the manner and style required to be done, with such directions as will enable a competent builder to carry them out, and afford to builders all needful information; a full and accurate estimate of each item of expense, and of the aggregate cost thereof. \* \* \*”

The Section 2343 et seq. group of statutes, and also Section 2362 et seq., General Code, make provision for the erecting and repairing of public buildings under the competitive system, and since these statutes are numerous and quite lengthy, and the fact that your letter indicates that you are familiar with their provisions, I am not quoting them in this opinion.

In view of the statutory provisions to which I have called your attention, and the further fact that none of these statutes contains any exception in favor of county fairground buildings, you are advised that your second question should be answered in the affirmative.

Respectfully,

HUGH S. JENKINS  
Attorney General