relating to road construction and improvement by county commissioners. As above pointed out, the provisions of Section 6971, providing that General Assemblies, subsequent to the 85th General Assembly, should make appropriations from which state aid might be paid, could in no event be considered binding upon later General Assemblies. It seems quite obvious that it was not contemplated by the 85th General Assembly, when enacting the Greene law, that none of the provisions thereof should be effective unless it was determined by later Legislatures to co-operate with the counties in improving roads in the system of county roads. The purpose of state aid was merely to encourage the local subdivisions, either county or townships, in building these roads, and it seems clear that it was not intended that because of failure to continue making appropriations to make state aid possible, construction of roads in a county system under the Greene law should entirely cease. On the other hand, the intention seems to be clear that the primary duty of constructing, improving and maintaining roads in the county system was intended to be placed upon the local officials and local taxing units and the money from the state appropriations was to be given as an incentive to or reward for a greater road building program by the local units.

In connection with these conclusions, I see no reason why the provisions of Section 6970, supra, should not be complied with by the local officials even though no appropriation is now available against which the auditor may draw his warrant upon the Treasurer of State in favor of any county operating under the Greene law. Whether or not appropriations will be made in the future, which will permit paying to counties the moneys contemplated by the Greene law, rests in the sound discretion of future General Assemblies. In any event, however, no harm can come from the local officials acting in accordance with the provisions of Section 6970.

For the reasons above set forth, it is my opinion, in specific answer to your question, that the proceeds of a tax levy, made under the provisions of Section 1222, General Code, as amended by the 87th General Assembly (112 v. 470), may be expended by the county commissioners for the purpose of constructing, reconstructing or improving any section of highway in the system of county highways, under the provisions of Sections 6965 to 6972, inclusive, of the General Code, regardless of whether or not the Legislature has appropriated any moneys for state aid in accordance with Sections 6970 and 6971, General Code.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1972.

AGREEMENT—EFFECT OF AGREEMENT BETWEEN C. C. C. & ST. L. R. R. COMPANY AND OHIO STATE BOARD OF AGRICULTURE, DISCUSSED.

SYLLABUS:

Effect of agreement between the C. C. C. & St. L. Ry. Co. and the Ohio State Board of Agriculture, dated November 9, 1892, discussed.

COLUMBUS, OHIO, April 14, 1928.

HON. CHARLES V. TRUAX, *Director of Agriculture, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your communication under recent date, wherein you request my opinion as to the effect of a purported agreement be-

tween the Cleveland, Cincinnati, Chicago and St. Louis Railway Company and the Ohio State Board of Agriculture, dated November 9, 1892, granting certain rights to the railway company in the premises known as the Ohio State Fair Grounds.

With the communication above referred to you have submitted a certified copy of a memorandum of agreement between the C. C. C. & St. L. Ry. Co., as party of the first part, and the Ohio State Board of Agriculture, as party of the second part, dated November 9, 1892. Without setting out in full the memorandum of agreement, it provides, briefly, as follows: That whereas under date of December 7, 1883, the C. C. C. & I. Ry. Co., of which the C. C. C. & St. L. Ry. Co. is the successor, made a proposition, in writing, which is incorporated in the agreement, to the State Board of Agriculture, wherein it was proposed that if the State Board of Agriculture would purchase certain land in Clinton Township, Franklin County, Ohio, contiguous to the tracks of the C. C. C. & I. Ry. Co., and permanently locate and hold the state fair on said land "for the unexpired term that the State Board is under obligation to locate and hold said State Fair at Columbus, not exceeding twenty-five years and not less than twenty years from the date thereof," and would furnish said railway company, without cost or expense, room for side tracks, switches and turnouts sufficient for all purposes connected with the moving of passengers attending the state fair and for receiving and delivering stock, machinery and everything intended for use or exhibition at said state fair, and also grant it, without expense, room for a depot and station house on the fair grounds, the railway company would pay to the State Board of Agriculture the sum of ten thousand ($10,000.00) dollars, in periodical installments of two thousand ($2,000.00) dollars each, as specified in the proposal.

The proposal also recited that the railway company would lay all needed tracks, provide suitable platforms, erect a suitable and proper depot and station house and furnish coaches, cars and engines sufficient to carry all passengers and freight, etc., to and from the state fair, charging reasonable rates for such transportation.

The proposal further recited that if the state board should at any time permit or grant any other railroad or railroads the right or privilege to construct tracks upon or into its grounds or erect depots or platforms, then, from that time, the obligations on the part of the railway company to pay the ten thousand dollars, or any part thereof, should cease and terminate, but the state board should have and retain the amount paid in of said ten thousand dollars prior to the establishment of such other tracks, depots or platforms.

The agreement also recites the acceptance of said proposal on or about May 1, 1884, the holding of the first state fair on September 1, 1886, and the necessity for granting additional ground to the railway company, and contains an agreement that a railway company may have, hold and use, for the purposes aforesaid, as the necessity arises, certain premises described by metes and bounds; and contains a further agreement to furnish additional grounds, as described therein, as the necessity for the same arises.

According to the agreement, eight thousand dollars of the ten thousand dollars previously agreed upon had been paid, leaving two thousand dollars unpaid, which amount was to be paid to the State Board of Agriculture upon the execution of the agreement.

The question as to the effect of the agreement above referred to has, as I understand it, arisen in connection with a conveyance of a strip of land 60 feet in width off of the west side of the State Fair Grounds to the Pennsylvania, Ohio and Detroit Railway Company, pursuant to House Bill No. 380 enacted by the 87th General Assembly on April 11, 1927 (112 O. L. 116). It appears that a part at least of the land which the Governor is, by the terms of said act, authorized and directed to convey to the Pennsylvania, Ohio and Detroit Railway Company lies within the boundaries

of the land referred to in the aforementioned agreement with the C. C. C. and St. L. Ry. Co.

At the time the above agreement was entered into Section 3694, Revised Statutes, was in effect. That section provided:

> "The board (State Board of Agriculture) may hold in fee simple such real estate as it may have heretofore purchased, or may hereafter purchase, as sites whereon to hold its annual fairs, and all such lands held by the board for said purpose shall be exempt from taxation, but when any such real estate as may have heretofore been purchased, or may hereafter be purchased, shall cease to be used by the board as sites whereon to hold such annual fairs, then such real estate, with the improvements thereon, belonging to the board, shall revert to the State of Ohio, *and no portion of any such real estate shall be disposed of except by act of the Legislature.* * * * " (Matter in parentheses and italics the writer's.)

It will be observed that the agreement does not purport to be a conveyance or lease of real estate to the C. C. C. & St. L. Ry. Co. but merely purports to give to the Railway Company the right to use certain described land for the purpose of laying tracks, building a depot and station for the purpose of conveying passengers and freight to and from the state fair. No definite term is stated, except such as might be inferred from the quotation to the effect that the board will hold its fair at Columbus for a period not exceeding twenty-five years and not less than twenty years. If this may be taken to be the period for which the agreement is to run, then clearly the same has, by its own terms, expired and is no longer in effect. It is claimed, however, that inasmuch as the agreement states no definite time for its expiration the same is still in effect and is binding upon the State of Ohio. It is well settled that no state officer, board or commission may grant or convey any land or rights therein belonging to the state without specific authority from the Legislature.

I am not unmindful of the fact that in the case of *Chemical Company* vs. *Calvert,* 7 O. N. P. (n. s.) 103, the Common Pleas Court of Franklin County, Ohio, held that the State Board of Agriculture was not a public corporation, or state agency, or department of the state government, but was essentially a private corporation. Conceding the correctness of this decision, the rule nevertheless is that a private corporation is a creature of statute and has only such powers as are specifically granted to it by its charter or general law, and such as may be implied to carry the powers so granted into effect. While the State Board of Agriculture was given the right in Section 3694, Revised Statutes, to "hold in fee simple such real estate as it may have heretofore purchased, or may hereafter purchase, as sites whereon to hold its annual fairs," that section further provided that at any time such real estate should cease to be used by the board as sites whereon to hold such annual fairs, then such real estate, with the improvements thereon, should revert to the State of Ohio, and no portion of any such real estate should be disposed of except by act of the Legislature.

The agreement in question does not purport to be a deed or lease of real estate or any interest therein, and does not bear a proper acknowledgment as such deed or lease. The most that can be said for the agreement in question is that it is a mere license, revocable at will, which cannot be enforced against the State of Ohio at any time the state sees fit to revoke the same.

The Legislature, by the enactment of House Bill No. 380 above referred to, has clearly indicated its intention to revoke the agreement, and it is therefore my opinion that the same is no longer in force.

Respectfully,
EDWARD C. TURNER,
Attorney General.