

which findings of fact are required by law as a predicate to your authority to sell this property. It appears further, that the appraised value and sale price of this property does not exceed \$500.00; and in this situation you are authorized to sell this property at private sale subject to the approval of the Governor and the Attorney General.

Upon the consideration above noted, I am approving the sale of this property and the transcript of your proceedings relating to such sale, all of which is evidenced by my approval endorsed upon the transcript of your findings relating to the sale and upon the duplicate copy thereof, both of which are herewith enclosed.

Respectfully,

THOMAS J. HERBERT,
Attorney General.

1369.

COUNTY AGRICULTURAL SOCIETY—WHERE FAILURE TO SUBMIT REPORTS WITHIN TIME PROVIDED BY RULES, DEPARTMENT OF AGRICULTURE — WHERE FORMER DIRECTOR REFUSED TO ISSUE CERTIFICATE REFERRED TO IN SECTIONS 9880, 9884 G. C.—PRESENT DIRECTOR HAS NO AUTHORITY TO ISSUE—FAILURE OF COMPLIANCE IN ANY ONE YEAR DOES NOT PRECLUDE SUCH SOCIETY FROM PARTICIPATION IN COUNTY FUNDS IN SUCCEEDING YEARS.

SYLLABUS:

1. *The present Director of Agriculture has no authority to issue to a county agricultural society the certificates referred to in Sections 9880 and 9884, General Code, for the years 1936 and 1937 when such certificates were refused the society by a former Director of Agriculture because of the failure of such society to submit reports within the time provided for by the rules of the Department of Agriculture.*

2. *The failure of a county agricultural society to make the proper reports within the time specified by law and the rules of the Department of Agriculture in any one year does not preclude such society from participating in county funds in succeeding years.*

COLUMBUS, OHIO, November 1, 1939.

HON. JOHN T. BROWN, *Director of Agriculture, State Office Building, Columbus, Ohio.*

DEAR SIR: Your request for my opinion presents the following questions for consideration:

1. Does the present Director of Agriculture have the authority to issue to a county agricultural society the certificates

referred to in Sections 9880 and 9884, General Code, for the years 1936 and 1937 when such certificates were refused the society by the former Director of Agriculture for failure to comply with the time limitation set forth in Rules VI and VII of the Department of Agriculture covering the management of county and independent fairs?

2. When the Director of Agriculture refuses to issue certificates under the provisions of Sections 9880 and 9884, General Code, to a county or independent agricultural society in any one year, may the Director of Agriculture recognize the rights of said agricultural society to participate in county funds in the future without a complete reorganization of said society as provided in Sections 9880 and 9880-1, General Code?

Section 9880, General Code, provides:

“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 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 the sum of eight hundred dollars, and the treasurer of the county shall pay it. The total amount of such order shall not exceed one hundred per cent (100%) of the amount paid in regular class premiums.”

Section 9884, General Code, provides:

“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.”

The Board of Agriculture and the office of secretary of agriculture were abolished by Section 154-26, General Code. The powers and duties formerly resting with these two agencies are now vested in the Department of Agriculture by virtue of Section 154-42, General Code.

Your first question involves the right of a public official to reverse the decisions of his predecessor in office. In the instant situation, the former Director of Agriculture deemed it proper and did refuse, because of the violation by the society of Rules VI and VII of the Department of Agriculture covering management of county and independent fairs, to issue the certificates referred to in Sections 9880 and 9884, supra.

Rule VI of the Department of Agriculture of Ohio covering management of county and independent fairs provides in part :

“The President shall appoint three Directors as an auditing committee to inspect and audit the accounts and books of the Secretary and Treasurer, and report the result of its findings to the Board of Directors; said report to show an itemized statement of receipts and expenditures for the year. Said report shall be made a part of the records and a summary of same shall be published in a newspaper of the county and a marked copy of same mailed to the Secretary of the Board of Agriculture of Ohio, not later than January 10th.”

Rule VII of the Department of Agriculture of Ohio covering management of county and independent fairs provides in part :

“Each Society shall deliver to the Department of Agriculture of Ohio, a copy of their annual premium list and before or during its annual meeting provided for in section 1092, General Code, a report of offers and awards of premiums, receipts, disbursements, etc., of the past year. Said report must be signed and sworn to by the President and Secretary and approved by a majority of the Board of Directors. Said report must state that the rules of the Department of Agriculture of Ohio and the laws of Ohio pertaining to County Agricultural Societies has been properly complied with. Unless said report is properly made the Department of Agriculture may not issue certificate for per capita allowance.”

In 46 C. J. at page 1033 the following statement is found :

“In the absence of statutory authority an officer in performing a statutory duty which does not involve the exercise of discretion is without the power of amendment ; and when the judgment or discretion of an executive officer has been completely exercised in the performance of a specific duty the act performed is beyond his review or recall although the statute conferring authority expressly makes his determination discretionary. So the final decisions of public officers are binding upon their successors.”

The Supreme Court of the United States, speaking of the powers of the postmaster general, said in the case of *United States v. Bank*, 15 Pet. 377 :

“The right of an incumbent of reviewing a predecessor’s decision extends to mistakes in matters of fact arising from errors in calculation and to cases of rejected claims in which material testimony is afterward discovered and produced.”

The general rule was also discussed in the case of *People v. Preston*, 16 N. Y. S. 488. In the second proposition of the syllabus, it was stated :

—“The decision of a superintendent of the banking department of the state, in refusing an application for a certificate of compensation alleged to be due a special bank examiner, is binding upon a succeeding superintendent in case of a second application by the same person on the same state of facts as *res adjudicata* of the claim in question.”

The court said at page 490 :

“In our system of government where changes of state officers are so frequent and where any political party may succeed another in a few years, it is of great importance that there should be no right in the new officer to reverse the decisions of his predecessors. The contrary rule would, in our government, be especially dangerous.”

From the tests above laid down, it appears that in the instant situation the present Director of Agriculture is precluded from the granting of the certificates for 1936 and 1937 inasmuch as the former Director of Agriculture refused to issue the same. Using the rule laid down by the Supreme Court of the United States in the case of *United States v. Bank*, *supra*, it does not appear that the decision of the former Director of Agriculture was based on a mistake of fact arising from errors in calcula-

tion, nor does it appear that this is a situation involving rejected claims in which material testimony has been discovered and produced.

Your second query asks, in effect, whether the refusal of the Director of Agriculture to issue the certificates for one year precludes the Director of Agriculture from issuing certificates to the same society in succeeding years without a complete reorganization of such society.

An examination of Sections 9880 and 9884, *supra*, reveals that the issuance of the certificates provided for therein is an annual procedure predicated upon the society having conducted its affairs according to law and the rules of the Department of Agriculture during the preceding year. There is nothing contained in the laws relating to agricultural societies which indicates that upon failure of a society in any one year to comply with the legal requirements, the rights of that society to certificates from the Director of Agriculture should be forever forfeited. Rather it appears that the Legislature intended that should such society violate the laws or the rules of the Department of Agriculture pertaining to the operation of such societies in any particular year, its right to the certificates and its resultant right to participate in county funds should be forfeited only for such year.

In view of the above and in specific answer to your inquiries, I am of the Opinion that: (1) The present Director of Agriculture has no authority to issue to a county agricultural society the certificates referred to in Sections 9880 and 9884, General Code, for the years 1936 and 1937 when such certificates were refused the society by a former Director of Agriculture because of the failure of such society to submit reports within the time provided for by the rules of the Department of Agriculture; (2) The failure of a county agricultural society to make the proper reports within the time specified by law and the rules of the Department of Agriculture in any one year does not preclude such society from participating in county funds in succeeding years.

Respectfully,

THOMAS J. HERBERT,
Attorney General.