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1. AGRICULTURAL SOCIETIES—COUNTY AND INDEPENDENT—ORGANIZED UNDER PROVISIONS SECTIONS 9880 AND 9880-1, G. C. IN SO FAR AS PROVISIONS OF SECTION 1094-1, G. C. ARE CONCERNED, NOT UNDER SUPERVISION OF DEPARTMENT OF AGRICULTURE—PROVISIONS OF SECTION 1094-1, G. C. RELATIVE TO CLASSIFICATION OF O. I. C. BREED OF SWINE, HAVE NO APPLICATION TO AGRICULTURAL EXHIBITS AND COUNTY FAIRS—MANAGEMENT AND CONTROL OF COUNTY AND INDEPENDENT AGRICULTURAL SOCIETIES.
2. DIRECTOR OF AGRICULTURE—NOT REQUIRED TO ADOPT RULES TO REQUIRE COUNTY AND INDEPENDENT AGRICULTURAL SOCIETIES TO RECOGNIZE O. I. C. BREED OF SWINE— CLASSIFICATION—FULL AND INDIVIDUAL IN ANY CATALOGUES OR PREMIUM LISTS PUBLISHED IN CONNECTION WITH AGRICULTURAL EXHIBITS AND COUNTY FAIRS.

## SYLLABUS:

1. County and independent agricultural societies, organized under the provisions of Sections 9880 and 9880-1 of the General Code, are not, in so far as the provisions of Section 1094-1 are concerned, under the supervision of the department of agriculture and consequently the provisions of said latter section, relative to the classification of O. I. C. breed of swine, have no application to agricultural exhibits and county fairs held by and under the management and control of county and independent agricultural societies.

2. Section 1094-1 of the General Code does not require the director of agriculture to adopt rules requiring county and independent agricultural societies to recognize the O. I. C. breed of swine and give such breed full and individual classification in any catalogues or premium lists published in connection with agricultural exhibits and county fairs held by such societies.

Columbus, Ohio, July 12, 1945

Hon. J. W. Hodson, Director of Agriculture  
Columbus, Ohio

Dear Sir:

This will acknowledge receipt of your request for my opinion, which reads as follows:

"We respectfully ask your opinion on the following questions as to the interpretation of House Bill No. 131, passed by the 96th General Assembly and which became effective August 7, 1945.

1. Under the provisions of House Bill 131, will county and independent agricultural societies, organized under the provisions of Section 9880 and Section 9880-1 of the General Code, be considered to be under the supervision of the Ohio State Board of Agriculture, thereby requiring these county and independent fairs to recognize the O. I. C. breed of swine and give them full and individual classifications in any catalogs or premium lists which they may publish and circulate in connection with their annual fairs?

2. Since Sections 9880 and 9880-1 of the General Code require county and independent agricultural societies to conform to the rules of the State Board of Agriculture, does House Bill 131, which will become effective on August 7, 1945, require the State Board of Agriculture to adopt a rule requiring county and independent agricultural societies to recognize the O. I. C. breed of swine and give this breed of swine full and individual classification in any catalogs or premium lists which these societies may publish or circulate in contemplation of a fair?

At the present time, this department is receiving inquiries as to whether or not provisions of House Bill 131 are effective upon our Ohio county and independent fairs. Your courtesy in giving us your opinion with regard to this matter will be fully appreciated."

House Bill 131 of the 96th General Assembly (codified as Section 1094-1, General Code) reads as follows:

"That hereafter O. I. C. swine shall be recognized by the Ohio state board of agriculture as a separate and distinct breed of swine and when any state fairs and agriculture or livestock exhibits are held under the supervision of the board, the O. I. C.

breed of swine shall be given full and individual classification, and listed in any catalogues or premium lists published and circulated in contemplation of a fair or exhibit. The board of agriculture shall provide such premiums and pen accommodations at any fair or exhibit as are provided for other breeds of swine, and if the board solicits the exhibition of other breeds of swine, the O. I. C. swine breeders shall also be solicited. No discrimination of any kind shall be made against O. I. C. swine at any fair or exhibit."

At the outset your attention is directed to Section 154-42 of the General Code, which reads:

"The department of agriculture shall have all powers and perform all duties vested by law in the board of agriculture, the secretary of agriculture, the agriculture advisory board, the division of conservation and in all other bureaus and offices established or authorized by law under the board of agriculture or the secretary of agriculture. Wherever powers are conferred or duties imposed by law upon such board of agriculture or secretary of agriculture, or upon bureaus or offices under either of them, such powers and duties shall be, excepting as herein provided, construed as vested in and imposed upon the department of agriculture."

From the above it follows that the duties set out in Section 1094-1, General Code, are imposed upon the department of agriculture. It will be noted that Section 1094-1 provides that when any *state fairs* are held under the supervision of the *Ohio state board of agriculture*, the O. I. C. breed of swine shall be given classification, etc., and the *Ohio state board of agriculture* shall provide premiums and pen accommodations at fairs and exhibits as are provided for other breeds of swine.

Section 1094, which provides for the holding of an annual state fair, reads in part:

"The board of agriculture shall hold an annual exhibit of the agricultural and general productive industries of the state, and may make rules for the payment of premiums to exhibitors. \* \* \* The board of agriculture shall have the custody of the land, buildings, and other property at the state fair grounds at Columbus, and shall use the same for agricultural purposes \* \* \*"

It will be observed that the powers conferred upon the department of agriculture by the above section deal only with an annual state exhibit and with the state fair grounds, and that no reference is made therein to county fairs.

To the contrary, the sections referred to in your letter, each dealing with the holding of annual exhibits by county and independent agricultural societies, provide that such latter exhibits are under the control and supervision of such societies.

Section 9887, General Code, which deals with the acquisition of real estate for county fair grounds, provides in express terms that such fairs shall be held "under the management and control of county agricultural societies."

Provision is made in the statutes dealing with county fairs for the payment of certain sums of money from the county treasury to county and independent agricultural societies for the furtherance and carrying on of agricultural exhibits and junior club work.

Section 9881, General Code, provides that the several societies formed under the provisions of the preceding sections, annually shall offer and award premiums for the improvement of grains, fruit, vegetables, live stock, etc., and shall regulate the amount of premiums, and their different grades, so that all may have an opportunity to compete therefor.

The requirement of law under Section 9884, General Code, that a synopsis or report of their 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 forwarded to the secretary of agriculture, and without which synopsis or report, and certificate of receipt thereof by the secretary of agriculture, no subsequent payment shall be made from the county treasury, does not imply that such societies or corporations may be otherwise directed in the conduct of their fairs and making their offer and award of premiums.

By the provisions of Section 9885, General Code, county societies and independent societies, comprising one, two or a trio of counties which have been or hereafter may be organized, are declared bodies corporate and politic, and the scope of their discretion in the conduct of an annual

program to offer and award premiums for the improvement of live stock as vested in them under the specific provisions of Section 9881 of the General Code, is not changed by the enactment of Section 1094-1, General Code. Their determination of the amount of premiums and their different grades so that all may have an opportunity to compete therefor, and their decision on the class or type and kind of fruits, vegetables or live stock upon which they will expend or exhaust their premium funds, is neither subject to a rule-making power nor is it a matter to be brought into the question of such societies being entitled to funds from the county treasury, so long as the synopsis or report of their awards for the improvement of agriculture is made in accordance with the provisions of the statute and the rules of the department of agriculture.

In specific answer to your questions, you are therefore advised that it is my opinion:

1. County and independent agricultural societies, organized under the provisions of Sections 9880 and 9880-1 of the General Code, are not, in so far as the provisions of Section 1094-1 are concerned, under the supervision of the department of agriculture, and consequently the provisions of said latter section, relative to the classification of O. I. C. breed of swine, have no application to agricultural exhibits and county fairs held by and under the management and control of county and independent agricultural societies.

2. Section 1094-1 of the General Code does not require the director of agriculture to adopt rules requiring county and independent agricultural societies to recognize the O. I. C. breed of swine and give such breed full and individual classification in any catalogues or premium lists published in connection with agricultural exhibits and county fairs held by such societies.

Respectfully,

HUGH S. JENKINS

Attorney General