

additional information above requested for the purpose of having the same made a part of the abstract. When this is done you should again submit said abstract of title to me for approval.

The warranty deed of Cora M. Artrip, conveying this property to the State of Ohio, has been properly executed and acknowledged by herself and husband and the same is sufficient in form to convey to the State of Ohio a fee simple title to the property here in question, free and clear of all encumbrances whatsoever.

I likewise find encumbrance estimate No. 312, which has been submitted to me as part of the files relating to the purchase of this property, to be properly executed. This encumbrance estimate shows that there are sufficient balances in the proper appropriation account to pay the price of this property. It also appears that the purchase price of the property here in question, to-wit, the sum of seventeen hundred dollars (\$1700.00), has been released for the purpose by the controlling board. I am retaining said warranty deed and encumbrance estimate in my files until such time as the corrected abstract of title has been again submitted to me for approval.

Respectfully,

GILBERT BETTMAN,
Attorney General.

1935.

APPROVAL, BONDS OF STOKES TOWNSHIP RURAL SCHOOL DISTRICT,
LOGAN COUNTY—\$110,000.00.

COLUMBUS, OHIO, June 2, 1930.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

1936.

APPROVAL, BONDS OF HARRISONVILLE-SCIPIC CONSOLIDATED SCHOOL
DISTRICT, MEIGS COUNTY—\$900.00.

COLUMBUS, OHIO, June 2, 1930.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

1937.

COUNTY COMMISSIONERS—RIGHT TO INSTALL LIGHTING EQUIPMENT
OR PARTLY PAY COST OF ITS INSTALLATION ON GROUNDS OF
AGRICULTURAL SOCIETY—FUNDS APPROPRIATED TO SUCH SO-
CIETY TO BE CONTROLLED AND EXPENDED BY COMMISSIONERS.

SYLLABUS:

1. *In counties wherein there is a county agricultural society which owns in fee simple the fairgrounds and the appurtenances thereto, the county commissioners may, if they*

think it is for the best interest of the county, improve such grounds by installing lighting equipment therein or contribute a part of the cost of such installation, under the provisions of Section 9887, General Code.

2. *Funds which may be appropriated under the provisions of Section 9887, General Code, by a board of county commissioners for the benefit of a county agricultural society, are within the control of the board of county commissioners and should be expended by the county and not appropriated in a lump sum for the benefit of such agricultural society to be used and distributed by such society for any of the purposes set forth in Section 9887, General Code, as the society may see fit.*

COLUMBUS, OHIO, June 3, 1930.

HON G. E. KALBFLEISCH, *Prosecuting Attorney, Mansfield, Ohio.*

DEAR SIR:—Your letter of recent date is as follows:

“My assistant, Mr. Will, while in your city last Tuesday, conferred with you regarding a certain transaction of our County Agricultural Society, and I would like a written opinion on the questions involved. To refresh your memory on the questions involved, I will state them in detail herein.

The Richland County Agricultural Society have title to the Fair Grounds and the appurtenances thereunto belonging, in fee simple. Last year the Mansfield Driving Club, an association of men, promoting horse races, caused to be temporarily erected, at various places on the Fair Grounds, to-wit: around the race track, grand stand, barns, stables and other buildings, certain lighting equipment. Prior to the erecting of said lighting equipment, the Mansfield Driving Club arranged with the County Commissioners, as follows: if, after said equipment was erected and installed, it would meet with the approval of the County Commissioners and appear advantageous for the Fair Grounds and Agricultural Society, the said County Commissioners were to purchase said equipment for Twenty-five Hundred (\$2500.00) Dollars. The cost of said equipment and the installation thereof was in the neighborhood of Fifty-five Hundred (\$5500.00) Dollars. The difference between the Twenty-five Hundred (\$2500.00) Dollars which the County Commissioners were to pay for said equipment, (approximately Three Thousand (\$3000.00) Dollars, was to be paid by the Mansfield Driving Club in lieu of rent for the use of said Fair Grounds by the Driving Club.

Following the above referred to agreement, the Mansfield Driving Club caused said equipment to be installed, sometime last summer and last fall the Agricultural Society used said equipment and it was determined at that time by the society and the County Commissioners that said equipment was advantageous and for the best interests of the Society and the County, and decided to purchase same at the figure above quoted. The County Commissioners appropriated, under Section 9887 of the General Code, Ten Thousand (\$10000.00) Dollars in addition to the regular Twenty-eight Hundred (\$2800.00) Dollar appropriation for the Agricultural Society, thereby making available the Twenty-five Hundred (\$2500.00) Dollars needed to make said purchase.

Question: Can the County Commissioners purchase said equipment and pay for the same out of said Ten Thousand (\$10000.00) Dollar fund or can the Agricultural Society purchase the same out of said fund?

Before the repeal of Section 9897 and in 1921 General Price, then Attorney General wrote an opinion, found on page 157 of the 1921 Attorney General's reports, which opinion authorized the County Auditor and Treasurer to issue the County's warrant to the Treasurer of the Agricultural Society for the funds so appropriated under Section 9887, and held that said fund was

to be distributed and controlled by the Agricultural Society. It being difficult, in view of the looseness with which the statutes are drawn, to determine by whom the Legislature intended the funds created under Section 9887 of the General Code were to be handled, I am requesting in addition to the above question that the Attorney General give me an opinion as to whether the County Commissioners retain control of funds created under Section 9887 or whether the same goes direct to the Agricultural Society to be used and distributed by them in accordance with the provisions of said section."

Section 9887, General Code, which was amended by the 87th General Assembly, provides insofar as is pertinent as follows:

"In any county in which there is a duly organized county agricultural society, the board of county commissioners is authorized to purchase or lease, for a term of not less than twenty years, real estate whereon to hold fairs under the management and control of the county agricultural society, and may erect thereon suitable buildings and otherwise improve the same.

In counties wherein there is a county agricultural society which has purchased, or leased, real estate for a term of not less than twenty years, a site whereon to hold fairs or where the title to such site is vested in fee in the county, the county commissioners, if they think it is for the best interest of the county, and society, may erect or repair buildings or otherwise improve such site and pay the rental thereof, or contribute to or pay any other form of indebtedness of said society. The commissioners are authorized to appropriate from the general fund such an amount, as they deem necessary for any of said purposes. Provided, however, that if the amount appropriated to be expended in the purchase of such real estate or in the erection of buildings or other improvements or payments of rent or other forms of indebtedness of said society shall exceed ten thousand dollars, in any one year, such expenditure shall not be made unless the question of a levy of the tax therefor is submitted to the qualified electors of the county at some general election, a notice of which, specifying the amount to be levied, has been given at least thirty days previous to such election, in one or more newspapers published and of general circulation in the county. * * *"

It is expressly provided in this section that in counties where the county agricultural society owns the title to the fairgrounds, the county commissioners, if they think it is for the best interest of the county and society, may improve such grounds or contribute to or pay any other form of indebtedness of the society. To carry out such authority, the commissioners are authorized to appropriate from the general fund such amount as they deem necessary for any such purposes as therein set forth. This section was under consideration in an opinion appearing in Opinions of the Attorney General for the year 1928, Vol. IV, p. 2882, the syllabus of which is as follows:

"The construction of a cinder training track in connection with the race track on the fair grounds of a county agricultural society is an improvement, to the cost and expense of which the county commissioners are authorized to contribute out of the general fund of the county such amount as they deem necessary for said purpose, if they determine that said improvement is for the best interest of the county and of such county agricultural society. If the total amount appropriated to be expended in the purchase of real estate or in the erection of buildings or other improvements or payments of rent or other forms of indebtedness and the expenditure for the construction

of said cinder track should in the aggregate exceed ten thousand dollars in any one year, such expenditure may not be made unless the question of a levy of a tax therefor is submitted to the qualified electors of the county."

In view of the express provisions of Section 9887, supra, and the foregoing opinion of this office, I have little difficulty in concluding that in counties wherein there is a county agricultural society which owns in fee simple the fairgrounds and the appurtenances thereto, the county commissioners may, if they think it is for the best interest of the county, improve such grounds by installing lighting equipment therein or contribute a part of the cost of such installation, under the provisions of Section 9887, General Code.

You also inquire as to whether or not the county commissioners should purchase such lighting equipment themselves or appropriate the money therefor for the county agricultural society so that the purchase may be made by such society, and whether the funds generally appropriated under Section 9887, General Code, should be turned over to the agricultural society to be used and distributed by such society or whether such funds should be retained by and under the control of the county commissioners. You refer to an opinion of this office appearing in Opinions of the Attorney General for the year 1921, Vol. I, p. 157, the syllabus of which is as follows:

"Money raised by county commissioners for the benefit of county agricultural societies, in accordance with the provisions of Section 9887, G. C., is a fund properly within the control of said agricultural society, and the county commissioners or auditors are warranted in turning over said fund to the proper officer of the county agricultural society in accordance with the provisions of Sections 9897 and 9892, G. C."

The conclusions of the then Attorney General were predicated principally upon the provisions of Section 9897, as then in force and effect. At that time there was no authority for the county commissioners to appropriate money for a county agricultural society out of the general fund. County aid was provided for such societies by means of a tax levy which was authorized under the then provisions of Section 9887-1, General Code. Section 9897, relating to the tax for the benefit of county agricultural societies provided as follows:

"When such tax is collected by the county treasurer, the auditor shall issue his order for the amount thereof to the treasurer of the county agricultural society, 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 faithful paying over and accounting to such society for such funds."

Under the law as now in force and effect, I find no provision with respect to the funds provided in Section 9887, supra, authorizing the board of county commissioners to make a general appropriation for a county agricultural society and turn over to such society the amount of ten thousand dollars to be used and distributed as the society may see fit. On the contrary, Section 9887 only authorizes the commissioners to appropriate from the general fund the moneys therein provided for certain specific purposes, viz.: the erection or repair of buildings, the improvement of the site, the rental of the site, and contribution to or payment of any form of indebtedness of the society. Obviously it was contemplated that the board of county commissioners should not relinquish their control and administration of and responsibility for these moneys appropriated from the general fund. The only circumstances under which the commissioners are authorized, within the provisions of this section, to appropriate

moneys from the general fund and turn over such moneys to the county agricultural society would be in the case of a contribution toward the payment of an indebtedness of such society for which the society is primarily liable. On the statement of facts which you have submitted, the lighting equipment was installed by an agreement with the county commissioners whereby the county was to pay a portion of the cost of its installation. It, therefore, seems clear that the county commissioners, having determined that such lights are for the best interest of the county and the society should make the payment in question direct. I am not unmindful of the fact that in a sense the county is contributing to the cost of this installation, since revenues for the use of the fairgrounds would under these circumstances be payable to the society and the portion of the cost borne by the society is equal to the deduction occasioned by a credit for rent for the use of the fairgrounds. As hereinabove mentioned, however, the negotiations at the time of the installation of this equipment were with the board of county commissioners.

In specific answer to your second question, therefore, it is my opinion that funds which may be appropriated under the provisions of Section 9887, General Code, by a board of county commissioners for the benefit of a county agricultural society, are within the control of the board of county commissioners and should be expended by the county and not appropriated in a lump sum for the benefit of such agricultural society to be used and distributed by such society for any of the purposes set forth in Section 9887, General Code, as the society may see fit.

Respectfully,
 GILBERT BETTMAN,
Attorney General.

1938.

ENGINEERING SERVICES—FOR MUNICIPAL STREET CONSTRUCTION
 AND REPAVING—PAYABLE FROM GAS AND MOTOR VEHICLE LI-
 CENSE MONEYS WITHOUT COMPETITIVE BIDDING.

SYLLABUS:

The language used in Sections 6309-2 and 5537 of the General Code, to the effect that funds available to municipalities for the purpose of constructing and repaving a public street may be expended only pursuant to contract after the taking of competitive bids as provided by law, does not preclude the expenditure of such funds for the cost and expense of engineering services without competitive bidding, since engineering service is essentially non-competitive in character.

COLUMBUS, OHIO, June 3, 1930.

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

GENTLEMEN:—Your recent communication requesting my opinion reads:

“The syllabus of Opinion No. 1491, dated February 5, 1930, reads:

‘The salary and expenses of a group of engineers employed by a city for the sole purpose of preparing plans, specifications, and supervising the construction of street paving generally, may properly be paid from the proceeds of the motor vehicle and gasoline taxes.’

The syllabus of Opinion No. 1800, dated April 21, 1930, reads: