

1845

1. UNIFORM BOND ACT—COUNTY AGRICULTURAL SOCIETIES—COUNTY WAR VETERANS COMMITTEES—MAY NOT ISSUE BONDS UNDER AUTHORITY OF THE ACT—SECTION 2293-1 ET SEQ., G. C.
2. BONDS MAY NOT BE ISSUED UNDER AUTHORITY OF THE ACT OR SECTION 9886 ET SEQ., G. C. RELATING TO ORGANIZATION AND POWERS OF AGRICULTURAL SOCIETIES—PURPOSE TO CONSTRUCT COLISEUM, DEDICATION, MEMORIAL BUILDING ON COUNTY FAIR GROUNDS—CONTROL, COUNTY AGRICULTURAL SOCIETY—BUILDING TO BE USED JOINTLY AS MEMORIAL BUILDING AND FAIR GROUNDS BUILDINGS.
3. BONDS ISSUED FOR CONSTRUCTION OF MEMORIAL BUILDING MUST BE ISSUED UNDER SECTION 3059 G. C.—BUILDING CONSTRUCTED FROM PROCEEDS OF BOND ISSUE MUST BE CONSTRUCTED, MAINTAINED AND OPERATED BY MEMORIAL BUILDING BOARD OF TRUSTEES.

4. VETERANS' MEMORIAL BUILDING—BOARD OF TRUSTEES MAY PERMIT USE OF BUILDING FOR ANY COMMUNITY, CIVIC AND PATRIOTIC PURPOSES—SECTION 3059 ET SEQ., G. C.

SYLLABUS:

1. County agricultural societies and county war veteran committees may not issue bonds under authority of the Uniform Bond Act, Section 2293-1, et seq., G. C.

2. Bonds may not be issued under authority of the Uniform Bond Act or Section 9880 et seq., General Code, relating to the organization and powers of agricultural societies for the purpose of constructing a coliseum to be dedicated as a memorial building upon county fair grounds under the control of a county agricultural society to be used jointly as a memorial building and as a fair grounds building.

3. Bonds issued for the construction of a memorial building must be issued under the authority of, pursuant to and in compliance with the provisions of Section 3059, General Code, and the building constructed from the proceeds of such bond issue must be constructed, maintained and operated by the memorial building board of trustees created and empowered pursuant to Section 3059 et seq., General Code.

4. The board of trustees in charge of a veteran's memorial building erected and maintained pursuant to Section 3059 et seq., General Code, may permit the use of the building for any community, civic and patriotic purposes.

Columbus, Ohio, June 6, 1950

Hon. Stanley N. Husted, Prosecuting Attorney  
Clark County, Springfield, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"The Board of County Commissioners of Clark County, Ohio, the Clark County Agricultural Society, and the Clark County War Veterans Committee, are jointly considering the sponsoring of a project for the construction of a colosseum building, such building to be located on the Clark County Fair Grounds, the title to said grounds is held by the Board of County Commissioners, and the contemplated uses of such colosseum building are:

- (1) For the use of the war veterans of Clark County in general;
- (2) For the Clark County Agricultural Society in connection with the annual County Fair, and such other Agricultural Society uses as may arise;
- (3) For the general use of the citizens and organizations of Clark County.

Under the facts which I have just stated, a number of questions arise as to whether or not voter-approved bonds of Clark County may be issued under the following conditions:

- (1) Under the Uniform Bond Act sections of the General Code of Ohio, viz: 2293 et seq.;
- (2) Under the Agricultural Society sections of the General Code of Ohio, viz: 9880 et seq.;
- (3) Under the War Memorial sections of the General Code, viz: 3059 et seq.;
- (4) Could the matter of issuance of bonds be submitted to the voters of Clark County in a single question which would permit the use of the colosseum building by the Agricultural Society, the war veterans, and the organizations and citizens of Clark County in general;
- (5) What percentage of voter approval is required under items one to four inclusive herein.

Now assuming that the colosseum building is built, under whose control and management should the building be operated?"

Section 2293-1 et seq., General Code, commonly known as the Uniform Bond Act, provides a uniform procedure for the issuance of bonds by political subdivisions. Section 2293-1, General Code, provides in part as follows:

"This act shall be known as 'the uniform bond act.' The following definitions shall be applied to the terms used in this act:

- (a) 'Subdivision' shall mean any county, school district except the county school district, municipal corporation, joint township hospital district or township in the state.
- (b) 'Municipality' or 'municipal corporation' shall mean any municipality, including municipalities which have adopted a charter under the provisions of article XVIII of the constitution of Ohio.
- (c) 'Taxing authority' or 'bond issuing authority' shall mean in the case of any county, the county commissioners; in the case of a municipal corporation, the council or other legislative authority of such municipal corporation; in the case of a school district, the board of education; in the case of a joint township hospital district, the joint township hospital board; and in the case of a township, the township trustees."

Section 2293-2, General Code, reads:

"The taxing authority of any subdivision shall have power to issue the bonds of such subdivision for the purpose of acquir-

ing or constructing, any permanent improvement which such subdivision is authorized to acquire or construct. But no subdivision or other political taxing unit shall create or incur any indebtedness for current operating expenses, except as provided in sections 2293-3, 2293-3a, 2293-4, 2293-7 and 2293-24 of the General Code. The estimate of the life of permanent improvements proposed to be acquired, constructed, improved, extended or enlarged from the proceeds of any bonds shall be made in any case by the fiscal officer of the subdivision and certified by him to the bond-issuing authority and shall be binding upon such authority."

A permanent improvement is defined by Section 2293-1, *supra*, as any property, asset or improvement with an estimated life or usefulness of five years or more. There can be no doubt but that the building proposed to be constructed here would be classified as a permanent improvement under the Uniform Bond Act. From the definition of "Taxing Authority" or "Bond Issuing Authority" contained in Section 2293-1, *supra*, it will be noted that county agricultural societies and county war veterans committees are not considered such authorities. It follows that such societies and committees are not authorized to issue bonds under the provisions of said act.

Section 3059 *et seq.*, General Code, relate to memorial buildings. Section 3059 provides in part as follows:

"The taxing authority of any township, municipality or county at any time not less than thirty days prior to a general election in any year, by vote of two-thirds of all members of the taxing authority, may, and upon presentation to the clerk of said taxing authority of a petition signed by not less than two per cent of the electors of the political subdivision, as shown at the preceding general election held therein, shall, declare by resolution that the amount of taxes which may be raised within the ten mill limitation will be insufficient to provide an adequate amount for the necessary requirements of such subdivision and that it is necessary to levy a tax or taxes in excess of such limitation for either or both of the following purposes:

A. For purchasing a site, erecting, equipping and furnishing, or for establishing a memorial to commemorate the services of all members and veterans of the armed forces of the United States.

B. For the operation and maintenance of a memorial, and the functions related thereto."

Section 3059-1, General Code, authorizes the taxing authority to issue bonds of the subdivision for the purpose of purchasing a site, erecting, equipping and furnishing, or for establishing a memorial to commemorate the services of all members and veterans of the armed forces of the United States. Neither of said sections authorizes the taxing authority to acquire or construct such memorial. Sections 3061 and 3061-1, General Code, provide for the appointment of a board of trustees which is authorized by Section 3064-2, General Code, to acquire the necessary site or sites and establish and maintain such memorials. Section 3066, General Code, confers upon such boards of trustees additional powers including that of conducting, maintaining and operating such memorials for the benefit of the entire county or community, civic and patriotic purposes. It will thus be seen that the taxing authority, although vested with the authority to provide for the necessary financing, is not authorized to acquire or construct such memorials. It follows that any bonds issued for the purpose of acquiring or constructing memorial buildings could not be issued under the authority of the provisions of the Uniform Bond Act for the reason that the authority to acquire or construct such improvement is vested in a public body other than a taxing authority. Any bonds issued for such purpose, therefore, must be issued under authority of and pursuant to the provisions of Section 3059-1, *supra*.

Section 9880 et seq., General Code, provides for the organization and powers of agricultural societies. Section 9887, General Code, provides in part 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. \* \* \*”

It will be observed that the foregoing statutory provision authorizes the county commissioners (taxing authority) to construct buildings on

county fair grounds. Bonds issued for such purpose, consequently, must be issued under authority of and pursuant to the provisions of the Uniform Bond Act.

From the foregoing, it appears eminently clear that if bonds were to be issued for the purpose of erecting a coliseum on the county fair grounds which was to be dedicated as a memorial building under the memorial building sections of the General Code as well as a fair ground building, it would present an incongruous situation in which the same public body would be incorporating in a single issue bonds which are authorized to be issued under separate and distinct statutory powers. Further, while in effect the purpose of such a bond issue would be for the erection of a building, the purposes for which it would be used would in fact be authorized under separate and unrelated statutes for separate and unrelated purposes. Such combined issue of bonds would be contrary to Section 2293-20, General Code, which provides that the resolution of necessity required under Section 2293-19, General Code, shall relate to only one purpose.

The further question which presents itself is whether or not such building may be constructed under both the memorial building sections of the Code and the agricultural society sections of the Code from the proceeds of separate bond issues issued pursuant to the separate statutory authorities. It has been heretofore pointed out that memorials constructed pursuant to the memorial building sections of the Code are under the exclusive control and operation of the board of trustees appointed pursuant to said statutory provisions.

Your attention is called to Opinions of the Attorney General for 1949, No. 662, in which I stated that it was my opinion that any building erected pursuant to Section 9887, General Code, must be placed under the control and management of the duly organized agricultural society. It is an old, established and often repeated rule of law that public bodies which are created by statute have only such powers as are conferred upon them by statute. There being no statutory provision authorizing joint action or cooperation on the part of either the memorial building boards of trustees or the county commissioners with respect to such joint construction, or between the memorial building boards of trustees and the county agricultural societies with respect to joint operation of a building under their control, it appears eminently clear that such building could not be constructed under the authority of and pursuant to both the memorial building and agricultural society sections of the General Code.

It is suggested that the desired object may be accomplished by proceeding solely under the memorial building sections of the General Code for the constructing of a memorial building to be located on a portion of the fair grounds under a lease arrangement with the agricultural society. As pointed out above, boards of trustees of memorial buildings are empowered under Section 3066, General Code, to conduct, maintain and operate such memorial for the benefit of the entire county for community, civic and patriotic purposes. These purposes for which such building may be used are sufficiently broad to cover all the intended uses set forth in your request. Section 3064-2, General Code, authorizes such boards of trustees to acquire sites for such memorials by purchase, condemnation or otherwise. This would empower such boards to acquire sites by lease.

While I am apprised of no provision of law which affirmatively authorizes agricultural societies to lease a portion of fair grounds under their control, such authority may be implied from Section 9906, General Code, which reads as follows :

“When the title to grounds and improvements occupied by agricultural societies is in the county commissioners, the control and management of such lands and improvements shall be vested in the board of directors of such society so long as they are occupied and used by it for holding agricultural fairs. Moneys realized by the society in holding county fairs and derived from renting or leasing the grounds and buildings, or portions thereof, in the conduct of fairs or otherwise, over and above the necessary expenses thereof, shall be paid into the county treasury of the society, to be used as a fund for keeping such grounds and buildings in good order and repair, and in making other improvements from time to time deemed necessary by its directors.”

Under the circumstances the proceedings for the issuance of bonds for the purpose of constructing such memorial building would be taken under the authority of, pursuant to and in compliance with the provisions of Section 3059-1, *supra*, and the building when constructed would be under the control of the board of trustees appointed pursuant to Section 3059 *et seq.*, General Code.

It is my opinion, therefore, that :

1. County agricultural societies and county war veteran committees may not issue bonds under authority of the Uniform Bond Act, Section 2293-1, *et seq.*, G. C.
2. Bonds may not be issued under authority of the Uniform Bond Act or Section 9880 *et seq.*, General Code, relating to the organization

and powers of agricultural societies for the purpose of constructing a coliseum to be dedicated as a memorial building upon county fair grounds under the control of a county agricultural society to be used jointly as a memorial building and as a fair grounds building.

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4. The board of trustees in charge of a veteran's memorial building erected and maintained pursuant to Section 3059 et seq., General Code, may permit the use of the building for any community, civic and patriotic purposes.

Respectfully,

HERBERT S. DUFFY,  
Attorney General.