

1999.

APPROVAL, FINAL RESOLUTIONS ON ROAD IMPROVEMENTS IN
MAHONING, MEDINA, SUMMIT AND WASHINGTON COUNTIES.

COLUMBUS, OHIO, April 21, 1928.

HON. GEORGE F. SCHLESINGER, *Director of Highways, Columbus, Ohio.*

2000.

APPROVAL, FINAL RESOLUTIONS ON ROAD IMPROVEMENTS IN
HANCOCK COUNTY.

COLUMBUS, OHIO, April 21, 1928.

HON. GEORGE F. SCHLESINGER, *Director of Highways, Columbus, Ohio.*

2001.

AGRICULTURAL SOCIETIES—APPROPRIATION—SECTIONS 9894, 9880
AND 9880-1, GENERAL CODE, CONSTRUED.

SYLLABUS:

Section 9894, General Code, does not in any way abrogate or limit the provisions of Section 9880, General Code, and the amount of moneys directed and authorized to be appropriated by Section 9894 is to be paid to the agricultural societies specified therein in addition to the moneys authorized to be appropriated by Sections 9880 and 9880-1, General Code.

COLUMBUS, OHIO, April 21, 1928.

HON. W. J. JONES, *Prosecuting Attorney, McArthur, Ohio.*

DEAR SIR:—This will acknowledge your letter dated April 12, 1928, in which you request my opinion upon the following question:

“Section 9880, General Code, provides where there is an agricultural society organized according to law the treasurer shall draw an order in favor of said society for the sum of \$800.00. Section 9894, General Code, provides that the county commissioners on request of the agricultural society shall annually appropriate the sum of \$2000.00 and not less than \$1500.00 for the purpose of encouraging said society. Now shall this appropriation as defined in Section 9894 be in addition to amount that shall be appropriated in Section 9880, General Code?”

Section 9880, General Code, to which you refer, reads as follows:

“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 9880-1, General Code, relating to independent agricultural societies, provides that:

“When thirty or more persons of a county or of contiguous counties, not to exceed three shall have been organized into an independent agricultural society and has held an annual exhibit for three years previous to January 1, 1919, in a county wherein is located a county agricultural society, and when such independent society has held an annual exhibition, in accordance with the three following sections and made proper report to the state board, then, upon the presentation to the county auditor of a certificate from the president of the state board attested by the secretary thereof, that the laws of Ohio and the rules of the board have been complied with, the county auditor of the county, if the fair board be residents of one county, shall draw an order on the treasurer of the county in favor of the president of the independent association for a sum equal to one hundred per cent of the amount paid in regular class premiums as calculated in Section 9880 herein, but which shall not exceed the sum of eight hundred dollars, and the treasurer shall pay said order.

If the fair board be residents of more than one county the auditor of such counties shall draw orders on their respective treasurers for the proportionate share of the sum of eight hundred dollars to be divided according to population of the counties according to the last federal census, but shall not exceed more than one hundred per cent of the amount paid in regular class premiums, and the treasurer or treasurers shall pay such order or orders from the county funds.”

Section 9894, General Code, to which you refer, was enacted on March 10, 1927 (112 v. 84), and provides:

“When a county or duly organized county agricultural society owns or holds under a lease real estate used as a site whereon to hold fairs and the county agricultural society therein has the control and management of such lands and buildings, for the purpose of encouraging agricultural fairs, the county commissioners shall, on the request of the agricultural society, annually appropriate from the general fund not to exceed the sum of two

thousand dollars or less than fifteen hundred dollars for such purposes, and in any county wherein is located one or more independent agricultural society or societies as provided for in Section 9880-1 herein, the county commissioners of said county, for the purpose of encouraging such independent agricultural society or societies, may appropriate, in addition to the sum appropriated for the county agricultural society a sum not greater than the amount appropriated for the county society. The appropriation made for said agricultural society or societies shall be paid by the treasurer of the county to the treasurer of the county society or independent society or societies upon an order from the county auditor, duly issued therefor."

Former Section 9894, General Code, which was repealed on March 27, 1925 (111 v. 238) read as follows:

"When a county or agricultural society owns or holds under a lease, real estate used as a site whereon to hold fairs, and the county agricultural society therein has the control and management of such lands and buildings, for the purpose of encouraging agricultural fairs, the county commissioners shall on the request of the agricultural society annually levy taxes of not exceeding a tenth of one mill upon all taxable property of the county, but in no event to exceed the sum of two thousand dollars, or be less than fifteen hundred dollars, which sum shall be paid by the treasurer of the county to the treasurer of the agricultural society, upon an order from the county auditor duly issued therefor. Such commissioners shall pay out of the treasury any sum from money in the general fund not otherwise appropriated, in anticipation of such levy."

Section 9880, *supra*, was originally enacted February 28, 1846 (44 v. 70), as Section 1 of an act entitled "for the encouragement of agriculture" and in many respects provided the same then as now. You will observe that the amount paid to county agricultural societies by the county, under the provisions of this section, is determined by the provisions contained in the latter part of the statute, to the effect that the county auditor "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 section further providing that the "total amount of such order shall not exceed one hundred per cent (100%) of the amount paid in regular class premiums."

By the terms of Section 9880, *supra*, the Legislature has evidenced its intent that each county agricultural society which is organized under and complies with the provisions thereof, should receive annually from the county treasury a sum of money, the amount of which is dependent upon the amount paid in regular class premiums by such county agricultural society, which amount, in no event, shall exceed eight hundred dollars. In other words, Section 9880, *supra*, contemplates an annual payment by the county to the agricultural society, the amount thereof being determined by the following factors:

1. The amount shall not exceed one hundred per centum of the amount paid out by such agricultural society in regular class premiums.
2. The amount, in any case, shall not exceed eight hundred dollars.

As Section 9894, *supra*, now reads, it is mandatory that the commissioners of any county, upon the request of a duly organized county agricultural society, when the county or such society owns, or holds under a lease, real estate used as a site where-

on to hold fairs and such society has the control and management of such lands and buildings, annually shall appropriate from the general fund not to exceed two thousand dollars or less than fifteen hundred dollars for such purpose. In any county wherein there is located one or more independent agricultural society or societies, organized under Section 9880-1, General Code, the county commissioners of such county *may* appropriate, in addition to the sum appropriated to the county agricultural society, a sum not greater than the amount appropriated for the county society. By the express terms of the statute these appropriations are authorized to be made in the first instance for the purpose of encouraging agricultural fairs, and in the second instance for the purpose of encouraging such independent agricultural society or societies.

It is my opinion that, in so far as the funds in the county treasury will permit, having due regard for other expenditures made mandatory by statute, under the provisions of Section 9894, General Code, for the purpose of encouraging agricultural fairs, it is the duty of the commissioners of any county, upon the request of any duly organized county agricultural society in such county, when the county or such society owns, or holds under a lease, real estate used as a site whereon to hold fairs and such society has control and management of such lands and buildings, to appropriate annually from the general fund not to exceed two thousand dollars or less than fifteen hundred dollars for such purpose.

While your inquiry only requests an opinion as to Sections 9880 and 9894, General Code, and is apparently limited to county agricultural societies, I believe that in view of the fact that Section 9894 also mentions independent agricultural societies it would be well to point out the distinction between county agricultural societies and independent agricultural societies in so far as Section 9894 is concerned.

As above stated, under the provisions of Section 9894, General Code, it is the duty of the commissioners of any county, upon the request of any duly organized county agricultural society, when the county or such society owns or holds under lease real estate as a site whereon to hold fairs, and such society has the control and management of such lands and buildings annually to appropriate from the general fund not to exceed the sum of two thousand dollars or less than fifteen hundred dollars for such purposes.

The section further provides that in any county wherein there is located one or more independent agricultural society or societies, as provided for in Section 9880-1, General Code, the county commissioners of said county, for the purpose of encouraging such independent agricultural society or societies, *may* appropriate for such society in addition to the sum appropriated for the county agricultural society, a similar sum.

Section 9380-1, General Code, referred to in Section 9394, *supra*, pertains to the organization of independent agricultural societies for the purpose of holding annual exhibits, and provides that when such independent society has held an annual exhibition 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 Ohio and the rules of the board have been complied with, the county auditor of the county, if the fair board be residents of one county, shall draw an order on the treasurer of the county, in favor of the president of the independent association, for a sum equal to one hundred per cent of the amount paid in regular class premiums, as calculated in Section 9880, General Code, but which shall not exceed the sum of eight hundred dollars, and the treasurer shall pay said order.

Reading Sections 9880-1 and 9894, General Code, together, it is clear that an independent agricultural society is entitled to the same appropriation as that to which a county agricultural society is entitled under Section 9880, General Code. However, in respect of the appropriation mentioned in Section 9894, General Code, that section makes mandatory an appropriation to a duly organized county agricultural society, when the county or such society owns, or holds, under lease, real estate used as a site

whereon to hold fairs, but provides that the county commissioners *may* appropriate a similar sum to an independent agricultural society located in the county. In other words, while the appropriation to the county agricultural society owning or holding, under lease, real estate is mandatory, the appropriation to the independent society is at the discretion of the county commissioners.

A further distinction between the two societies is that, whereas a county agricultural society in order to be entitled to the appropriation for which provision is made in Section 9894, General Code, must exist in a county which owns or holds real estate whereon to hold fairs or must itself own or hold such real estate and such society must have control and management of such lands and buildings, it is not necessary that an independent society hold or own real estate in order to be eligible for a similar appropriation.

It is my opinion that Section 9894, General Code, does not in any way abrogate or limit the provisions of Section 9880, General Code, but on the other hand makes provision for an additional appropriation, if the conditions prescribed in such section are complied with. As above pointed out, Section 9894 was enacted by the 87th General Assembly on March 10, 1927 (112 v. 84), the title of the act being:

"An Act—To amend Section 9887 and to enact Section 9894 of the General Code, relative to agricultural societies."

In the act the sections were given the numbers in the title, and it is apparent that the Legislature when amending Section 9887, intended to restore Section 9894, which, as stated above, was repealed on March 27, 1925 (111 v. 238), although the provisions of the section as reenacted are different in many respects.

Section 9887 now reads 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. The county commissioners shall pass a resolution authorizing the submission of the question to the electors and certify their action to the board of deputy state supervisors of elections

of the county who shall prepare and furnish the necessary ballots and other supplies. The form of the ballots cast at such election shall be:

“Agricultural tax—Yes.”

“Agricultural tax—No.”

If a majority of the votes cast be in favor of such tax, it may be levied and collected as other taxes.”

This section was formerly Section 3702, Revised Statutes, which read:

“When a county society has purchased, or leased for a term of not less than twenty years, real estate as a site whereon to hold fairs, or where the title to the grounds is vested in fee in the buildings, the county commissioners may, if they think it for the interests of the county, and society, pay out of the county treasury the same amount of money for the purchase or lease and improvement of such site as is paid by such agricultural society or individuals for such purpose; and such commissioners may levy a tax upon all the taxable property of the county sufficient to meet the provisions of this section.”

Section 9894 was formerly Section 3702b, Revised Statutes, and, when originally enacted on April 25, 1898 (93 v. 292), the act in which it was passed was entitled:

“An Act—Supplementary to Section 3702 of the Revised Statutes of Ohio for the encouragement of agriculture.”

From the provisions of Section 9880 it will be seen that the moneys there authorized to be paid from the county treasury are for the purpose of encouraging and making possible exhibits and the offering and awarding of premiums for the improvement of agricultural, domestic and public school productions, Sections 9881 and 9884, reading as follows:

Section 9881. “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, articles of domestic industry, public school displays, and such other articles, productions and improvements, as they deem proper, and may perform all acts that are best calculated to promote the agricultural and household manufacturing interest of the county or counties, and of the state. They shall regulate the amount of premiums, and their different grades, so that all may have an opportunity to compete therefor.”

Section 9884. “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.”

Sections 9887 and 9894, on the other hand, relate to the acquiring and the control and management of lands and buildings upon which to hold fairs; and it seems clear

that the moneys authorized to be paid from the county treasury under these sections are for the purpose of aiding the societies under consideration in acquiring and improving fair property. Both from the history of these sections, therefore, as well as from the context thereof, it seems manifest that the appropriations authorized to be made by Section 9394 are in addition to those authorized to be made by Sections 9880 and 9880-1.

Specifically answering your question it is my opinion that Section 9894, General Code, does not in any way abrogate or limit the provisions of Section 9880, General Code, and that the amount of moneys directed and authorized to be appropriated by Section 9394 is to be paid to the agricultural societies specified therein in addition to the moneys authorized to be appropriated by Sections 9880 and 9880-1, General Code.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2002.

COUNTY BOARD OF EDUCATION—TRANSFER OF TERRITORY—
SPECIFIC CASE REVIEWED—GENERAL LAW DISCUSSED.

SYLLABUS:

1. *The filing of a single petition with a county board of education for the transfer of territory which lies in more than one school district of a county school district, to another county school district, does not vest jurisdiction in the county board of education to transfer any part or all of the territory sought thereby to be transferred, regardless of the number of petitioners therefor.*

2. *When a petition is filed with a county board of education, signed by seventy-five per cent or more of the electors of a part or all of a school district of the county school district other than a centralized district, asking that such part or all of the district be transferred to a contiguous county school district, it becomes the mandatory duty of the county board of education to make the transfer as requested.*

3. *When a petition is filed with a county board of education signed by seventy-five per cent or more of the electors of a part or all of a school district of the county school district in which the schools have been centralized, asking that such part or all of the district be transferred to a contiguous county school district, the board may make the transfer as requested or not, as in its discretion seems advisable.*

4. *Under no circumstances may school territory be transferred from one county school district to another, unless the territory transferred be contiguous to the county school district to which the transfer is made.*

5. *There is no provision for the filing of remonstrances against the transfer of school territory where petitions have been filed therefor under Section 4696, General Code.*

6. *Petitioners under Section 4696, General Code, may withdraw their names from such petition any time before official action is taken thereon.*

7. *When school territory lying within one county school district is transferred to a contiguous county school district by authority of Section 4696, General Code, the district to which the transfer is made may or may not accept the transfer. If it is desired to accept the transfer, such acceptance is not complete until the board of education of the county school*