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AGRICULTURAL SOCIETY, COUNTY—MANAGEMENT AND CONTROL OF COUNTY FAIR GROUNDS—TITLE VESTED IN COUNTY — MAY CONTRACT TO ERECT BUILDING ON COUNTY FAIR GROUNDS — PUBLIC ADVERTISING FOR COMPETITIVE BIDS NOT REQUIRED—SECTION 9887-1 G. C.

SYLLABUS:

Where a county agricultural society manages and controls the county fair grounds of a county, title to which is vested in the county, such agricultural society may enter into a contract for the erection of a building on such county fairgrounds, pursuant to the provisions of Section 9887-1, General Code of Ohio, without publicly advertising for competitive bids for such construction.

Columbus, Ohio, October 3, 1949

Hon. Ralph E. Carhart, Prosecuting Attorney
Marion County, Marion, Ohio

Dear Sir:

This is to acknowledge receipt of your letter requesting my opinion which reads as follows:

“The Marion County Agricultural Society controls and manages the grounds and improvements occupied by the Society, and the title to the same is in the Marion County Commissioners.

“A couple of years ago a levy for a new coliseum was placed on the ballot and approved under the provisions of Section 9887, General Code of Ohio. Since that time repeated efforts have been made to enter into contracts for a building within the limits of the amount of money voted, which was approximately \$400,000.00, but no satisfactory contract could be completed. Now, at the present time, the Marion County Agricultural Society has requested and received private bids from three companies for the erection of a building on the County Fairgrounds.

“The question is whether such a contract can be entered into by the Marion County Agricultural Society for the erection of such a building without the advertisement and solicitation of bids by public legal notice. Your attention is called to Section 9887-1, General Code of Ohio, and to Attorney General’s Opinion No. 1205, rendered in 1946.”

Reference was made in your communication to a former opinion of the Attorney General No. 1205, Opinions of the Attorney General for 1946, page 683. I am assuming that such reference relates to that branch of the syllabus which reads:

"Buildings erected by the county commissioners on county-owned fairgrounds for county fair purposes, are 'public buildings' within the meaning of Sections 2343 and 2362, and related sections of the General Code."

Section 2343 et seq., General Code, makes provision for the erecting and repairing of public buildings by the county commissioners of a county, and Section 2362 et seq. specifies the manner in which officers, boards and other authorities of the state, county, township, city, village, school or road district or of any public institution belonging thereto shall be required to receive bids and award contracts for furnishing material or doing work or both for the erecting, repair, alteration or rebuilding of a public building, institution, bridge, culvert or improvement which are required by law to advertise and receive proposals for such work or materials. The question involved in the above cited opinion was whether or not the county commissioners, should they desire to rebuild and repair the county fairgrounds of their county, title to which was in the county, would be required to comply with the statutory requirements pertaining to the building of county buildings. The question which you present is whether or not such a contract can be entered into by an agricultural society without the advertisement and receipt of bids for such work, and presents a different factual situation from that discussed in the 1946 Opinion of the Attorney General.

Section 9887, General Code, provides in part that:

"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. * * *

“Provided, further that the requirement that the question of a tax levy be submitted to the electors shall not be construed to apply where the funds to be expended have been received as reparation for damage to the fair grounds caused by use thereof for military purposes.”

In Section 9887-1 of the General Code, it is provided :

“When the control and management of real estate, whereon to hold fairs, is in a county agricultural society, and the county commissioners have appropriated such an amount as they deem necessary therefor, or have levied a tax therefor, as provided in General Code section 9887, such county agricultural society, with the consent of the county commissioners, may enter into a contract or contracts for the erection or repair of buildings or otherwise improve said site, to the extent the payment for said improvement is provided by said county commissioners.

“When such appropriation is made by the county commissioners or tax is collected by the county treasurer, the auditor shall place the same in a special fund, designated ‘county agricultural society fund,’ indicating the purpose for which it is available, and on application of the treasurer of the county agricultural society, said auditor shall issue his order for the amount thereof to the said treasurer of the county agricultural society, provided that said agricultural society has secured the certificate required under section 9884 of the General Code, 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 satisfactory paying-over and accounting of such funds for the uses and purposes for which they were provided. Said funds shall remain in the special fund in which they are placed by the county auditor until applied for by the treasurer of the county agricultural society, and bond given as hereinbefore provided, or are expended by the county commissioners for the purposes for which said fund was created. In the event

a county agricultural society ceases to exist or releases said fund as not required for the purposes for which said fund was created, the county commissioners may by resolution transfer said fund to the general fund of the county.”

Sections 9887 and 9887-1, *supra*, provide for the repairs and erection of buildings on real estate owned by the county and under the management and control of the county agricultural society by, first, the county commissioners, and secondly, by the county agricultural society. It should be observed that the only reference made to the county commissioners, when such buildings are to be erected by the society, is that a contract may be entered into with the consent of the county commissioners and that such contract may be entered into to the extent that payment for said improvement is provided by said county commissioners. Nothing is contained in said section which directs the manner or form of entering into such contract when executed or about to be executed by the county agricultural society. I fail to find any provision of the General Code of Ohio requiring county agricultural societies to advertise and solicit public bids for the work to be done before they may enter into a contract for such work.

In discussing the necessity of competitive bidding with respect to public works and contracts, 43 Am. Jur. at page 765, states the well recognized rules of law applicable as follows:

“Whether a contract for public work, or to furnish supplies, services, etc., to the public is to be entered into through private negotiation or only after competitive bidding is a matter of statutory provision and construction. In the absence of some controlling constitutional or statutory provision, municipal ordinance, or other legislative requirement, competitive bidding is not an essential prerequisite to the validity of contracts for public work, contracts to furnish materials to public bodies, or other contracts by and with public bodies.”

It is my opinion, therefore, that where a county agricultural society manages and controls the county fair grounds of a county, title to which is vested in the county, such agricultural society may enter into a contract for the erection of a building on such county fairgrounds, pursuant to the provisions of Section 9887-1, General Code of Ohio, without publicly advertising for competitive bids for such construction.

Respectfully,

HERBERT S. DUFFY,

Attorney General.