

Upon such considerations, therefore, you are advised that the "salary or average earnings" contemplated by the provisions of section 4647-8 G. C. is that salary or average earning, earned by such fireman in the discharge of his official duties as fireman, and that such compensation or average earnings contemplates cases of partial time services rendered by firemen in the discharge of such duties, and does not include incomes of such firemen derived from private sources.

Respectfully,  
 JOHN G. PRICE,  
*Attorney-General.*

2827.

COUNTY AGRICULTURAL SOCIETIES—PRIVATE CORPORATIONS—NO PERSONAL LIABILITY UPON MEMBERS OF BOARD OF DIRECTORS WHO VOTE TO WAIVE LIMITATIONS OF SECTION 3819 G. C. WHEN CONSUMMATED IN GOOD FAITH.

1. *County agricultural societies organized under the provisions of section 9880 et seq. of the General Code are private corporations, whose officers and directors in the management of the societies' affairs, are governed by the same rules of conduct as those applied to similar officers of private corporations generally.*

2. *There is no personal liability upon the members of the board of directors of a county agricultural society, who vote affirmatively to waive the limitations afforded by the provisions of section 3819 G. C., when such action is consummated in good faith and is deemed by said directors to be in the best interests of the society.*

COLUMBUS, OHIO, January 27, 1922.

HON. JESSE C. HANLEY, *Prosecuting Attorney, Lisbon, Ohio.*

DEAR SIR:—The receipt is acknowledged of your letter of recent date reading as follows:

"The Columbiana County Agricultural Society have requested me to ask you for an opinion upon the following question:

'Is there any personal liability upon the board of directors of a county agricultural society who vote affirmatively for and subsequently permit the society's funds to be used in payment of a special assessment for the improvement of a street upon which the society's property abuts, where said assessment may be in excess of the benefits conferred and in excess of one-third of the value of the property after the improvement?'

This question arises out of the following

FACTS:

The Columbiana County Agricultural Society was organized more than seventy years ago under statutes which are now G. C. 9880 et seq. It regularly receives the state aid provided for by said section, and also receives the proceeds of a county levy under G. C. 9894. It owns approximately thirty-five acres of unplatted land lying wholly within the corporate limits

of the village of Lisbon and abutting for a distance of approximately 1,600 feet on the northerly side of Lee avenue.

Under G. C. 6949 et seq. the county commissioners and village council of Lisbon entered into an agreement for the improvement of Lee avenue and one connecting street. Prior to this agreement the directors of the Agricultural Society, by a majority vote, passed a resolution approving the plan and agreeing that the society would pay the full amount of the special assessment thereafter to be made by the village council against the society's property irrespective of benefits or valuation.

Thereafter assessments were levied by the council under G. C. 3812 et seq. under a ten-year payment plan, the first installment being due December 20th, 1921. The village bonds were issued and sold, and the county commissioners duly advertised for and awarded a contract for the work.

The value of the Agricultural Society's abutting property assessed to the depth of one hundred and eighty feet, which is the average depth of village lots, probably does not exceed \$6,000.00. The assessment, including interest on deferred payments, on this property consists of something like \$9,700.00.

It has been suggested to the board of directors that they can in no event pay more than one-third of the value of the property assessed and that if they do so they are personally liable for repayment of the money.

My own opinion of the matter is that a street improvement is the proper purpose for the expenditure of Agricultural Society funds where the street constitutes the principal approach to their grounds as in this instance; and that the amount which may be expended for such purpose is entirely within the discretion of the board of directors so long as they are acting in good faith. I believe that they are no different from the directors or trustees of any corporation not for profit; that this is a private corporation rather than a public corporation; and that by analogy the principle announced in Attorney General's Opinions 1913, p. 1253 and cases therein cited, controls.

I might say that this is a matter of considerable importance to the village of Lisbon as well as to the Agricultural Society. If the assessment placed against the Agricultural Society's property is not paid, the entire deficit will of course fall against the village. On account of the high rate of the assessment there is no possibility of placing anything additional against the other properties. The village is in no position financially to undertake or carry this burden."

Pertinent to your question, section 9880 G. C. provides:

"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."

This section of the General Code provides for the organization of such an agricultural society as your communication contemplates.

Section 9865 G. C. provides for the powers of such a society after incorporation, and declares such an organization to be a body corporate and politic, capable of suing and being sued and of holding real estate for society purposes in fee simple. The section is as follows:

"Sec. 9885. County societies which have been, or may hereafter be organized, are declared bodies corporate and politic, and as such, shall be capable of suing and being sued, and of holding in fee simple such real estate as they have heretofore purchased, or may hereafter purchase, as sites whereon to hold their fairs. They may mortgage the grounds of the society for the purposes of renewing or extending pre-existing debts, and for the purpose of furnishing money to purchase additional land. But if the county commissioners have paid money out of the county treasury to aid in the purchase of the site of such grounds, no mortgage shall be given without the consent of such commissioners."

Construing the sections cited, Opinion No. 313 of Opinions of the Attorney General for the year 1913, Vol. II, page 1253, held that a county agricultural society is not a public corporation, and as such is comprehended by the terms of a statute applicable to private persons generally, and consequently for legal purposes is deemed a private corporation, to be treated the same as a natural person, though it may serve a public purpose. This view is supported by ample authority cited in the body of the opinion, and is thought to be the correct legal conclusion in the instance. This being true, it would follow that the directors of such an agricultural society would be subject to liabilities similar to those attaching to the directors of a private corporation, and the relation between the corporation on the one hand, and the directors and officers of the corporation on the other, is thought to be that of principal and agent, and that the law of agency would apply to acts consummated in this relation.

In general the directors and other officers of a private corporation are liable to the corporation for losses sustained by it in consequence of their wilful or fraudulent acts, constituting a breach of trust, also for acts in excess of their authority, and which are not the result of mistake or error of judgment, or for their negligence in failing to exercise care and skill in the management of corporate affairs, and it is believed that the liability of such officers to the corporation for damages caused by unauthorized acts is founded upon the common law rule which renders every agent liable who violates his authority or neglects his duty to the damage of his principal.

Since a corporation may lawfully do that which an individual may do, it is thought the directors of the agricultural society in question may waive the rights of the corporation to the benefits of the statutory limitations imposed by section 3819 G. C. if such an act is not prohibited by the by-laws of the society, and is consum-

mated in good faith and in the best interests of such society. See 4 O. C. C., n. s. 31, 31 O. S. 592, 39 O. S. 291.

Upon such considerations therefore, you are advised that in the opinion of this department the facts stated in your communication are insufficient to create a personal liability against the directors of the agricultural society in question.

Respectfully,  
JOHN G. PRICE,  
*Attorney-General.*

---

2828.

APPROVAL, FINAL RESOLUTIONS FOR ROAD IMPROVEMENTS IN  
PERRY AND WARREN COUNTIES, OHIO.

COLUMBUS, OHIO, January 27, 1922.

*Department of Highways and Public Works, Division of Highways, Columbus, Ohio.*

---

2829.

APPROVAL, BONDS OF HENRY TOWNSHIP RURAL SCHOOL DIS-  
TRICT, WOOD COUNTY, OHIO, IN AMOUNT OF \$5,000.

COLUMBUS, OHIO, January 27, 1922.

*Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.*

---

2830.

APPROVAL, FINAL RESOLUTION FOR ROAD IMPROVEMENTS, HAM-  
ILTON COUNTY, OHIO.

COLUMBUS, OHIO, January 28, 1922.

*Department of Highways and Public Works, Division of Highways, Columbus, Ohio.*