

juvenile judge, when acting as the county administrator, shall utilize in the administration of this act the services of officers and employes of the court exercising juvenile jurisdiction.”

(Parenthetical matter the writer's.)

It should be noted that nowhere in the sections (Sections 1359-31 to 1359-45, inclusive, Ohio General Code) is the juvenile judge given a separate appointing power to provide for employes to administer the act. A reading of the whole act dealing with Aid for Dependent Children leads to these conclusions: (1) the county administrator under the act is the juvenile judge; (2) the juvenile judge, in so far as is practicable, shall use juvenile court employes to administer the act; (3) the juvenile judge has been given no separate powers to appoint employes under the act; which conclusions in turn lead finally to the conclusion that it was the intent of the Legislature to add the duties of administering the act to the duties already existing of regular court employes and not to create thereby separate and distinct offices.

It has long been recognized in Ohio that the addition of duties to an office or an employment does not create a new office or a new employment. See 38 O. J., 948; State, ex rel. vs. Power, 109 O. S., 383.

From these considerations, I am of the opinion that a person employed within a juvenile court as chief probation officer and who also acts as county visitor for Aid to Dependent Children serves under the provisions of Section 1639-18, Ohio General Code, and is, therefore, within the unclassified civil service of the State of Ohio.

Respectfully,

THOMAS J. HERBERT,  
*Attorney General.*

1124.

---

COUNTY AGRICULTURAL SOCIETY—FAIRS—WHERE TITLE TO SITE IN BOARD OF COUNTY COMMISSIONERS — CONSENT — JOURNAL ENTRY — PROCEDURE TO MORTGAGE REAL ESTATE — VALUE, APPRAISEMENT, COST, REPAIRS AND IMPROVEMENTS—APPOINTMENT OF APPRAISERS—SECTION 9908 G. C.—LOAN—ASSIGNMENT—SECTIONS 9880, 9880-2, 9887, 9894 G. C.

**SYLLABUS:**

1. *Where title to the site on which a county agricultural society holds its fairs is in the board of county commissioners, the agricultural society may, with the consent of the board of county commissioners duly entered on their journal, mortgage the real estate so used to an amount not exceeding fifty per cent of its value for the purpose of paying the cost*

of necessary repairs and improvements thereto. The value of such real estate must be determined for such purposes by appraisers appointed by the county commissioners pursuant to Section 9908, General Code.

2. A county agricultural society may, in order to provide for the payment of a loan obtained by it to construct improvements on the county fair-grounds, assign to the person making the loan one-half of the funds which it receives pursuant to Section 9880, 9880-2, 9887 and 9894, General Code, to be applied as payments on said loan and such assignment is binding and effective.

COLUMBUS, OHIO, September 2, 1939.

HON. H. LLOYD JONES, *Prosecuting Attorney, Delaware, Ohio.*

DEAR SIR: Your recent request for my opinion reads as follows:

"The Delaware County Agricultural Society is a duly organized agricultural society under General Code sections 9880 and following, and in charge and control of the Delaware County Fair Grounds.

Title to the Delaware County Fair Grounds is held by the county commissioners.

The Delaware County Agricultural Society desires to borrow from a bank the sum of \$10,000 for the purpose of erecting new buildings upon the fair grounds to be used and occupied in the conduct of the Fair.

In order to obtain such a loan from a bank it is necessary that some definite arrangement for repayment be entered into. In this connection, the Agricultural Society desires to assign to the bank one-half of its State Aid funds which it receives annually, for the purpose of being applied upon said mortgage and the note secured thereby until the same are fully paid.

The county commissioners are in agreement as to this procedure and will consent to the giving of such mortgage and acknowledge receipt of such assignment. Can such an assignment be made by the Agricultural Society and will it be binding and effective if made.

Is the County Agricultural Society the proper party to give the mortgage in such a case where the title is held by the county commissioners."

I find no law whereby provision is made for aid by the State to county agricultural societies. However, Section 9880, 9880-2, 9887 and 9894, General Code, provide for payments out of the county treasury to county agricultural societies. All of these statutes, except Section 9880, General Code, were cited and discussed in my Opinion No. 386 rendered on the 5th day of April, 1939, to the Director of Agriculture, wherein the

conditions precedent to a county agricultural society's obtaining the funds provided in said three sections were considered. The syllabus of said opinion reads as follows:

"1. A county agricultural society is not entitled to receive funds from the county treasury under the provisions of Sections 9880-2, 9887 and 9894 of the General Code without first securing from the Director of Agriculture a certificate as provided by Section 9884 of the General Code.

2. If the certificate from the Department of Agriculture referred to in Section 9884 of the General Code is withheld from a county agricultural society by the Director of Agriculture, the auditor of the county wherein such society is located does not have the right to draw his warrant on the county treasurer in favor of said agricultural society for county funds."

In passing, I may say that by the express terms of Section 9880, General Code, a county agricultural society is not entitled to receive the funds provided for in said section and the county auditor could not draw his warrant therefor unless a certificate from the Director of Agriculture that the laws of the State and the rules of the board have been complied with by said society, should be presented to him.

It is assumed in this opinion that by the term "state aid" you mean the funds provided for in Sections 9880, 9880-2, 9887 and 9894, General Code. You say that it is proposed by the Delaware County Agricultural Society to borrow \$10,000 from a bank for the purpose of erecting new buildings upon the fairgrounds which are owned by the county commissioners but which are under the control and management of the Delaware County Agricultural Society, and you ask whether the agricultural society may assign to the bank one-half of said funds for the purpose of repaying said loan. You also ask whether the agricultural society may mortgage the fairgrounds with the consent of the board of county commissioners.

Section 9908, General Code, reads as follows:

"When the commissioners of a county have paid, or pay, money out of the county treasury for the purchase of real estate as a site for an agricultural society whereon to hold its fairs, the society shall not encumber such real estate with any debt, by mortgage or otherwise, without the consent of the commissioners duly entered upon their journal.

When such consent is obtained the society may encumber such real estate in order to pay the cost of necessary repairs and improvements to an amount not exceeding fifty per cent of its value. In order to ascertain the value of such real estate the commissioners shall appoint three disinterested free-holder resi-

dents of the county to appraise such real estate. The appraisers so appointed shall, within ten days after their appointment, upon actual view of such premises, appraise such real estate and return such appraisal under oath to the board of county commissioners. And the appraisal so made shall be considered the value of such real estate for the purpose of mortgage or other encumbrance.”

In an opinion found in the Opinions of the Attorney General for the year 1923, at page 70, it was ruled by the then Attorney General, as is disclosed by the syllabus, as follows:

“Under the provisions of section 9908 of the General Code and other related sections a county society properly organized and in control of the management of its affairs and real estate used for fair purposes, the title of which is in the county, may legally borrow money for necessary repairs and improvements and execute a mortgage to secure the payment thereof when the consent of the county commissioners has been first duly entered upon their journal. Such encumbrances must not exceed fifty per cent of the appraised value as provided for in section 9908.”

It therefore appears to be the settled rule in this State that a county agricultural society which has control and management of real estate whereon to hold its fairs, title to which is in the board of county commissioners, may, where the consent of the commissioners duly entered upon their journal is obtained, encumber such real estate in order to pay the cost of necessary repairs and improvements thereto not exceeding fifty per cent of its value. The statute provides that the value shall be determined by three disinterested freeholders appointed by the commissioners to appraise the same. In order for the agricultural society to mortgage the fairgrounds to secure the payment of \$10,000 borrowed by it for the purpose of erecting new buildings on the fairgrounds, it will be necessary for three disinterested freeholders appointed by the board of county commissioners to appraise such real estate pursuant to the provisions of Section 9908, General Code, and fix a value thereon of not less than \$20,000. It will also be necessary for the county commissioners to give their consent to such mortgage and such consent must be duly entered on their journal.

You also ask whether the agricultural society may assign to the bank one-half of the funds which it will receive from the county treasury pursuant to Sections 9880, 9880-2, 9887 and 9894, General Code, for the purpose of being applied on the mortgage to be given and the note secured thereby until such note is fully paid. It is noted that it is proposed to assign only fifty per cent of these funds and that the county commissioners

will acknowledge receipt of the assignment. You do not say that the county commissioners will consent to such assignment. Partial assignments cannot be enforced at law without the consent of the debtor but this rule does not obtain in equity and such partial assignment will be recognized and enforced in the chancery courts of this State. See *P. C. C. & St. L. Ry. Co. v. Volkert*, 58 O. S., 362, and *Robbins v. Klein*, 60 O. S., 199.

If, therefore, the agricultural society has authority and power to make the proposed assignment, it is enforceable even though only a part of the funds be assigned. Neither Section 9880, General Code, nor Section 9880-2, General Code, provides any limitation as to how the funds shall be used by the agricultural society when paid to it by the county treasurer. Section 9887, General Code, specifically provides that where the title to the fairgrounds is vested in fee to the county, the commissioners may contribute to or pay any form of indebtedness of the society. Section 9894, General Code, provides that the funds appropriated by the commissioners to be paid to the county agricultural society shall be used for the purpose of encouraging agricultural fairs. It therefore appears that the proposed assignment of these funds will not violate any of the provisions of law setting forth the purposes for which they may be used and the conclusion is therefore reached that the agricultural society may make a partial assignment of these funds and that such assignment will be binding when notice thereof is served upon the county auditor and the board of county commissioners.

In reaching this conclusion, I am not unmindful of the rule that a mere expectancy or remote or naked possibility is not assignable for the reason that there is nothing in being to assign. For this reason it has been held that an assignment of wages to be earned in the future where there is no existing employment is void for the reason that a mere expectancy or possibility cannot be assigned. It might be claimed that these funds which the agricultural society is entitled to receive from the county are mere expectancies and possibilities and are not sufficiently in ease to be the subject of a valid assignment. However, it is noted that the provisions of all of the above cited sections, except Section 9887, are mandatory in their terms and that the county commissioners and the county auditor have no option but to obey their commands where the statutory conditions have been complied with. While it does not appear in your letter, I have learned that it has been the practice for many years to hold a county fair in Delaware County and doubtless it is the intention of the county agricultural society to continue to hold these fairs. We have, therefore, something more than a mere possibility or expectancy with which to deal, for if the county agricultural society continues to hold fairs and to comply with the statutory requirements, it is entitled to demand and receive funds from the county treasury as a matter of right. If future wages to be earned under an existing employment constitute

a sufficient subject of assignment, no reason is perceived why the right of the agricultural society to receive these funds in the future is not also a valid subject of assignment.

For these reasons and in specific answer to your question, I am of the opinion that:

1. Where title to the site on which a county agricultural society holds its fairs is in the board of county commissioners, the agricultural society may, with the consent of the board of county commissioners duly entered on their journal, mortgage the real estate so used to an amount not exceeding fifty per cent of its value for the purpose of paying the cost of necessary repairs and improvements thereto. The value of such real estate must be determined for such purposes by appraisers appointed by the county commissioners pursuant to Section 9908, General Code.

2. A county agricultural society may, in order to provide for the payment of a loan obtained by it to construct improvements on the county fairgrounds assign to the person making the loan one-half of the funds which it receives pursuant to Sections 9880, 9880-2, 9887 and 9894, General Code, to be applied as payments on said loan and such assignment is binding and effective.

Respectfully,

THOMAS J. HERBERT,  
*Attorney General.*

---

1125.

REST AND CONVALESCENT HOMES—SHOULD BE INSPECTED BY DEPARTMENT OF INDUSTRIAL RELATIONS—SECTION 1031 G. C.

*SYLLABUS:*

*Rest and convalescent homes are included under the provisions of Section 1031 of the General Code of Ohio and should be inspected by the Department of Industrial Relations.*

COLUMBUS, OHIO, September 2, 1939.

HONORABLE GEORGE A. STRAIN, *Director, Department of Industrial Relations, Columbus, Ohio.*

DEAR SIR: This will acknowledge the receipt of a request from your office for my opinion, which reads as follows:

“The Department of Public Welfare and its Division of Aid for the Aged, the Department of Health, the State Fire