

1. COUNTY COMMISSIONERS, BOARD OF—HAS POWER TO CONSTRUCT SUITABLE BUILDINGS ON GROUNDS OF COUNTY HOME—USE, TO HOUSE FARM LABORERS OR OTHER EMPLOYES OF INSTITUTION.
2. COUNTY COMMISSIONERS, BOARD OF— HAS AUTHORITY TO ERECT DWELLING HOUSE AND OTHER BUILDINGS NECESSARY TO HOUSE CARETAKER OF FAIR-GROUNDS—SECTION 9887, G. C.

SYLLABUS:

1. A board of county commissioners has the power to construct suitable buildings on the grounds of the county home, to be used for housing farm laborers or other employes of such institution.

2. A board of county commissioners has authority under Section 9887, General Code, to expend funds for the erection of a dwelling house and other buildings necessary to house the caretaker of the fairgrounds.

Columbus, Ohio, August 7, 1951

Hon. Harold D. Roth, Prosecuting Attorney
Wyandot County, Upper Sandusky, Ohio

Dear Sir:

I have before me your request for my opinion, reading as follows:

“The Commissioners of Wyandot County, Ohio, have presented to me the following questions:

“1. Has the Board of Commissioners the right to expend funds for the erection of buildings on the grounds of the County Home to be used for housing employes or farm laborers on the County Farm?

“The County Home comprises two hundred eighty (280) acres of ground and it is necessary to hire persons to work other than the inmates of the institution to farm and care for said grounds. It is difficult to secure farm labor unless dwelling or housing facilities are furnished. I would like to call your attention to Section 2522 of the General Code in which the Commissioners are authorized to make contracts for new buildings * * * necessary for the County Home and also Paragraph No. 3 of said section wherein the Superintendent is authorized to employ

such labor and a rate of wages to be fixed by the County Commissioners.

“2. Has the Board of County Commissioners the right to expend funds for and erect buildings or a dwelling house on the fairgrounds to be used to house a caretaker?”

“I understand, of course, the Commissioners, under authority of Section 9887, may erect buildings upon a fairgrounds for fair purposes. The particular question involved is whether or not a dwelling erected on a fairgrounds can be used as a private dwelling for a person employed by the County Agricultural Society to oversee and care for the grounds throughout the year. The fairgrounds are owned by the Agricultural Society. I have found no restriction as to what type of building can be erected either by the Commissioners or the Agricultural Society or for what use they may be put to.”

I shall answer your two questions in the order in which they are presented.

“1. Has the Board of Commissioners the right to expend funds for the erection of buildings on the grounds of the County Home to be used for housing employes or farm laborers on the County Farm?”

Opinion No. 5954, Opinions of the Attorney General for 1943, page 184, deals generally with the management of a county home. On page 185, it states as follows:

“The general authority for the institution and maintenance of what is now known as a county home may be found in Section 2419 of the General Code, the pertinent portion of which reads as follows:

“‘A court house, jail, public comfort station, offices for county officers and an *infirmery* shall be provided by the commissioners when in their judgment they or any of them are needed. Such buildings and offices shall be of such style, dimensions and expense as the commissioners determine.
* * *’

“It was provided by Section 2419-3, General Code, enacted in 1919, that institutions previously known as ‘county infirmaries’ should thereafter be known as ‘county homes’ and that wherever in the statutes there was reference to an ‘infirmery’ or ‘county infirmery’, such words should be construed to read ‘county home’.”

In addition to the above sections, Section 2522, General Code, provides in part as follows:

"The board of county commissioners shall make all contracts for new buildings and for additions to and repairs of existing *buildings necessary for the county home* * * *.

"The superintendent may employ a matron and such labor from time to time, at rates of wages to be fixed by the county commissioners, as may not be found available on the part of the inmates of the institution. * * *"
(Emphasis added.)

An inspection of Section 2522, General Code, discloses no prohibitions upon the Board of County Commissioners which would prevent them from constructing suitable quarters for employes. Turning, then, to a more general statute, Section 2433, General Code, we find that:

"The taxing authority of any county in addition to other powers conferred by law shall have power to purchase, for cash or by installment payments, lease with option to purchase, lease, appropriate, *construct*, enlarge, improve, rebuild, equip and furnish a court house, county offices, jail, *county home*, juvenile court building, detention home, public market houses, county children's home *and other necessary buildings*, and sites therefor;
* * *"
(Emphasis added.)

These sections, viz. Sections 2419, 2522 and 2433 of the General Code, are sufficiently broad to give the board of county commissioners ample power to construct such buildings as it, in its sound discretion, may determine to be necessary in the proper operation of a county home.

I note that your request states that "It is difficult to secure farm labor unless dwelling or housing facilities are furnished." Much of the work in many county homes consists of general farm labor and it is perhaps necessary for such employees to travel some distance from their place of abode to the place of work. It is customary on many farms in the state, which are large enough to require extra hired labor, to provide living quarters on the farm. Due to the long hours of work and the necessity for continuous supervision of livestock, etc., such an arrangement is often essential. This same reasoning applies likewise to other employes whose duties require that they be on hand to supervise or aid inmates at all hours of the day or night. The fact that such institutions are often more or less isolated and removed from easily accessible transportation facilities lends support to the need for such accommodations on the grounds of the county home.

These practical considerations in the situation which you have outlined indicate that a finding of necessity in this case would not be an abuse of discretion.

Accordingly, it is my opinion that the board of county commissioners has the power to construct suitable buildings on the grounds of the county home, to be used for housing farm laborers or other employes of such institution.

Your second question reads:

"2. Has the Board of County Commissioners the right to expend funds for and erect buildings or a dwelling house on the fairgrounds to be used to house a caretaker?"

Section 9887, General Code, provides, among other things, for the erection or repair of buildings upon fairgrounds. This section reads in part as follows:

"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. * * *"

(Emphasis added.)

Further provisions of this section relate to the procedure to be followed in case the appropriation from the county in any one year shall exceed twenty thousand dollars. These later provisions have to do with a tax levy, form of ballot and vote necessary for approval. However, these provisions do not pertain to the question regarding the right of the county commissioners to build a caretaker's house upon fairgrounds owned by the county agricultural society. This section of the General Code was construed in Opinion No. 1871, Opinions of the Attorney General for 1940, page 175, at page 178, as follows:

"* * * The words 'erect or repair buildings' and 'otherwise improve such site' are general in scope and clearly there has been no attempt to specifically enumerate the purposes for which contribution may be made."

I concur in the statement made in your letter that there seems to be no provision in law which would tend to limit the type of building which may be built with county funds, nor are there any restrictions as to the use of any such buildings, although it may be properly implied that such buildings must have some substantial relation to the betterment of the county agricultural society, its annual exposition or the agricultural interests of the county generally. The determination by the board of county commissioners that such living quarters are "for the best interest of the county, and society," within Section 9887, General Code, would appear to be reasonable in this instance.

It is common knowledge that the investment in buildings and materials necessary for the proper functioning of a fairground is often considerable, and, therefore, necessitates proper guarding and supervision by a competent guardian constantly at hand. Also, it may be pointed out that many such grounds are located in more or less isolated spots which may not provide facilities for such a caretaker near said grounds.

My answer to your second question, therefore, is in the affirmative, and it is my opinion that the board of county commissioners has authority under Section 9887, General Code, to expend funds for the erection of a dwelling house and other buildings necessary to house the caretaker of the fairgrounds.

Respectfully,

C. WILLIAM O'NEILL
Attorney General