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1. AGRICULTURAL SOCIETY, COUNTY — UNLESS IT HAS PURCHASED OR LEASED REAL ESTATE AS SITE TO HOLD FAIRS, TERM NOT LESS THAN TWENTY YEARS, COUNTY COMMISSIONERS MAY NOT APPROPRIATE FROM GENERAL FUND AND PAY TO SAID SOCIETY MONIES PROVIDED FOR IN SECTION 9887 G.C.
2. WHERE SAID SOCIETY COMPLIED WITH REQUIREMENTS OF SECTIONS 9880 AND 9880-2 G.C. IT IS ENTITLED TO RECEIVE PAYMENTS PROVIDED FOR THEREIN, REGARDLESS OF ANY INTEREST IN REAL ESTATE USED AS SITE FOR HOLDING FAIRS.
3. SAID SOCIETY ENTITLED TO RECEIVE FROM COUNTY COMMISSIONERS, WHERE IT HAS COMPLETE CONTROL AND MANAGEMENT OF REAL ESTATE, BUILDINGS, TENTS AND OTHER STRUCTURES, AMOUNTS SPECIFIED IN SECTION 9894 G.C. UPON COMPLIANCE WITH SECTION 9884 G.C. WHERE IT OWNS OR HOLDS REAL ESTATE UNDER LEASE WHEREON TO HOLD FAIRS.

SYLLABUS:

1. County commissioners may not lawfully appropriate from the general fund of the county and pay over to a county agricultural society monies provided for in section 9887 of the General Code, unless such society has purchased or leased real estate for a term of not less than twenty years, as the site whereon to hold fairs.
2. A county agricultural society which has complied with the requirements of sections 9880 and 9880-2, General Code, respectively, is entitled to receive the respective payments prescribed in said sections, regardless of such society's interest in the real estate used by it as a site for the holding of fairs.
3. Upon compliance with the provisions of section 9884, General Code, a county agricultural society which owns or holds under lease real estate whereon to hold fairs, is entitled to receive from the county commissioners, upon request therefor, the amounts specified in section 9894, General Code, provided such county agricultural society has complete control and management of such real estate and buildings, tents and other structures erected thereon.

Columbus, Ohio, September 26, 1942.

Hon. J. Dale McNamar, Prosecuting Attorney,
Newark, Ohio.

Dear Sir:

Your recent request for my opinion reads as follows:

"It has become necessary for me to ask you the following questions:

1. Can a county agricultural society, organized under Section 9880 and succeeding sections of the General Code, collect from the county commissioners the amount specified under Sections 9880, 9880-2 and 9894, where such county agricultural society leases real estate for a period of only six months and less than twenty years?
2. Is it necessary for such county agricultural society, so leasing real estate for a period less than twenty years, to own or have the control and management of buildings upon the leased land in addition to leasing the land?
3. Must such county agricultural society purchase the real estate and become the owner thereof or lease it for a term of not less than twenty years, as provided by Section 9887 of the General Code? Or can it lease for less than twenty years?

These questions arise by reason of the fact that there is a county agricultural society organized here in this county under the General Code, and this county agricultural society does not own any real estate. Previously it leased real estate for a period of six months. It proposes to lease real estate again for a similar period or some period very much less than twenty years. There are no buildings upon this real estate, and the agricultural society merely owns or rents tents which it puts up on the real estate.

You will notice that Section 9894 provides in part:

'When a county or duly organized county agricultural society owns or holds under 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 * * *'

Because the county agricultural society here does not have the control of any buildings and because there is some question whether it has the power to lease for less than twenty years, although I consider the fact that it has no control and management of any buildings sufficient, I am instructing the Commissioners of Licking County that any payments collected by the county agricultural society must be only under Sections 9880 and 9880-2 until I can obtain an opinion from you."

The sections of the General Code of Ohio to which you refer provide:

Section 9880.

“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 9880-2.

“Upon the presentation of a certificate from the county commissioners certifying that any fair organization, either county or independent, that is then receiving state or county aid, has expended a definite and certain sum of money, such sum not being less than one hundred dollars, in the furtherance and carrying on of junior club work in the county, the county auditor annually shall draw an order on the treasurer of the county in favor of the said fair organization for an amount equal to the amount so expended in junior club work, provided said amount does not exceed five hundred dollars, and in case such amount exceeds five hundred dollars, then such order shall be for the amount of five hundred dollars. The Treasurer of the county shall pay said order upon presentation thereof.”

Section 9887.

“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 com-

missioners, 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. * * *

Section 9894.

“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, * * *

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.”

For the purpose of clarity in reasoning, I will answer the questions which you ask, in the reverse order from that contained in your letter.

Other sections of the General Code of Ohio which are pertinent to an answer of your third question are Section 9885 which provides in part that county agricultural societies are declared to be bodies corporate and politic and to be capable of suing, being sued and of holding title to real estate to be used as sites whereon to hold their fairs, and Section 9886, which authorizes conveyances of real estate to and by such societies, without words of inheritance.

I fail to find in the sections pertaining to agricultural societies any provision requiring that they own real estate. To the contrary, Section 9887, General Code, hereinbefore quoted, provides that the county commissioners are authorized to expend county funds for purposes of making repairs and paying rentals or other indebtedness of a county agricultural society, only in the event that such society has purchased or leased real estate for a term of not less than twenty years as a site for fairs, or if such site is owned by the county. Thus it seems apparent that the Legislature recognized that agricultural societies could own more or less temporary interests in real estate and therefore expressed its intent that county funds should not be spent for the improvement or maintenance

of fairgrounds that are not reasonably permanent. Furthermore, Section 9894, General Code, hereinabove quoted, which provides for an appropriation by the county commissioners "for the encouragement of agricultural fairs" contains no limitation on the term of ownership or leasehold of a fair site by an agricultural society.

The same conclusion was reached by a former Attorney General in Opinions of the Attorney General for 1927, Vol. II, Page 1282. The question presented to him was whether a county agricultural society, which had been operating for a number of years but which did not have a lease for twenty years or more for a fair site, was entitled to payments from the county of the money provided for by the provisions of Section 9894, General Code. It was stated in that opinion at page 1284:

" * * * The annual appropriation provided for in Section 9894, supra, is for the purpose of encouraging agricultural fairs and upon request is available to any county or duly organized county agricultural society, which owns, or controls under a lease, real estate used as a site whereon to hold fairs, such society having the control and management of such lands and buildings * * *

No restriction or limitation appears in Section 9894, supra, that makes such an appropriation available only to those societies having a lease for twenty years or more.

* * * 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 county or duly organized county agricultural society in such county which society owns, or holds under lease, real estate used as a site thereon to hold fairs and 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."

I find no reason to disagree with the above quoted opinion and it is therefore my opinion that the county agricultural society may purchase or lease real estate for a term of less than twenty years as a site on which to hold fairs.

In order for a county agricultural society to be eligible to require the county commissioners to appropriate a sum of not less than \$1500.00, nor more than \$2000.00, for the encouragement of agricultural fairs, as

provided in Section 9894, General Code, it must own or hold under lease real estate used as a site whereon to hold fairs and must have "control and management of such lands and buildings."

It must be remembered that it has been the object of the Legislature to keep the fairs of agricultural societies on a high moral plane and it, therefore, forbade a county agricultural society to sell or grant to any person or to permit in any manner the privilege of selling, dealing, or bartering in spirituous, vinous, or malt liquors, to allow or tolerate immoral shows, lottery devices, games of chance, or gambling of any kind, in or about any building or anywhere on its fairgrounds. Section 9884-4, General Code of Ohio. In order to comply with this section of the General Code, it is necessary that an agricultural society control the entire site of its fair, which would include not only the land, but any buildings that might be located on that land. If such agricultural society controls the entire site of the fair, it is immaterial whether the displays are shown in permanent buildings, in tents or other temporary structures located thereon.

It is, therefore, my opinion that it is necessary for a county agricultural society to control the entire site of its fairs, including any buildings which may be located thereon, and that it is immaterial whether such buildings are of a permanent or temporary type of construction.

In considering your first question, it should be pointed out that the Board of Agriculture and the office of Secretary of Agriculture were abolished in Section 154-26, General Code. The power and duties formerly resting with those two agencies are now vested in the Department of Agriculture by virtue of Section 154-42, General Code.

As you have indicated in your letter, the right of a county agricultural society to obtain the amounts specified under Sections 9880 and 9880-2, General Code, is not dependent on the ownership of land by a county agricultural society.

It is pointed out in Opinions of the Attorney General for 1928, Vol. II, page 960, that the amount to be paid to a county agricultural society by a county, under the provisions of Section 9880, is determined by the conditions contained in the latter part of the statute itself, i.e., when such a society has been organized and has conducted its affairs according to

law and the rules of the Department of Agriculture, has held an annual exhibition in accordance with the law, has made proper report to said Department and submitted to the County Auditor a certificate from the Department of Agriculture, attested by the Director thereof, that the laws of the State and the rules of the Department have been complied with, the county shall pay to such society an amount of \$800.00, however, the total of such amount must not exceed 100% of the amount paid by the county agricultural society in regular class premiums. This section was originally enacted February 28, 1846 (44 O.L. 7) as Section 1 of an Act entitled, "For the Encouragement of Agriculture" and in many respects provided the same then as now.

It is thus evident that it was the purpose of the Legislature in enacting Section 9880, General Code, to encourage agricultural fairs by reimbursing the societies conducting such fairs for the premiums which they paid for exhibits, not to exceed in any event the sum of \$800.00.

Section 9880-2, which is a part of the same chapter of the General Code, is another form of encouraging agricultural societies that are receiving state or county aid and have expended not less than \$100.00 in the furtherance and carrying on of junior club work in the county, for the amount so spent not to exceed in any event the sum of \$500.00. The only condition upon which the payment of this sum is predicated, is that such society expend not less than \$100.00 in such a manner and forward to the Department of Agriculture the report required by Section 9884, General Code, and present to the county auditor the certificate of the Director of Agriculture showing that such reports have been made.

The provisions of Section 9894, General Code made payment of the amounts specified therein dependent on such society owning, or holding under lease, real estate used as a site whereon to hold a fair and over which the society has the control and management. In Opinion No. 386, rendered by me on April 5, 1939, and printed in Volume 1 of the Opinions of the Attorney General for 1939 at page 475, I held that the payment of the amount specified in this section, as well as that specified in Section 9880-2, was also dependent on a submission of a report of the proceedings of the society for the year to the Department of Agriculture and securing from the Director of that department a certificate that such reports had been filed, as provided in Section 9884, General Code. It was pointed out in that opinion that Sections 9884 and 9894 of the Gen-

eral Code are in *pari materia* and should be construed together. Section 9884, General Code provides:

“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.”

It is important to note that Sections 9880 and 9880-2, General Code, both specifically provide for reimbursing a county agricultural society for money actually expended in the conduct of a fair. Whereas, Section 9894 contains no such specific provision but to the contrary is a forward looking law enacted “for the purpose of encouraging agricultural fairs.” The amount specified therein is to be paid only in the event that a county agricultural society complies with the provisions of Section 9884; presents the certificate of the Director of Agriculture, authorized by said section, to the county auditor; requests the county commissioners to make the appropriation authorized by Section 9894; and at the time of such appropriation owns or holds under lease, real estate on which to hold a fair and has the control and management of such land and of any structures which may be located thereon.

I do not believe that it is necessary that the term of such ownership or leasehold be running at the time of the appropriation. However, such interest must be owned at that time and the actual term of the leasehold and control of such property may begin at a later time, so long as it is effective at the time when the fair is to be held.

The facts stated in your letter do not show the date of the execution or the date of the beginning and ending of the term of the lease therein referred to, so it has been impossible to categorically answer the last part of your first question. However, I believe that the above discussion of this section will allow you to dispose of this question in the light of the existing facts.

Specifically answering your questions, it is my opinion that:

1. County commissioners may not lawfully appropriate from the general fund of the county and pay over to a county agricultural society monies provided for in section 9887 of the General Code, unless such society has purchased or leased real estate for a term of not less than twenty years, as a site whereon to hold fairs.

2. A county agricultural society which has complied with the requirements of sections 9880 and 9880-2, General Code, respectively, is entitled to receive the respective payments prescribed in said sections, regardless of such society's interest in the real estate used by it as a site for the holding of fairs.

3. Upon compliance with the provisions of section 9884, General Code, a county agricultural society which owns or holds under lease real estate whereon to hold fairs, is entitled to receive from the county commissioners, upon request therefor, the amounts specified in section 9894, General Code, provided such county agricultural society has complete control and management of such real estate and buildings, tents and other structures erected thereon.

Respectfully,

THOMAS J. HERBERT
Attorney General.