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AGRICULTURAL SOCIETY, COUNTY—IN POSSESSION OF
FAIR GROUNDS UNDER TERMS OF LEASE—CAN NOT AC-
QUIRE GROUNDS BY CONDEMNATION PROCEEDINGS PUR-
SUANT TO LAW OF EMINENT DOMAIN.

SYLLABUS:

A county agricultural society in possession of fair grounds under the terms of a lease can not acquire those fair grounds by condemnation proceedings pursuant to the law of eminent domain.

Columbus, Ohio, June 11, 1946

Hon. M. J. Cofer, Prosecuting Attorney
Waverly, Ohio

Dear Sir:

Your request for my opinion reads:

“I respectfully request your Opinion on the following prop-
osition:

“Pike County has a duly organized and existing County
Agricultural Society, and it has a twenty-year lease on its present

fairgrounds. Twelve years of said lease have expired. Several of the buildings, including the art hall, were recently destroyed by fire. The directors of the Agricultural Society have asked the County Commissioners for a large sum of money to replace those buildings. The County Commissioners are reluctant to contribute any substantial amount of money to replace these buildings unless the lease could be renewed or the property condemned, because the lease will expire in eight years. The lessor has indicated that she will not renew the lease at the expiration thereof.

I am aware of Section 9909, which provides that property may be condemned to enlarge the fairgrounds. Can the County Agricultural Society acquire the fairgrounds by proper condemnation proceedings under the law of eminent domain?"

The power of eminent domain, the power of a sovereign state to take, or to authorize the taking of, private property for the public use without the owner's consent, is a sovereign power, inherent in every government. *Cincinnati v. Louisville & N. R. Co.*, 223 U. S. 390, 56 L. Ed. 481, 32 S. Ct. 267, affirming 82 O. S. 466, 92 N. E. 1111. The state of Ohio, being a sovereign state, has the power of eminent domain. The power may be exercised directly by the legislators or through subordinate agencies acting by authority from the legislature. *Sargent v. Cincinnati*, 110 O. S. 444, 144 N. E. 132. It is well established that the right to authorize the exercise of the power is wholly legislative and that there can be no taking of private property for public use against the will of the owner without direct authority from the legislature. 79 A. L. R. 515, 516; 2 L. R. A. 680; 4 L. R. A. 786; 11 L. R. A. (n. s.) 940.

Turning then to the laws enacted by the General Assembly to discover whether or not county agricultural societies have been authorized to exercise the powers of eminent domain, I find that this matter is dealt with solely in Section 9909 of the General Code of Ohio, which reads as follows:

"When deemed necessary by the board of directors of a county agricultural society to *enlarge* the fair grounds under its control, and the owner or owners of the proposed *addition* to the grounds and the board are unable to agree upon the sale and purchase thereof, the board shall make an accurate plat and description of the land which it desires for such purpose and file them with the probate judge of the proper county. Thereupon the same proceedings of appropriation shall be had which are

provided for the appropriation of private property by municipal corporations, such board to act for the society therein as the council would for the municipality.” (Emphasis added.)

It is clear from this section that the power of eminent domain has been granted to county agricultural societies. Likewise, it is clear that the legislature in granting the power has limited the extent to which it may be exercised by providing that the purpose of the exercise of this power by a county agricultural society be “to enlarge the fair grounds under its control”.

The word “enlarge” indicates that the power is conferred for the purpose of extending the limits of existing fair grounds or in other words of adding to the fair grounds an adjacent and contiguous parcel of land.

Section 9909, General Code, does not embrace the acquisition of a complete fair ground site. The phrase “to enlarge the fair grounds under its control” is hardly consistent with an interpretation that the grant does include such a situation. I am fortified in this belief by the legislature’s use of the words “the proposed addition to the grounds” to describe the land which constitutes the subject of the appropriation proceedings.

For the county agricultural society to acquire the fair grounds which it now occupies under leasehold rights would not be “to enlarge the fair grounds under its control”, nor would the land constituting the subject of such an appropriation be an “addition to the grounds”. If it had been the intention of the legislature to confer upon county agricultural societies an unlimited and unqualified right to acquire fair grounds by eminent domain, appropriate words would not have been wanting. In the absence of such language, I must conclude that this was not the intention of the legislature.

A statute conferring the power of eminent domain must be strictly construed. *Pontiac Improvement Co. v. Cleveland Metropolitan Park Dist.*, 104 O. S. 447; 135 N. E. 635; 23 A. L. R. 866. This is well established, and it is well expressed in Volume 18 of American Jurisprudence at page 650 in the following language:

“A grant of the power of eminent domain, which is one of the attributes of sovereignty most fraught with the possibility of abuse and injustice, will never pass by implication; and when

the power is granted the extent to which it may be exercised is limited to the express terms or clear implication of the statute in which the grant is contained. In other words, statutes conferring the power must be strictly construed. Clear legislative authority must be shown to justify the taking. Authority cannot be implied or inferred from vague or doubtful language. When the matter is doubtful, it must be resolved in favor of the property owner."

Accordingly, in specific answer to your inquiry, it is my opinion that a county agricultural society in possession of fair grounds under the terms of a lease can not acquire those fair grounds by condemnation proceedings pursuant to the law of eminent domain.

Respectfully,

HUGH S. JENKINS
Attorney General