

App. 578, 66 N. E., 760; *Wing vs. Clark*, 24 Me., 366; *Parsons vs. Dickenson*, 11 Pick, 352; Williston on Sales, Sec. 264, p. 359."

In *Piano Co. vs. Piano Co.*, 85 O. S., 196, it is held:

"Between the parties to a sale of specific goods especially when the price has been paid, a presumption arises that the title has passed without a delivery of the goods."

In the instant case the price was paid and at least constructive delivery of tangible personal property, the subject of the sale, was effected to the purchaser "A" who was acting for himself and not as agent for another in this state and title passed to the purchaser in this state, at least nothing appears to indicate a contrary intention. The presumption of the passage of title therefore prevails. I am therefore of the opinion that the sale in question is taxable under the provisions of the Retail Sales Tax Law. It should be understood that no arbitrary rule can be laid down as to just what constitutes "interstate" commerce. Each case depends upon its own facts and must be determined upon a consideration of established facts and known commercial methods.

The same is true of the question of when title passes upon the sale of personal property, the controlling factor being the intention of the parties in ascertaining which regard must be had to the terms of the contract, conduct of the parties, usages of trade and the circumstances of the case aided by certain recognized presumptions of law and rules of law as contained in the so-called Uniform Sales Law as it is in force in this state.

Respectfully,
JOHN W. BRICKER,
Attorney General.

4138.

COUNTY AGRICULTURAL SOCIETY—INDEBTEDNESS THEREOF MAY BE PAID BY COUNTY COMMISSIONERS WHEN—LEVY OF TAX AND ISSUE OF BONDS TO PAY INDEBTEDNESS—COUNTY COMMISSIONERS MAY PURCHASE FAIR GROUNDS FROM SOCIETY.

SYLLABUS:

1. *The indebtedness of a county agricultural society may be paid by the county commissioners by appropriating a sufficient amount therefor from the general fund, except that where such indebtedness exceeds \$10,000.00 in any one year the question of levying a tax therefor must be submitted to a vote of the electors or if the indebtedness is \$15,000.00 or more the question of issuing bonds to pay the same may be submitted to a vote of the electors upon the presentation of a petition therefor signed by not less than five hundred resident electors of the county.*

2. *The county commissioners have the authority to purchase the fair grounds from the county agricultural society, and such society has the authority to sell its fair grounds to the county, whereon to hold fairs under the management and control of the society, for the purpose of using the proceeds of said sale to pay the indebtedness of such society.*

COLUMBUS, OHIO, APRIL 10, 1935.

HON. HAROLD K. BOSTWICK, *Prosecuting Attorney, Chardon, Ohio.*

DEAR SIR:—I acknowledge receipt of your communication which reads as follows:

“The duly organized County Agricultural Society in our county is in debt approximately \$7000.00 and has no money with which to meet such obligation, nor has said Society been able to borrow that amount of money by securing same by mortgage on the fair grounds that it owns.

Section 9887 provides in substance that the County Commissioners may appropriate from the general fund a sufficient amount to pay any indebtedness of said Society, but there is no money in said fund available and the Society needs the money immediately by reason of notes that are due and payable.

The indebtedness of said Society does not amount to \$15,000.00, and therefore the Commissioners cannot issue bonds under Section 9888.

The only way out of the situation as I see it is, for the Commissioners to purchase the fair grounds from said Society under authority of Section 9887 and then issue bonds for the purchase price, under authority of Section 2293-2. The Society would then pay off their indebtedness with the purchase price.

The Society has agreed to return to the Commissioners \$1000.00 of the \$1500.00 they are entitled to receive each year under Section 9894, and the Commissioners are to apply said amount each year toward the retirement of the bonds issued for the payment of the purchase price of said fair grounds.

Will you please give me your opinion as to whether my plan mentioned in paragraph four is O. K., or if you know of any other way out, I will appreciate your suggestion.”

Sections 9887 and 9888, General Code, read as follows:

Sec. 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 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. Provided, however, that if the amount appropriated to be expended in the purchase of such real estate or in the erection of buildings or other improvements or payments of rent or other forms of indebtedness of said society shall exceed ten thousand dollars, in any one year, such expenditure shall not be made unless the question of a levy of the tax therefor is submitted to the qualified electors of the county at some general election, a notice of which, specifying the amount to be levied, has been given at least thirty days previous to such election, in one or more newspapers published and of general circulation in the county. The county commissioners shall pass a resolution authorizing the sub-

mission of the question to the electors and certify their action to the board of deputy state supervisors of elections of the county who shall prepare and furnish the necessary ballots and other supplies. The form of the ballots cast at such election shall be:

'Agricultural tax—Yes.'

'Agricultural tax—No.'

If a majority of the vote cast be in favor of such tax, it may be levied and collected as other taxes."

Sec. 9888. "In counties wherein there is a county agricultural society which has purchased a site whereon to hold fairs, or if the title to such grounds is vested in fee in the county, and such society is indebted fifteen thousand dollars or more, upon the presentation of a petition signed by not less than five hundred resident electors of the county praying for the submission to the electors of the county of the question whether or not county bonds shall be issued and sold to liquidate such indebtedness, such commissioners, within ten days thereafter by resolution shall fix a date which shall be within thirty days, upon which the question of issuing and selling such bonds, in amount and denomination such as are necessary for the purpose in view, shall be submitted to the electors of the county. They also shall cause a copy of such resolution to be certified to the deputy state supervisors of elections of the county, who, within ten days thereafter shall proceed to prepare the ballots and make all other necessary arrangements for the submission of such question to such electors at the time fixed by the resolution."

Under these statutes the county commissioners may appropriate from the general fund of the county such amount as may be necessary to pay the indebtedness of a county agricultural society except that where such indebtedness exceeds \$10,000.00 in any one year the question of levying a tax therefor must be submitted to a vote of the electors, and if the indebtedness is \$15,000.00 or more the question of issuing bonds therefor may be submitted to a vote of the electors upon the presentation of a petition therefor signed by not less than five hundred resident electors of the county.

The other question raised by your communication is whether the society may sell to the county and the county commissioners purchase the fair grounds owned by such society and use the proceeds thereof to pay such indebtedness. This question was decided by the court of appeals for Licking County in the case of *Agricultural Society vs. County Commissioners, et al.*, appearing in the Ohio State Bar Association report for March 18, 1935. In this case a deed conveying the real property owned by the agricultural society was executed by it to the board of county commissioners in consideration of the assumption by the board of the indebtedness of the society. The court said:

"On this point we are of the opinion that The Licking County Agricultural Society did have ample authority to convey this tract of land to the Board of County Commissioners of Licking county, Ohio, as under Section 9885, General Code, a society of this kind is declared to be a body corporate and politic. In other words, this society is a corporation, and as such it has the attributes of any other corporation which has been called into being by the voluntary action of the individuals forming the same for their own advantage, convenience or pleasure. *Dunn vs. Agricultural Society*, 46 Ohio St., 93, 18 N. E., 496, 15 Am. St. Rep., 556, 1 L. R. A., 754.

Being a corporation, it follows that unless restricted by law it would have the implied authority that corporations generally have to convey property owned by them. 10 Ohio Jurisprudence, page 879, Section 651."

The Supreme Court has overruled a motion to certify to it the record in this case.

I know of no other ways by which the indebtedness referred to in your communication may be paid than those pointed out in this opinion.

I am of the opinion therefore that:

1. The indebtedness of a county agricultural society may be paid by the county commissioners by appropriating a sufficient amount therefor from the general fund, except that where such indebtedness exceeds \$10,000.00 in any one year the question of levying a tax therefor must be submitted to a vote of the electors or if the indebtedness is \$15,000.00 or more the question of issuing bonds to pay the same may be submitted to a vote of the electors upon the presentation of a petition therefor signed by not less than five hundred resident electors of the county.

2. The county commissioners have the authority to purchase the fair grounds from the county agricultural society, and such society has the authority to sell its fair grounds to the county, whereon to hold fairs under the management and control of the society, for the purpose of using the proceeds of said sale to pay the indebtedness of such society.

Respectfully,

JOHN W. BRICKER,

Attorney General.

4139.

COUNTY COMMISSIONERS—RESOLUTION AUTHORIZING SURVEYOR TO
PROCEED WITH ROAD AND BRIDGE PROGRAM BY FORCE ACCOUNT
NOT AUTHORITY FOR SURVEYOR TO PURCHASE MACHINERY.

SYLLABUS:

1. *Where county commissioners of a county have adopted a resolution authorizing the county surveyor to proceed with a road and bridge program by force account under authority of section 7198, General Code, such county commissioners reserving the right to purchase all materials necessary to effectuate such program, said commissioners have not by such resolution given the authority to the county surveyor to purchase machinery, including road maintainers, necessary in connection with such program, but have reserved such right to themselves.*

2. *Where road maintainers have been purchased by the county commissioners at the request of the county surveyor for use in connection with such road and bridge program, the county surveyor may not refuse permission to have such maintainers stored in the county barn.*

3. *County commissioners may rescind a resolution adopting a road and bridge program and appropriating the fund after approval and certification to the county auditor, providing such action does not affect obligations already incurred under the original legislation.*

4. *County commissioners after adopting a road program as set forth in syllabus 1, may purchase machinery and pay for it out of the fund against which the appropriation made by the resolution is drawn.*