

"The trustees shall not receive any compensation for their services, but they and the superintendent shall be allowed their necessary expenses while on duty, including expenses as duly accredited delegates to state and national conferences devoted to child-saving, and other charitable and correctional work, and such expenses shall be paid in the same manner as other current expenses of children's homes, and shall not exceed four hundred dollars in any year for any county."

It is noted that this section expressly authorizes the payment of the necessary expenses of the superintendent and trustees of the county children's home when they are serving as duly accredited delegates to state and national conferences devoted to child-saving and other charitable and correctional work.

In an opinion of this department, Annual Report of the Attorney General, Vol. I, 1912, page 118 at 119 it is stated:

"Furthermore, the legislature has seen fit to provide that the trustees of children's homes shall not receive compensation for their services 'but the said trustees and the superintendent shall be allowed their necessary expenses while on duty, including expenses as duly accredited delegates to state and national conferences devoted to child saving and other correctional and charitable work'—99 O. L. 185 (now Section 3087, General Code.)

It will, therefore, be seen that the legislature, in enacting the law in reference to trustees of children's homes, had in mind the advisability of such trustees attending state and national conferences."

It may reasonably be assumed that the National Conference of Social Workers held at Cleveland, Ohio, was devoted in part at least to child-saving and other charitable work; and also that said superintendents and trustees were duly accredited delegates thereto.

It is, therefore, my opinion that under the provisions, upon the conditions and within the limitations prescribed in Section 3087, General Code, the trustees and superintendents of children's homes may legally be allowed their necessary expenses in attending the National Conference of Social Workers held at Cleveland, Ohio, May 26th to June 2nd, 1926.

Respectfully,
EDWARD C. TURNER,
Attorney General.

597.

COUNTY COMMISSIONERS—WITHOUT AUTHORITY TO APPROPRIATE MONEY IN EXCESS OF \$2,000.00 ANNUALLY FOR PURPOSES ENUMERATED IN SECTION 1177-4, GENERAL CODE—MAY REPAIR AND MAINTAIN BUILDINGS OF COUNTY AGRICULTURAL FARM.

SYLLABUS:

A board of county commissioners is without authority to appropriate money in excess of two thousand dollars annually for any or all of the purposes enumerated in Section 1177-4, General Code, namely, for the payment of wages of laborers

employed in the management of county experiment farms, and for the purchase of supplies, materials, implements, live stock, stock feed and teams, and for the construction of necessary buildings, drains and fences. However, by virtue of its implied power to maintain and keep in repair county property, such board may lawfully expend money for the repair and maintenance of a county agricultural farm and the buildings and structures thereon, if funds are available for such purpose.

COLUMBUS, OHIO, June 10, 1927.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN :—This will acknowledge receipt of your letter of recent date which reads as follows:

“You are respectfully requested to furnish this department with your written opinion upon the following:

Section 1177-4 of the General Code provides that after a county experiment farm has been established and the initial expense of the equipment has been paid the county shall thereafter appropriate for the expense of the upkeep of the farm an amount not exceeding \$2,000.00 per year.

Question 1. May the county commissioners in addition to the appropriation of \$2,000.00 legally pay for repairs to the buildings on such farm or make any other improvement in connection therewith such as the grading of a drive from the main road to the buildings, painting buildings, etc.?

Question 2. In the event that such expenditures have been made may finding for recovery be made by this department and if so against whom should it be made?

Question 3. In event that more than \$2,000.00 has been appropriated for the current expenses of the farm should finding for recovery be made and if so against whom?”

The so-called County Agricultural Farm Law is found in Sections 1174 to 1177-9, General Code.

The purpose of establishing a county experiment farm, as provided in Section 1174, General Code, is to demonstrate the practical application under local conditions of the results of the investigation of the Ohio Agricultural Experiment station and to increase the effectiveness of the agriculture of the various counties of the state.

In addition to Section 1177-4, General Code, your attention is directed to Section 1177-8, General Code. These two sections were part of an act passed April 15, 1913, (103 O. L. 304) and originally provided:

“Sec. 1177-4. The equipment of an experiment farm shall consist of such buildings, drains, fences, implements, live stock, stock feed and teams as shall be deemed necessary by the agricultural commission for the successful work of such farm, and the initial equipment shall be provided by the county in which the farm is established, together with a sufficient fund to pay the wages of laborers required to conduct the work of such farm during the first season. The county commissioners shall appropriate for the payment of the wages of laborers employed in the management of such farms as may be established under this act, and for the purpose of supplies and materials necessary to the proper conduct of such farms such sums not exceeding two thousand dollars annually for any farm, as may be agreed upon between such county commissioners and the agricultural commission.”
(Italics the writer's.)

"Sec. 1177-8. The produce of each county experiment farm as may be established under this act, over and above that required for the support of the teams and live stock kept on the farm, shall be sold and the proceeds applied to the *payment of the labor and to the purchase of the supplies and materials* required for the proper management of the farm as contemplated by this act, *and for the maintenance of its equipment*. Any surplus beyond these requirements shall be covered into the county treasury and placed to the credit of the general fund of the county, except in the case of the use of farms already belonging to the county, in which case the proceeds shall be placed to the credit of such fund as the county commissioners may designate." (Italics the writer's.)

Both sections were amended April 6, 1915, (106 O. L. 122) but without material changes therein. By an act passed March 8, 1921, (109 O. L. 45) entitled

"To amend Sections 1177-4 and 1177-8 of the General Code, relative to the purchase of supplies, materials and *permanent improvements* on agricultural experimental farms." (Italics the writer's.)

both sections were amended to read as they now appear in the General Code. These sections provide:

"Sec. 1177-4. The equipment of an experiment farm shall consist of such buildings, drains, fences, implements, live stock, stock feed and teams as shall be deemed necessary by the board of control at any time for the successful work of such farm, and the initial equipment shall be provided by the county in which the farm is established, together with a sufficient fund to pay the wages of the laborers required to conduct the work of such farm during the first season. The county commissioners shall appropriate for the *payment of the wages of laborers employed in the management of such farms as may be established under this act, and for the purchase of supplies, materials, implements, live stock, stock feed and teams, and for the construction of buildings, drains and fences*, necessary to the proper conduct of such farms, such sums not exceeding two thousand dollars annually for any farm, as may be agreed upon between such county commissioners and the board of control." (Italics the writer's.)

"Sec. 1177-8. The produce of each county experiment farm as may be established under this act, over and above that required for the support of the teams and live stock kept on the farm, shall be sold and the proceeds applied to the payment of the labor and to the purchase of the supplies, materials, implements, live stock, stock feed and teams, and to the construction of buildings, drains and fences required for the proper management of the farm as contemplated by this act, and for the maintenance of its equipment. Any surplus beyond these requirements shall be covered into the county treasury and placed to the credit of the general fund of the county, except in the case of the use of farms already belonging to the county, in which case the proceeds shall be placed to the credit of such fund as the county commissioners may designate."

An examination of Section 1177-4, *supra*, shows that after enumerating what the *equipment* of an experiment farm shall consist of, the section imposes the duty upon the county in which such farm is established to provide the initial equipment of the character enumerated, together with a sufficient fund to pay the wages of the

laborers required to conduct the work of such farm during the first season. Such section then authorizes an annual appropriation not to exceed two thousand dollars for any farm to be used for :

1. The payment of the wages of laborers employed in the management of such farms as may be established.
2. The purchase of supplies, materials, implements, live stock, stock feed and teams.
3. The construction of buildings, drains and fences which are necessary to the proper conduct of such farms.

As originally enacted this section authorized a similar annual appropriation to be used for :

1. The payment of the wages of laborers employed in the management of such farms as may be established.
2. The purchase of supplies and materials which are necessary to the proper conduct of such farms.

It is readily apparent that the intent of the legislature, as expressed by its latest enactment, was to limit the maximum amount of the annual appropriation to be appropriated by the board of county commissioners and expended for the purposes specified in the section.

Section 1177-8, *supra*, authorizes the sale of the produce of such a farm over and above that required for the support of the teams and live stock, the proceeds, if any, to be applied to :

1. The payment of labor.
2. The purchase of supplies, materials, implements, live stock, stock feed and teams.
3. The construction of buildings, drains and fences required for the proper management of the farm.
4. The maintenance of its equipment.

This section contemplates that after such a county experiment farm has been established it may become not only self-supporting but provide an additional source of revenue to the county wherein it is situate.

Established by the affirmative vote of a majority of the electors of a county purchased with funds derived from a tax levy on all taxable property within such county, the farm itself being situated within said county, and, if abandoned and sold, the proceeds of such sale reverting to the county treasury, there is no question but that said county experiment farm belongs to the county in which it is situate.

It is fundamental that a board of county commissioners, being a creature of statute, can exercise only such powers as are conferred upon it by law. To this effect see *State ex rel. Baen vs. Yeatman*, 22 O. S. 546 and *Elder vs. Smith*, 103 O. S. 369. The board of county commissioners represents the county in respect to its financial affairs, only so far as authority is given to it by statute. The board of county commissioners is the body—the quasi corporation—in which is vested by law the title to all the property of the county. In one sense the commissioners are the agents of the county, and in another sense they are the county itself. It is in this latter sense that they acquire, and hold in perpetuity, the title to its property. In this capacity they not only act for the county, but also act as the county.

By the provisions of Sections 1174 to 1177-9, General Code, the county com-

missioners are authorized to establish and acquire a county experiment farm. Such expressed authority carries with it implied authority to maintain and keep in repair that which the county acquires. Although Section 1177-8, supra, authorizes expending the proceeds, if any, from the sale of produce for the maintenance of the equipment of such a farm it cannot be successfully contended that unless there are such proceeds, the commissioners may not repair and maintain county property which it has lawfully acquired.

The limitations and restrictions of Section 1177-4, supra, relate only to expenditures for the *construction of buildings, drains and fences*, purchase of supplies, equipment and stock, etc., and for the labor necessary to the proper conduct of such a farm.

Under the implied power to keep in repair and maintain county property, such expenditures, as those about which you inquire, could lawfully be made, provided such expenditures are *not* for the purposes enumerated in Section 1177-4, supra, in which case the two thousand dollar limitation prescribed by said section applies. It is needless to cite authorities to the effect that painting buildings and work of similar nature are not construction but maintenance and repair. Whether or not the funds expended for the grading of the "drive" referred to in your letter were expended for the maintenance and repair of an existing road, or for the construction of a new one is a question of fact, which this office cannot determine upon the facts stated in your letter and the additional facts furnished in oral conference with your bureau. It is not believed, however, that your bureau will have any difficulty in determining this question when investigation is made.

Summarizing and answering your first question specifically it is my opinion that county commissioners are without authority to appropriate money in excess of two thousand dollars annually for any or all of the purposes enumerated in Section 1177-4, supra, but by virtue of their implied power to maintain and keep in repair county property, such board may lawfully expend money for repair and maintenance, if funds are available for such purpose.

The above answer to your first question makes unnecessary an answer to questions numbers two and three.

Respectfully,
EDWARD C. TURNER,
Attorney General.

598.

APPROVAL, NOTE OF MONROE RURAL SCHOOL DISTRICT, CARROLL COUNTY, \$2,400.00.

COLUMBUS, OHIO, June 10, 1927.

Retirement Board, State Teachers' Retirement System, Columbus, Ohio.