

6875

AGRICULTURAL SOCIETY, COUNTY — MEMBERS MAY VOLUNTARILY DISSOLVE SAME — GENERAL CORPORATION ACT — COMPLIANCE — DISSOLUTION OF CORPORATIONS — NO SPECIAL PROVISION IN GENERAL CODE — SECTION 9880 ET SEQ., G. C.

SYLLABUS:

There is no special provision in the General Code for the voluntary dissolution of a county agricultural society organized pursuant to Section 9880, et seq., General Code, and the members of such a society may voluntarily dissolve same only by complying with the applicable provisions of the General Corporation Act with respect to the dissolution of corporations.

Columbus, Ohio, April 27, 1944

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

Dear Sir:

You have requested my opinion with respect to several questions which arise out of action taken by the members of what you designate as the "old The Licking County Agricultural Society." You state that on February 12, 1944, a meeting of the members of such old society was held, the minutes of which read as follows:

"MINUTES OF MEETING OF REMAINING MEMBERS  
OF THE OLD THE LICKING COUNTY  
AGRICULTURAL SOCIETY

Pursuant to notice duly given to each remaining member, a meeting of the remaining members of the old The Licking County Agricultural Society was held at the chapel of the County Jail of Licking County, Ohio, on the 12th day of February, 1944, the time and place specified in said notice.

Mr. E. T. Denman, former and the last elected President, acted as Chairman, and Mr. Keith W. Lowery, former and the last elected Secretary, acted as Secretary of the meeting.

The Chairman directed a roll call of all the remaining members of said old county agricultural society.

Thereupon, the Chairman stated the purpose of the meeting.

Mr. W. S. Keller moved the adoption and Mr. J. L. Mason seconded the adoption of the following resolution:

*RESOLUTION*

WHEREAS, The Licking County Agricultural Society, formerly existing as a county agricultural society under Section 9880 of the General Code, held its last fair in 1939 and became inactive and disbanded in the year 1940, and

WHEREAS, said former society has no physical or intangible property, either real or personal, and no assets of any kind or description, and

WHEREAS, said former society has no indebtedness of any kind or description, and

WHEREAS, due to the fact that in the year 1940 said former society had become inactive and disbanded and has been inactive and disbanded ever since, another county agricultural society was organized for Licking County, Ohio, under Section 9880 of the General Code of Ohio, upon the 21st day of March, 1941, and has continued in existence as The Licking County Agricultural Society since said 21st day of March, 1941, and

WHEREAS, it is desired to clear up all doubt as to any existence of said former county agricultural society since the year 1940, and

WHEREAS, after notice of this meeting and the purpose thereof duly given to all remaining officers and members of said former county agricultural society, a meeting of all remaining officers and members of said former agricultural society was held upon this 12th day of February, 1944, and

WHEREAS, said former society has had no employes since the year 1939 and has no liabilities for workmen's compensation, unemployment insurance or social security,

Now, BE IT RESOLVED, by the old officers and members of said former The Licking County Agricultural Society, that it is hereby declared that said former The Licking County Agricultural Society has been disbanded and has ceased to exist since the year 1940 and that we hereby recognize, as The Licking County Agricultural Society, the county agricultural society organized the 21st day of March, 1941, as aforesaid.

Be it further RESOLVED that a copy of this resolution be filed with the Director of Agriculture for Ohio, the County Commissioners of Licking County and with such other public officers as may be necessary.'

A discussion developed, and, the question being called for, a ballot was taken and all votes were cast for and no votes were cast against the resolution. Thereupon, the Chairman declared the resolution unanimously adopted, and, there being no other business, the meeting adjourned.

E. T. Denman  
Chairman

Attest: Keith W. Lowery  
Secretary"

You further state that this old society held its last fair in 1939 and made its last report to the Director of Agriculture in 1940. You also state that the minutes set forth the facts about the new and the old societies.

The following questions are propounded by you:

"1. Is the old society dissolved?

2. In dissolving such a county agricultural society, is it necessary to comply with Section 8623-79 of the General Corporation Act and succeeding sections regulating the voluntary dissolution of private corporation for profit and not for profit?

3. If not, will it be sufficient to file certified copies of the last minutes with the Director of Agriculture and the County Commissioners?

4. Can we safely regard the old agricultural society as having been dissolved since the year 1940 by reason of being disbanded, granted the statements of the foregoing resolution are true?

5. If you answer question 4 in the affirmative, can the new society be safely regarded as being legally organized, granting that all other legal requirements are complied with?

6. If the provisions of the General Corporation Act as to private corporations do not apply, how can such a society dissolve and be regarded as legally dissolved (a) voluntarily, (b) involuntarily, (c) by legal action instituted by the prosecuting attorney, under General Corporation Act or in Quo Warranto, (d) other legal method or methods which you may suggest?

7. Upon voluntary dissolution, is it necessary to file certified resolution and minutes with the Secretary of State as provided by General Corporation Act?"

Since your first two questions are closely related, they will be considered together. There seems to be no doubt that a county agricultural society is a body corporate. It is so provided in Section 9885, General Code, and in the case of Licking County Agricultural Society v. Commissioners, 48 O. App., 528, it was so declared. Section 9898, General Code, recognizes that such a society may be dissolved or cease to exist, but at no place in the chapter governing agricultural societies is there any provision directing the method and manner of dissolving such a society.

In Opinion No. 42 of the Opinions of the Attorney General for 1933 found in Volume I, at page 29, it was said by the then Attorney General, at page 33, with respect to Section 9898, General Code:

"This section was construed in the case of Toledo Exposition Company vs. Kerr, 8 O. C. C. (N. S.) 369, 18 C. D. 547. This was an action by the County Commissioners of Lucas County for the recovery of real estate owned by the county and used by the County Agricultural Society for giving fairs. It was held that the society, by ceasing to give fairs and leasing its grounds to another organization to carry out that purpose, did not fall within the statutory provision that when such a

society is 'dissolved or ceases to exist' its real estate and improvements thereon shall vest in the county. The court held that the society must cease to exist as a corporation and not merely cease to give fairs before the realty shall vest in the county.

Unfortunately, neither this case nor any other authority which has come to my attention offers any suggestion as to the procedure necessary to dissolve such corporation."

In my Opinion No. 2454 found in Opinions of the Attorney General for 1940, at page 614 of Volume I, I said at page 619:

"Once such a society has been organized, no other county society may be organized under Section 9880, General Code, until such former society has been disbanded, or been dissolved *as are other private corporations.*"

(Emphasis supplied.)

This language indicates that I was of the view that the method of dissolving county agricultural societies was the same as that of dissolving other private corporations. However, such question was not involved and no further discussion is found in such opinion in regard thereto.

Section 8623-132, General Code, provides:

"In cases where special provision is made in the General Code for the incorporation, organization, conduct or government of any class of corporations, such special provision shall govern to the exclusion of the provisions of this act on the same subject, unless it clearly appears that the special provision is cumulative, in which case the provisions of this act also shall apply.

No banking, safe deposit, trust or insurance corporation shall be authorized to issue shares without par value."

It will be noted that this section specifies that where special provision is made for the incorporation, organization, conduct or government of any class of corporations, such special provision shall govern to the exclusion of the provisions of the General Corporation Act on the same subject, but it does not provide that special provisions with respect to dissolution shall govern to the exclusion of the provisions contained in the General Corporation Act. It might be that the provisions of the General Corporation Act with respect to the dissolution of

corporations would govern even if there were special provisions on that subject in the General Code in regard to a particular kind of corporation. However, it is unnecessary to discuss this question because there is no special provision in the General Code in regard to the dissolution of a county agricultural society and the inference seems rather clear from the language of Section 8623-132, General Code, that the provisions of the General Corporation Act apply to the dissolution of county agricultural societies.

The provisions of the General Corporation Act with respect to the dissolution of corporations have not been complied with by the old society. Your first question is therefore answered in the negative. Your second question is answered in the affirmative, but your attention is directed to Section 8623-114, General Code, which provides for the dissolution of a non-profit corporation but makes the provisions with respect to the dissolution of corporations for profit controlling in so far as applicable.

In view of the answer to your second question, it is unnecessary to consider or discuss your third question.

In order for a corporation voluntarily to dissolve, it is necessary, among other things, that it file a certificate with the Secretary of State as provided in paragraph (c) of Section 8623-79, General Code, which, so far as applicable, governs the dissolution of corporations not for profit by reason of the express provisions of Section 8623-114, General Code. The old agricultural society has filed no such certificate with the Secretary of State and I therefore believe that it can not be regarded as legally dissolved since the year 1940.

Since the answer to your fourth question is in the negative, it is unnecessary to answer your fifth question.

The provisions of the General Corporation Act with respect to the dissolution of corporations apply to this type of corporation and it is therefore unnecessary to answer your sixth question.

It is not necessary to file a certified resolution and minutes with the Secretary of State. Section 8623-79, General Code, provides what

shall be filed with the Secretary of State by the president or vice president and the secretary or assistant secretary of the corporation which is being dissolved.

Respectfully,

THOMAS J. HERBERT

Attorney General