

1572.

APPROVAL, BONDS OF THE CITY OF GIRARD, TRUMBULL COUNTY—
\$8,555.00.

COLUMBUS, OHIO, January 13, 1928.

Industrial Commission of Ohio, Columbus, Ohio.

1573.

APPROVAL, BONDS OF THE VILLAGE OF LOUISVILLE, STARK
COUNTY, OHIO—\$7,000.00.

COLUMBUS, OHIO, January 13, 1928.

Industrial Commission of Ohio, Columbus, Ohio.

1574.

APPROVAL, FINAL RESOLUTION ON ROAD IMPROVEMENTS IN
JEFFERSON COUNTY, OHIO.

COLUMBUS, OHIO, January 14, 1928.

HON. GEORGE F. SCHLESINGER, *Director Department of Highways and Public Works,*
Columbus, Ohio.

1575.

OPINION NO. 612 IN REGARD TO AGRICULTURAL EXTENSION FUND,
RECONSIDERED AND ADHERED TO.

SYLLABUS:

Former Opinion No. 612 of this department is reconsidered and adhered to.

COLUMBUS, OHIO, January 14, 1928.

HON. GEORGE W. RIGHTMIRE, *President, Ohio State University, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your recent communication requesting a reconsideration of Opinion No. 612 of this department, directed to the

Bureau of Inspection and Supervision of Public Offices under date of June 13, 1927.
Your communication is as follows:

"Following the conference in your office yesterday we have given consideration to the matter of agricultural extension funds and beg to submit the following thoughts about the matter:

1. Following the enactment of Section 9921-6, Dean Alfred Vivian, of the College of Agriculture, on November 15th, 1919, addressed Attorney General John G. Price with reference to the appropriation of additional money, and the letter and thoughts of the Attorney General may be found in his Opinion No. 388, and therein he reached the specific conclusion that funds appropriated under Section 9921-6 might be used in the employment of assistant county agents, home demonstration agents, or leaders of boys' and girls' agricultural clubs.

On March 13, 1923, Honorable C. C. Crabbe, Attorney General, wrote to Prosecuting Attorney Everett F. Folger, of Marietta, Ohio, answering the question whether the Commissioners of a county might make appropriations for salary and expenses of a county agricultural agent in addition to the sum referred to in Section 9921-4, and he says that General Price's Opinion is capable of a construction permitting an affirmative answer to this question. He added that it has come to his attention that that Opinion has been so construed by a number of the county officials throughout the state. Therefore, he declines to write a further opinion in answer to Mr. Folger, considering it unnecessary.

This opinion and this letter have been widely circulated in the counties of Ohio where questions relating to agricultural extension have been raised, and they have been taken as authorizing the common practice on the part of about one-half the counties of the state of raising additional appropriations under 9921-6, to be used for the purpose expressed in 9921-4, and the practice seems to find ample authority in these two pronouncements coming from the office of the Attorney General.

As pointed out by Dr. Thompson and Dean Vivian, yesterday, in the conference, the adjustment of agricultural extension under the laws of Congress and of the state was based upon experience throughout the county and in various counties in Ohio, interested in agricultural extension, had learned that additional monies not contemplated previously were needed and so this section was passed in general terms, the entire purpose, on the part of the proposers of the law, being to make it very general on the theory that experience had shown that calls for new activities in agricultural extension were constantly coming up. Therefore, the thought was that although the earlier section used the language, 'not to exceed \$1,500,' yet the later section is additional and supplemental thereto, and these terms are used indiscriminately and usually together throughout these opinions in speaking of the latter sections; it may very properly therefore be regarded as authority to exceed, within the limits provided in the last section.

In view of this state of the law and the pronouncements from the Attorney General's office, formerly, and the practice throughout the state based thereon, it is respectfully solicited that the Attorney General take up for reconsideration the Opinion No. 612, issued on January 13, 1927.

2. Based on the practice of appropriating additional funds under the latter section, the present agricultural extension organization in Ohio has been set up, and if the practice is now to be changed it will lead to consid-

erable disruption of the agricultural extension work in Ohio, which would be very detrimental to the interests of agriculture and country life.

If in the opinion of the Attorney General his recent ruling No. 612 should be adhered to, then it will be appreciated, if in his judgment it would be appropriate, if the Attorney General might outline a proper course for the agricultural extension interests to pursue until there may be opportunity at the next legislature to enact new legislation. It is appreciated that if the Attorney General, in view of the entire situation, should modify his opinion to authorize the current practice, then nothing further need be done by the agricultural extension interests before the next meeting of the legislature."

The opinion of this department above referred to was addressed to the question whether an appropriation of money made by the county commissioners of a county, under the authority of Section 9921-6, General Code, could be used for the purpose of paying additional salary to the county agricultural agent of a county, and for the payment of the office expense of such agricultural agent, including the salary of a stenographer employed by him. In this opinion I concurred in the conclusion reached by my predecessor, Hon. John G. Price, on the question submitted to and considered by him, that the expenditures by the trustees of Ohio State University of funds appropriated by the county commissioners of the county under Section 9921-6, General Code, for the purpose of employing an assistant county agent, home demonstration agent, or leaders of boys and girls agricultural clubs in a county did not, as a matter of law, constitute an abuse of discretion on the part of such trustees (Opinions, Attorney General, 1919, Vol. II, p. 1454). Addressing myself to the specific question submitted for my opinion I held that no authority was granted to the trustees of Ohio State University to use any part of the monies appropriated by the county commissioners of a county under said Section 9921-6, General Code, for the purpose of additional salary to the agricultural agent of a county or for the employment of a stenographer or for other office expenses.

In reconsidering this question, and so far as possible taking the same up *de novo*, it will be noted that the whole of the statutory provisions touching these questions fall within the compass of Sections 9921-1 to 9921-6, General Code, inclusive. Sections 9921-1 to 9921-5, General Code, were enacted as a part of an act passed May 19, 1915 (106 O. L. 356), entitled in part as an act "to supplement said Section 9921 by section to be known as 9921-1, 9921-2, 9921-3, 9921-4, 9921-5, creating the office of agricultural agent in the several counties of the state."

I do not deem it necessary to set out *in extenso* said Sections 9921-1 to 9921-5, General Code, inclusive. It is sufficient to note that said Section 9921-1, General Code, provides that money apportioned to Ohio by the United States under the act of Congress approved May 8, 1914, together with the money appropriated by the state and any county or counties to make available the aid extended by the United States in said act of Congress above referred to, shall be set aside and designated as "the Agricultural Extension Fund" to be used "in accordance with the provisions of this act" for the extension service of the college of agriculture of the Ohio State University. This section further provides that the trustees of the Ohio State University shall expend "in accordance with law," all moneys in the state treasury to the credit of the agricultural extension fund.

There is nothing in any of the above noted sections of said act of May 19, 1915, which indicates any intention or purpose to extend the service of the college of agriculture of Ohio State University or otherwise to provide for the development of agriculture in the several counties of the state by any means other than by the appointment and maintenance of county agricultural agents in such counties as co-operate with the state, by making the appropriations provided for in said act.

Provision is made for the compensation and expenses of such county agricultural agents by Sections 9921-2 and 9921-4, General Code, as follows:

Section 9921-2, General Code, provides that from the monies appropriated by the state for the employment of agricultural agents, not to exceed three thousand dollars in any one year shall be expended for any county that shall raise at least one thousand dollars for the support of a county agricultural agent for one year, and shall give satisfactory assurance to the trustees of the Ohio State University that a like sum shall be raised by such county for a second year.

By Section 9921-4, General Code, it is provided that each and every county of the state is authorized to appropriate annually not to exceed fifteen hundred dollars for the maintenance, support and expenses of a county agricultural agent, and that the county commissioners of such county or counties are authorized to set apart and appropriate said sums of money and transmit the same to the state treasurer who shall place it to the credit of the agricultural extension fund to be paid out for said purposes, on warrant issued by the auditor of state in favor of the Ohio State University.

In addition to these provisions, Section 9921-5, General Code, provides that where a county agricultural agent is provided for and established in any county upon a vote of the electors of such county, the county commissioners of such county shall continue to make such annual appropriations for the work of such county agricultural agent as the trustees of the Ohio State University may direct, not exceeding the sum of fifteen hundred dollars annually for a period of five years.

Section 9921-6, General Code, was enacted as an act passed April 10, 1919, entitled:

“An Act—To further supplement Section 9921 by the addition of supplementary Section 9921-6 of the General Code authorizing the employment of home demonstrating agents in the several counties in the state, and providing for the further development of agriculture.”

This section reads as follows:

“The county commissioners of each and every county of the state in addition to the powers conferred in Section 9921-4 of the General Code are hereby authorized and empowered to make additional appropriations annually to further the development of agriculture and country life in the county including the employment of a home demonstration agent and the county commissioners of said county or counties are authorized to set apart and appropriate said sum of money and transmit the same to the state treasurer who shall place it to the credit of the agricultural extension fund to be paid for the purpose aforesaid by warrant issued by the auditor of state on voucher approved by the Ohio State University. If for any reason it shall not be used as contemplated in this act, it shall revert to the county from which it came. The home demonstration agent shall acquaint herself with conditions in the county to which she is assigned, and as far as practicable, respond to invitations with reference to the selection and preparation of foods for persons both in health and sickness, the feeding of infants, the preservation and storage of foods, the choice of fabrics and making of garments, the arrangement and installation of household mechanical devices, and the choice and repair of household furnishings and decorations. She shall co-operate with the United States Department of Agriculture, the Ohio Agricultural Experiment Station, and other public agencies to the end that

the women of the county may have at hand the services of these agencies. She shall have an office in which bulletins and other printed matter and records of value to housewives may be consulted and through which the agent may at all times be reached as she travels from home to home in the discharge of her duties. After having appropriated under this section and a home demonstration agent having been employed for the county, the county commissioners shall appropriate under this section in each succeeding year for five years not less than one thousand dollars."

The fact that this section was enacted in terms as an act supplemental to Section 9921, General Code, and in fact supplemental to said section and Sections 9921-1 to 9921-5, inclusive, indicates quite conclusively that the legislature recognized a defect in the then existing law relating to the extension of the work of the College of Agriculture of Ohio State University and to the development of agriculture in the several counties of the state; and that said Section 9921-6, General Code, was intended to provide a remedy for the defect or evil in said existing law with respect to this subject. If the evil recognized by the legislature in the enactment of Section 9921-6, General Code, were the limitations provided by Sections 9921-4 and 9921-5, General Code, on the amount of money that could be appropriated by the commissioners of a county for the compensation and expenses of the county agricultural agent of the county, this evil in the existing law could have been very readily remedied by amending said Sections 9921-4 and 9921-5, General Code, by increasing the maximum amount which the county commissioners of a county could appropriate for that purpose. However, Section 9921-6, General Code, was enacted as an act *supplemental* to Section 9921 and to the act of May 19, 1915, carried into the General Code as Sections 9921-1 to 9921-5, General Code, inclusive.

In the case of *McCleary vs. Babcock*, 169 Ind. 228, the court in speaking of the effect of a supplemental act as distinguished from an amendment to a statute says:

"A supplemental act has quite a different meaning. It signifies something additional, something added to supply what is wanting. Webster's Int. Dict. It is that which supplies a deficiency, adds to, or completes, or extends that which is already in existence, without changing or modifying the original. *State, ex rel. vs. Board*, etc., 16 Ohio C. C. 218, 221; *Rahway Saving Inst. vs. Rahway*, 53 N. J. L. 48."

See also *State, ex rel. vs. Day*, 189 Ind. 243, 249.

Giving effect to Section 9921-6, as a supplemental act, I conclude that it was not thereby intended in any way to change or modify the provisions of Sections 9921-4 or 9921-5, General Code, fixing a limitation on the amount of money that the county commissioners of the county were authorized to appropriate for the compensation and expenses of a county agricultural agent, but that the intent, purpose and effect of said Section 9921-6, General Code, was to supplement and extend the power and authority of the county commissioners of the several counties of the state by authorizing them to appropriate money for other means of extending the service of the college of agriculture and the development of agriculture.

If Section 9921-6, General Code, were so construed as to authorize the county commissioners of a county to appropriate money for the compensation and expenses of the county agricultural agent of such county in addition to and in excess of the maximum amount that they are authorized to appropriate for said purposes under Sections 9921-4 and 9921-5, General Code, the effect of said Section 9921-6, General

Code, so construed, would be to repeal by implication the provisions of Sections 9921-4 and 9921-5, General Code, imposing a limitation upon the amount that the county commissioners of a county are authorized to appropriate for the compensation and expenses of the county agricultural agent of such county.

It is a well recognized rule of statutory construction, however, that "where two affirmative statutes exist one is not to be construed to repeal the other by implication unless they can be reconciled by no mode of interpretation." In Re: Hesse 93 O. S. 230, 234.

As above noted the later provisions of Section 9921-6, General Code, can be easily reconciled with those of Sections 9921-4 and 9921-5, General Code, by confining the authority granted by the provisions of Section 9921-6 to appropriations made by the county commissioners of a county under this section for means of extending the service of the college of agriculture and the development of agricultural life in the county, other than the employment and service of a county agricultural agent.

On the foregoing considerations, therefore, I am constrained to adhere to my former opinion above referred to.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1576.

COSTS—COMMON PLEAS COURT—NO AUTHORITY TO REQUIRE PAYMENT OF ADVANCED COSTS IN ACTION INSTITUTED BY STATE OF OHIO.

SYLLABUS:

There is no authority to require the payment of advanced costs in an action instituted by the State of Ohio in the common pleas court of Hamilton County.

COLUMBUS, OHIO, January 14, 1928.

HON. CLARENCE A. DORGER, *Special Counsel to Attorney General, Cincinnati, Ohio.*

DEAR SIR:—This will acknowledge your letter of January 9th, as follows:

"I am under the impression that Section 348 of the General Code exempts the state from paying the customary \$1.35 advanced cost when filing a petition in the common pleas court. The clerk of courts in this county refuses to accept our petitions without paying the advanced costs, which are \$1.35.

Will you kindly send me a ruling on this section as applied to the above facts?"

Section 348 of the General Code is in the following language:

"No undertaking or security shall be required on behalf of the state or an officer thereof, in the prosecution or defense of any action, writ or proceeding. In an action, writ or proceeding it shall not be necessary to verify the pleadings on the part of the state or any officer thereof."