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AGRICULTURAL SOCIETY, COUNTY—INDEPENDENT AGRICULTURAL SOCIETY—SECTION 9880-1 G.C.—IN ANY COUNTY WHERE SUCH SOCIETY, DULY ORGANIZED, EXISTS, COUNTY COMMISSIONERS AUTHORIZED BY SECTION 9894 G. C. TO APPROPRIATE ANNUALLY TO SUCH INDEPENDENT AGRICULTURAL SOCIETY A SUM NOT EXCEEDING AMOUNT APPROPRIATED, AND IN ANY EVENT, NOT EXCEEDING TWO THOUSAND DOLLARS—APPROPRIATION NOT DEPENDENT ON SOCIETY OWNING OR HAVING CONTROL OF REAL ESTATE ON WHICH TO HOLD FAIRS—SECOND BRANCH OF SYLLABUS, OPINION 7186, O. A. G. 1944, PAGE 588, OVERRULED.

SYLLABUS:

In any county in which there is a duly organized county agricultural society, and also an independent agricultural society duly organized under Section 9880-1 of the General Code, the county commissioners are authorized by Section 9894 General Code, to appropriate annually to such independent agricultural society for the purpose of encouraging such society, such sum as the commissioners may determine, not exceeding the amount appropriated to such county society, and not exceeding in any event the sum of two thousand dollars, and such appropriation to such independent agricultural society is not dependent on said society owning or having control of real estate on which to hold fairs. (Second syllabus of Opinion No. 7186 rendered October 28, 1944, overruled.)

Columbus, Ohio, January 24, 1946

Hon. C. W. Chorpening, Prosecuting Attorney
Ashland, Ohio

Dear Sir:

I have before me your communication requesting my opinion and reading as follows:

“For over fifty years there has been held a street fair in the village of Loudonville. It is conducted by an independent agricultural society. Throughout the years the county commissioners have contributed money to it for the purpose of encouraging the same. Of course, Ashland county has a county agricultural society, and conducts its own fair at Ashland, Ohio.

Under opinion No. 7186, Volume 40, rendered November 6, 1944, the county commissioners cannot grant funds to encourage such independent agricultural society unless the society has complete control and management of the real estate and buildings and other structures wherein its fairs are held. Inasmuch as this is a street fair the society does not lease the ground, but it does have management and control of the temporary structures in which the exhibitions are made.

“If the county must comply with this opinion and now, after all these years, refuse to grant further funds, it will probably amount to the abandonment of the Loudonville street fair. It will create an ugly feeling of quite far reaching consequences. On account of the seriousness of the matter, I would appreciate it if you would re-examine this opinion, or so much of it as pertains to the second syllabus. I believe there can be no question as to the soundness of the first.

The statute involved is #9894. The statute does not in so many words require that the independent agricultural society own or lease any real estate and the statutes providing for the existence of such independent organization nowhere provide that they shall own or lease any real estate. Personally, I seriously question the contention that the legislature in the enactment of section 9894 intended to limit the county commissioners to appropriating for the encouraging of the independent society to situations only where the independent agricultural society has complete control and management of the real estate.

“The section itself provides that the county commissioners *shall* on the request of the county agricultural society, annually appropriate funds not to exceed \$2,000 and not less than \$1500. It becomes obligatory to appropriate this sum to the county agri-

cultural society where the real estate is owned or leased by the county or the agricultural society. To hold that they may not appropriate to an independent agricultural society merely because they do not control the real estate, hardly seems inferential from the language used in this section. I question whether section 9894 though read in conjunction with section 9887 requires such an interpretation."

Independent agricultural societies are provided for by Section 9880-1 et seq. of the General Code. These are in addition to and independent of the county agricultural societies organized under the provisions of Section 9880. With certain limitations both may be subsidized by appropriation of county funds. It is notable that the organizers of a county agricultural society must be residents of a certain county, whereas the independent societies may be organized by persons residents of one or more but not exceeding three contiguous counties.

Section 9887 General Code, authorizes the county commissioners 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 authorizes the erection by the county commissioners of suitable buildings or other improvements. That section further authorizes the county commissioners to erect buildings on land which has been purchased or leased by the county agricultural society and to appropriate up to \$10,000 for such purpose. In case the contemplated expenditure exceeds \$10,000, then the question of a levy of a tax therefor is to be submitted to the electors of the county. As to the independent societies, there is no provision such as that just mentioned as contained in Section 9887. We find, however, in Section 9894 General Code, the following provisions:

"When a county or duly organized county agricultural society owns or holds under a lease real estate used as a site whereon to hold fairs and the county agricultural society therein has the control and management of such lands and buildings, for the purpose of encouraging agricultural fairs, the county commissioners shall, on the request of the agricultural society, annually appropriate from the general fund not to exceed the sum of two thousand dollars or less than fifteen hundred dollars for such purposes, and in any county wherein is located one or more independent agricultural society or societies as provided for in section 9880-1 herein, the county commissioners of said county, for the purpose of encouraging such independent agricultural society or societies,

may appropriate, in addition to the sum appropriated for the county agricultural society, a sum not greater than the amount appropriated for the county society, and if there is no duly organized county agricultural society, or if there is no fair held by a duly organized county agricultural society in a county in which exists an independent agricultural society that has held an annual exposition for three years previous to January 1, 1933, the county commissioners shall, on the request of the independent agricultural society, annually appropriate from the general fund not to exceed two thousand dollars nor less than five hundred dollars for the purpose of encouraging such independent agricultural fairs.

The appropriation made for said agricultural society or societies shall be paid by the treasurer of the county to the treasurer of the county society or independent society or societies upon an order from the county auditor, duly issued therefor."

Here it will be noted that there is *first*, a provision whereby the county commissioners *are required* upon the request of the county agricultural society, to appropriate annually from the general fund not less than \$1500 nor more than \$2000 "for the purpose of encouraging agricultural fairs" and this mandatory requirement is conditioned upon either the county or the county agricultural society owning or holding under lease a site whereon to hold fairs.

The second provision of this section is that in any county wherein is located one or more independent agricultural societies as provided in Section 9880-1 the county commissioners "for the purpose of encouraging such independent society or societies" *may* appropriate, in addition to the sum appropriated for the county society, a sum not greater than the amount appropriated for the county society. It will be noted that this provision is not mandatory nor is there any minimum prescribed, but if the county commissioners see fit they may appropriate any sum not greater than the amount appropriated for the county society.

The third provision of this section is to the effect that if there is no county society or if there is such society and it has not held fairs for three years previous to January 1, 1933, then the county commissioners *are required*, on request of the independent society to appropriate annually not less than \$500 nor more than \$2,000 for the purpose of encouraging such independent agricultural fairs.

From your letter I understand that Ashland County does have a county agricultural society and that it does hold annual fairs. Accordingly,

the question you present relative to the right of the county commissioners to make an appropriation to the independent society falls within the second provision of the statute above quoted. It appears to me very clear that there is nothing in the language of Section 9894 supra, that makes it a condition of the power of the county commissioners to appropriate money "for the purpose of encouraging such independent agricultural society", that such society shall own or have a lease on the land on which they propose to hold their fairs. That condition the general assembly saw fit to impose in regard to the appropriation to be made to the county society because that appropriation is not at the option of the county commissioners but is compulsory, whereas the appropriation to the local society is purely voluntary on the part of the commissioners and if granted may be in as small an amount as they see fit to allow. There is no possible reason for reading into this provision for the grant to the independent society the condition which is imposed as to the appropriation to the county society.

It seems obvious to me that an agricultural fair of great interest and value to persons interested in agriculture might well be held on grounds or in buildings merely loaned for the purpose or, as in the case which you present, on and adjacent to streets of a municipality.

The second syllabus of the opinion to which you refer, to wit, Opinion No. 7186, rendered October 28, 1944 (1944 Opinions Attorney General, p. 588) reads as follows:

"A board of county commissioners cannot grant funds to an independent agricultural society under the provisions of Section 9894, General Code of Ohio, for 'encouraging such independent agricultural society', unless such society has complete control and management of the real estate and buildings, and other structures whereon and wherein its fairs are held."

That conclusion appears to have been predicated upon the theory that since the grant to a county society under said Section 9894, could only be made where such society owns or holds under lease the real estate whereon to hold fairs, that same condition must exist in case the county commissioners see fit to make the grant authorized by that section to an independent society. For the reasons which I have hereinabove pointed out, I cannot concur in that conclusion since neither the language of said Section 9894 nor any possible construction of it could in my judgment lead

to that conclusion. It appears to me that the two societies are dealt with from different standpoints and in an entirely different way. Accordingly, I feel obliged to overrule the second branch of said opinion No. 7186.

As bearing on the attitude of the state toward these independent agricultural societies, it is worth while to note that in addition to the appropriation authorized by Section 9894 supra, it is provided in Section 9880-1 General Code, that when an independent agricultural society has been organized and has held an annual exhibit for three years previous to January 1, 1919, and has made proper reports to the state department of agriculture, it may draw an order on the treasurer of the county for an amount sufficient to cover its premiums not exceeding the sum of \$800. Section 9880-2 General Code, makes the further provision for the payment by the county to such independent society of an amount not exceeding \$500 for the promotion of junior club work. These statutes were in existence before the enactment of said Section 9894 and there seems to be no inconsistency between them and therefore no reason why an independent society should not benefit under each of these provisions.

In conclusion, and in specific answer to your question it is my opinion that if the independent agricultural society mentioned in your letter has been duly organized and has complied with the provisions of Section 9880-1 supra, the county commissioners would be authorized to appropriate and grant to it annually such an amount as the commissioners see fit, pursuant to the provision of Section 9894 of the General Code, not exceeding the amount appropriated to the county agricultural society and in no case exceeding \$2,000.

Respectfully,

HUGH S. JENKINS

Attorney General.