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1. FARM, COUNTY EXPERIMENTAL—MONEYS IN BANK—USE OF OPERATIONS OF FARM — REGARDLESS OF SOURCE MONEYS SHALL BE COVERED INTO COUNTY TREASURY AND PLACED TO CREDIT OF COUNTY GENERAL FUND—SECTION 1177-8 G. C.
2. PROCEEDS OF SALE OF PRODUCE OR OTHER ARTICLES RAISED ON FARM—AFTER DATE OF DISESTABLISHMENT—DISPOSITION.
3. BOARD OF COUNTY COMMISSIONERS—AUTHORITY TO HIRE AUCTIONEER TO CRY AUCTION — COSTS PAID FROM PROCEEDS OF SALE.
4. COUNTY COMMISSIONERS HAVE AUTHORITY TO ENGAGE EMPLOYES TO OPERATE FARM UNTIL SALE IS MADE — PAY COSTS FROM PROCEEDS OF AUCTION SALE OR FROM MONEYS IN BANK ACCOUNT OF FARM OR FROM COUNTY GENERAL FUNDS.
5. COUNTY COMMISSIONERS SHOULD SELL FARM AT PUBLIC AUCTION AFTER STATE PARTICIPATION CEASES.
6. DISTRIBUTION OF NET PROCEEDS OF SALE—SHOULD BE CREDITED TO SCHOOL FUNDS OF COUNTY—SECTION 1177-9 G. C.—SCHOOL FUND SET UP IN SECTION 4847-18 G. C.

## SYLLABUS:

1. Under Section 1177-8, General Code, the moneys in the bank account of a county experimental farm for the use of the operations of said farm, regardless of source, "shall be covered into the county treasury and placed to the credit of the general fund of the county."
2. The proceeds of the sale of produce or other articles raised on said farm after the date of disestablishment should be disposed of in the same manner as provided in paragraph 1.
3. The board of county commissioners has authority to hire an auctioneer to cry the auction and to pay the costs for such services from the proceeds of the sale.
4. The county commissioners have authority to employ such person or persons as may be necessary to operate said farm until such time as a sale is made and to

pay the costs thereof either from the proceeds of the auction sale or from the moneys in the bank account of said farm, or from the general funds of the county.

5. The board of county commissioners should sell such farm at public auction after state participation ceases.

6. Distribution of the net proceeds of the sale should be credited to the school funds of the county pursuant to Section 1177-9, General Code. The school fund is that set up in Section 4847-18, General Code.

Columbus, Ohio, April 25, 1951

Hon. Ray Bradford, Prosecuting Attorney  
Clermont County, Batavia, Ohio

Dear Sir:

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

“The Board of County Commissioners of our county has been informed that our Clermont County Experimental Farm is to be discontinued.

“Under Section 1177-9 of the General Code of the State of Ohio it is stated in part that: ‘In case the experiment station shall cease to use for the purposes herein specified any county experiment farm established under this act, such farm and its equipment shall be sold at public auction to the highest bidder. \* \* \*

“Could you please clarify or give me an opinion on the following questions:

“1. What disposition shall be made of monies which may be in a bank account which were used for the operations of said farm?

“2. What shall be done with monies which were received from the sale of produce or other articles raised on said farm after September 30, the time at which the farm was to be discontinued?

“3. Does the Board of County Commissioners have the right to hire an auctioneer to cry the sale of said farm and its equipment?

“4. Can the costs of the sale of said farm and its equipment be chargeable against the proceeds of said sale of farm and equipment, or must these expenses be borne out of the county funds?

“5. Can the Commissioners hire a person or persons to operate said farm until such time that a sale is made of said farm and equipment?

“6. If a person or persons can be hired, shall these monies

be paid out of the county treasury or can it be charged against the assets of said farm?

"7. In what period of time must the farm be sold?

"8. Could you please define for me what 'school funds of the county' means, and in what proportion or proportions should the proceeds of the sale of said farm and equipment be divided and distributed to said school fund?

"I would appreciate your answers to the above questions in order that I may give a fuller understanding and explanation of Section 1177-9 of the General Code of the State of Ohio."

The statutes relating to the establishment, operation and disestablishment of county experimental farms are contained in Sections 1174 to 1177-9, both inclusive, of the General Code.

Since you are mainly interested in an interpretation of Section 1177-9, General Code, which provides for the action to be taken when a county experimental farm is no longer used for such a purpose, I shall confine my discussion to that section and refer to the other provisions only to the extent that they shed light upon and amplify Section 1177-9.

The statute obviously does not spell out in complete detail the exact steps that should be taken when "the experiment station shall cease to use \* \* \* any county experimental farm". This section reads as follows:

"In case the experiment station shall cease to use for the purposes herein specified any county experiment farm established under this act, such farm and its equipment shall be sold at public auction to the highest bidder after notice of such proposed sale shall have been published for four consecutive weeks in two newspapers of opposite politics, once a week, published in and having the largest circulation in the county within which the farm is located, and the proceeds of such sale shall be covered into the county treasury, the sums thus covered to be placed to the credit of the school funds of the county."

From a reading of this section, all that one can determine is that such a farm *shall* be sold at public auction to the highest bidder after due notice by publication, and that the funds shall be covered into the county treasury to the credit of the school funds of the county.

As far as I am able to determine, there are no court decisions construing this particular section, nor are there any opinions of prior Attorneys General directly in point. Thus, for a proper interpretation we must rely

upon other sections of the General Code and prior opinions relating to the general subject of county experimental farms.

Let me say now that it is my opinion that the disestablishment of the Clermont County Experimental Farm rests largely within the discretion and judgment of the board of county commissioners. It is primarily a county project, subject only to supervision from the Director of the Ohio Agricultural Experiment Station and the Board of Control. Attorney General's Opinion No. 83, for the year 1927, contains the following statement at page 120:

“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, dedicated to the use and welfare of 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.”

Although the Board of Control and the Director of the Ohio Agricultural Experiment Station play an active role in establishing and operating county experimental farms, this participation ceases when the farm is no longer used for experimental purposes.

Section 1177-3, General Code, states that the Board of Control shall assist in the selection and purchase of a farm, and other sections provide for Director and/or Board participation in the management and operation of these farms. In Opinion No. 729, Opinions of the Attorney General for 1915, page 1528, it is stated:

“When the farm is purchased and the initial equipment thereof so provided, then by force of Section 1177-5, supra, the management and control thereof devolves upon the director of the Ohio Agricultural Experiment Station, who is authorized to appoint all employees and to plan and execute the work to be carried on.”

No such provision for state participation is found in Section 1177-9, General Code, which provides for the disestablishment of the farms, nor does the practical need arise for such supervision from outside the county. All that remains to be done is the necessary liquidation and disposition of funds. This is properly a subject with which the county commissioners can deal in their discretion, subject to any statutory limitations.

Since there are no statutory provisions which spell out the procedure to be followed, we must resort to general statutory provisions providing for the sale of county lands. Section 2447, of the General Code, provides for the sale of county lands not needed for public use, if, in the opinion of the county commissioners, the interests of the county so require. And in Opinion No. 83, Opinions of the Attorney General for 1927, page 120, we find this language:

“Said sections (1174, 1177-9, General Code) empower the commissioners of a county to establish such a farm, enumerate the uses thereof, provide \* \* \* for the sale *by the county commissioners* of an unused experiment farm and the application of the proceeds thereof.” (Emphasis added.)

For these reasons, I conclude, therefore, that in general, the procedure to be followed in disestablishing a county experimental farm under Section 1177-9, General Code, may be determined by the board of county commissioners.

Now I will deal more specifically with the series of questions you have presented:

“1. What disposition shall be made of monies which may be in a bank account which were used for the operations of said farm?”

Such monies may be from two sources, i. e., appropriations from the county, up to \$2,000 annually, pursuant to Section 1177-4, or from profits from the sale of surplus farm products. Regardless of source, Section 1177-8, General Code, is the governing section concerning the disposition of this money. In substance, Section 1177-8 states that any surplus money beyond that necessary to pay for farm labor, supplies, materials, implements, livestock, stock feed and teams, for the construction of buildings, drains and fences required for the proper management of the farm, and for the maintenance of this equipment, “shall be covered into the county treasury and placed to the credit of the general fund of the county, \* \* \*”

Since this farm is being disposed of soon, the amount necessary to operate it will be small, and the surplus may be disposed of as Section 1177-8 indicates.

“2. What shall be done with monies which were received from the sale of produce or other articles raised on said farm

after September 30, the time at which the farm was to be discontinued?"

My answer to Question 1, covers this question.

"3. Does the Board of County Commissioners have the right to hire an auctioneer to cry the sale of said farm and its equipment?"

I answer this question in the affirmative.

Section 2447, General Code, provides for the sale of county lands generally, and Section 2447-1, General Code, stipulates the mode of procedure to be followed when county lands are sold. Those general provisions must be read in conjunction with Section 1177-9, General Code. From an examination of Section 2447 and Section 2447-1, it is easily seen that the board of county commissioners has wide discretion in such matters where the statutes do not provide otherwise. Both Sections 2447-1 and 1177-9 provide for the sale to the highest bidder. Section 1177-9 specifically provides for public auction. It is reasonable to infer that the legislature intended to allow the county commissioners power to hire an auctioneer to cry this public sale. Where the legislature has provided for an end, it is proper to conclude that it meant to allow the reasonable and necessary means to that end. In further support of this conclusion, I refer you to Section 2434, General Code, which allows the county commissioners to employ land appraisers "Whenever it is necessary for the board \* \* \* to determine the value of any real property owned by the county, or real property which said board proposes to acquire \* \* \*." I believe this somewhat analogous section indicates the legislative intent had the legislature seen fit to speak specifically on the matter.

"4. Can the costs of the sale of said farm and its equipment be chargeable against the proceeds of said sale of farm and equipment, or must these expenses be borne out of the county funds?"

Throughout the sections of the code relating to county experimental farms, runs the suggestion that these farms are to be self-sustaining economic units as far as possible. I believe it is implicit in these sections that upon disestablishment of an experimental farm the expenses incurred therein shall be charged first against the farm itself, either against the funds laid aside for its operations or from the proceeds of the auction sale. But, I do not say that this construction is mandatory. Rather, it is permissive. In specific answer to your question I do say, however, that

the sale expenses do not *have* to be borne out of other county funds, although they possibly may be so charged.

“5. Can the Commissioners hire a person or persons to operate said farm until such time that a sale is made of said farm and equipment?”

I answer this question in the affirmative. Again, good judgment must be used, and these sections must be read with a common sense view to the legislative intent in the matters of which the legislature did not specifically speak. After the State authorities relinquished control of this farm, it reverted wholly to the board of county commissioners. The foregoing discussion, especially with regard to the right to hire an auctioneer, applies equally well here and shows that the board of county commissioners has adequate authority to hire labor to maintain the farm until it is sold. The authority of boards of county commissioners, generally, would seem to indicate that this conclusion is correct and reasonable.

“6. If a person or persons can be hired, shall these monies be paid out of the county treasury or can it be charged against the assets of said farm?”

Again, the cost of labor may be charged first against the assets of the farm, since it was meant to be, as nearly as possible, a self-sustaining economic unit. However, I do not say that the other county funds could not be tapped for this purpose. You will recall Section 1177-4, General Code, provides for appropriation by county commissioners for wages for labor “employed in the management of such farms as may be *established* under this act.” (Emphasis added.) I conclude that this appropriation could continue until the farm is completely disestablished. Nevertheless, such an appropriation is part of the assets of the farm as much as the surplus mentioned in Section 1177-8. It is my considered opinion that money necessary to hire labor for the operation of the farm until it is completely disposed of, *can* be charged against the assets of the farm, and do not necessarily have to be paid out of the county treasury, although I do not say that they may *not* be so paid from the county treasury.

“7. In what period of time must the farm be sold?”

No time limit is suggested in the statute, and, as it is my province to construe the law and not to make it, I cannot answer this question specifically. In such a case, however, where the legislature has not spoken,

it would not be unreasonable for this problem of time to be resolved by the county commissioners in their discretion, governed by the perennial standard of a "reasonable time."

"8. Could you please define for me what 'school funds of the county' means, and in what proportion or proportions should the proceeds of the sale of said farm and equipment be divided and distributed to said school fund?"

The answer to this question is found in Section 4847-18, General Code, which provides for the apportionment of school funds by the county auditor :

"\* \* \* (A)nd all other money in the county treasury for the support of common schools and not otherwise appropriated by law shall be apportioned annually to the school districts and parts of districts in the county in proportion to their respective membership used as a basis for the distribution of state funds under the provisions of the school foundation program law."

Respectfully,

C. WILLIAM O'NEILL

Attorney General