

2468.

APPROVAL, BONDS OF VILLAGE OF IDLEWOOD, CUYAHOGA COUNTY, \$148,800.00.

COLUMBUS, OHIO, May 9, 1925.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.

2469.

APPROVAL, 1 OHIO CANAL LAND LEASE, AT MASSILLON, OHIO.

COLUMBUS, OHIO, May 9, 1925.

Department of Highways and Public Works, Division of Public Works, Columbus, Ohio.

GENTLEMEN:—I have your letter of May 7, 1925, in which you enclose the following lease, in triplicate, for my approval:

<i>Ohio Canal Land Lease</i>	<i>Valuation</i>
To Edwin H. Pille and Willard L. Bechtel, canal land at Massillon, Ohio, for general business building -----	\$5333.34

I have carefully examined said lease, find it correct in form and legal, and am therefore returning the same with my approval endorsed thereon.

Respectfully,

C. C. CRABBE,

Attorney General.

2470.

COUNTY FAIR SOCIETY—HOUSE BILL 193 (9880-2 G. C.) CONSTRUED.

SYLLABUS:

Under the provisions of section 9880-2, General Code, as enacted in house bill No. 193, of the Eighty-Sixth General Assembly, when as a matter of fact it definitely appears that a county or independent society receiving state aid has expended a definite and certain sum of money, not less than one hundred dollars, in the furtherance of carrying on junior club work in the county, it is the mandatory duty of the county commissioners to certify such fact to the county auditor.

COLUMBUS, OHIO, May 11, 1925.

HON. CHARLES V. TRUAX, *Director, Department of Agriculture, Columbus, Ohio.*

DEAR SIR:—Mr. G. R. Lewis, fair manager, has requested my opinion in reference to the provisions of section 9880-2 as enacted in the last session of the legislature. The inquiry presented is whether or not it is mandatory for the county

commissioners to certify to the county auditor that any fair organization has expended a certain sum of money within the year for junior club work?

The act to which you refer is known as House Bill No. 193 and was approved by the governor on April 6th, 1925, and it is assumed that it was filed in the office of the secretary of state on April 10th, 1925, and of course, will become effective ninety days thereafter unless a referendum should be instituted against it.

The section above mentioned supplements section 9880 of the General Code and provides:

“Upon the presentation of a certificate from the county commissioners certifying that any fair organization, either county or independent, that is then receiving state or county aid, has expended a definite and certain sum of money, such sum not being less than one hundred dollars, in the furtherance and carrying on of junior club work in the county, the county auditor annually shall draw an order on the treasurer of the county in favor of said fair organization for an amount equal to the amount so expended in junior club work, provided said amount does not exceed five hundred dollars, and in case such amount exceeds five hundred dollars, then such order shall be for the amount of five hundred dollars. The treasurer of the county shall pay said order upon presentation thereof.”

The sole question presented is whether it becomes the mandatory duty of the commissioners to certify that the county society has expended the funds therein mentioned for the purposes mentioned when as a matter of fact such society has done so.

In the case of *State ex rel. vs. Franklin County Agricultural Society*, 100 O. S. 522, a similar question was considered.

Section 9880, General Code, provides that the auditor shall draw certain warrants upon the presentation of a certificate from the president and secretary of the state board of agriculture that certain things have transpired with reference to the conducting of a fair.

In the case considered the court held that mandamus did not lie for the reason that it did not appear that all of the things had been done. The court said among other things that:

“Said officers are not required to make such certificate on the filing of such report, but only after the board and the officers have made the necessary investigation to ascertain whether the requirements of the sections referred to have been complied with in the particular instance.”

While the case does not expressly so hold it is inferable from said case that if all of the conditions had been properly complied with the court would have held that it was the duty of the officers to so certify.

In this connection reference is made to the cases of *State ex rel. vs. Baker*, 19035 and 19059, recently decided by the supreme court in connection with the duties of the director of finance under the provisions of section 2288-2 of the General Code. It was stated by the court, as evidence by a part of the third syllabus:

“In the event the money is in fact in the fund, it is the ministerial duty of the director of finance to make the required certificate and the discharge of this duty may be compelled by mandamus.”

In this connection it will be noted that nowhere in the statutes does it specifically state that the director of finance shall make a certificate when a request has been

made for the same. Of course, if it should appear that the commissioners in any sense have a discretionary power then, of course, it will follow that mandamus cannot control discretion, but it is believed that the commissioners while having certain duties that are discretionary, have other duties to perform which are of a ministerial nature. In the present case it would be absurd to hold that the commissioners could arbitrarily defeat the intention of the legislature, to aid such projects as the clubs which are referred to, by refusing to certify as to the existence of a certain fact.

Based upon the authorities hereinbefore cited, it is my opinion that when as a matter of fact it definitely appears that a county or independent society receiving state aid has expended a definite and certain sum of money, not less than one hundred dollars, in the furtherance of carrying on junior club work in the county, it is the mandatory duty of the county commissioners to certify such fact to the county auditor.

Respectfully,
C. C. CRABBE,
Attorney General.

2471.

EFFECTIVE DATE OF AMENDED SUBSTITUTE SENATE BILL NO. 94.

SYLLABUS:

The bureau should prepare forms under the provisions of Amended Substitute Senate Bill No. 94 for the use of the various budget making bodies, to be filed with the county auditor as soon as this act goes into effect, complying with the provisions of this act relating to preparation and hearings thereunder held after advertisement.

Such budgets should be prepared for the fiscal year beginning January 1, 1926.

COLUMBUS, OHIO, May 11, 1925.

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

GENTLEMEN:—I am in receipt of your communication as follows:

“We respectfully request you to furnish this department your written opinion upon the following questions:

“Amended Substitute Senate Bill No. 94 was passed notwithstanding the governor’s veto on April 17th and we assume will become effective ninety days thereafter. Section 3 of this act provides for the preparation of annual budgets by the various taxing authorities in the state in the form prescribed by this bureau. The act repeals the present law relating to the filing of budgets and the form thereof.

“Question 1: Should the bureau prepare forms under the provisions of this act for the use of the various budget making bodies for this year to be filed with the county auditor on or before July 20th, 1925?

“Question 2: Should the various budgets be prepared, hearing held thereon after advertisement, adopted and filed with the county auditor at the times specified in this act?