

3204.

APPROVAL, CONTRACTS FOR ROAD IMPROVEMENTS IN LUCAS AND  
FRANKLIN COUNTIES.

COLUMBUS, OHIO, May 4, 1931.

HON. O. W. MERRELL, *Director of Highways, Columbus, Ohio.*

3205.

COUNTY AGRICULTURAL SOCIETY—UNAUTHORIZED TO MORT-  
GAGE FAIR GROUNDS TO PAY PRE-EXISTING DEBTS WHEN  
TITLE TO SAID GROUNDS IN COUNTY.

SYLLABUS:

*Where the title to fair grounds is in the county, there is no authority for the county society to mortgage said premises for the purpose of paying pre-existing debts. Opinion of the Attorney General for 1923, page 70, considered and facts distinguished.*

COLUMBUS, OHIO, MAY 5, 1931.

HON. RUSSELL M. WILHELM, *Prosecuting Attorney, Marion, Ohio.*

DEAR SIR:—Acknowledgment is made of your recent communication which reads:

“Will you please furnish the writer with your opinion on the following situation:

STATEMENT OF FACTS

The Marion County Agricultural Society has incurred a considerable deficit over several years' operation which was brought about primarily by the building of a grand stand on the local fair ground. At the time this grand stand was built it was paid for by a bond issue with the understanding that all receipts from the grand stand should be used to pay off the bond issue. This was done and these bonds were paid off with the result that the lack of these receipts from the grand stand caused the society to incur each year an increasing deficit. In 1925 the Agricultural Society borrowed nine thousand dollars (\$9,000) which amount was reduced several years ago to seven thousand four hundred dollars (\$7,400). At that time they borrowed seven thousand four hundred dollars (\$7,400) from The Marion National Bank giving a note to the bank signed by the members of the Marion Agricultural Society individually for the payment of the same. This note at The Marion National Bank is now due and the members of the Agricultural Society are insisting that they be released from any further individual liability.

Title to the local fair ground property is held in fee by the Marion County Commissioners, but the Marion County Agricultural Society has control and management of the grounds. It is now the desire of the Agri-

cultural Society, which action meets with the approval of the County Commissioners, to mortgage the fair ground property in order to pay the note of seven thousand four hundred dollars (\$7,400) now due. It is their intention, if possible, to borrow the total sum of nine thousand dollars (\$9,000) which will pay this note and give them an additional sixteen hundred dollars (\$1,600) to meet certain other obligations now due.

#### QUESTIONS

1. Can this be legally done under General Code, Section 9908 in conjunction with General Code, Section 9885?

2. In the event that your answer to the first question is in the affirmative have the County Commissioners the power to execute the mortgage to the land when the fee is in the County and what is the proper procedure?"

In an opinion found in Opinions of the Attorney General for the year 1923, page 70, the question which you propound was under consideration. The syllabus of said opinion reads:

"Under the provisions of section 9908 of the General Code and other related sections a county society properly organized and in control of the management of its affairs and real estate used for fair purposes, the title of which is in the county, may legally borrow money for necessary repairs and improvements and execute a mortgage to secure the payment thereof when the consent of the county commissioners has been first duly entered upon their journal. Such encumbrances must not exceed fifty per cent. of the appraised value as provided for in section 9908."

The said opinion points out that when the county has advanced money for the purposes of acquiring property for the use of the Agricultural Society the same can not be disposed of or encumbered without the consent of the commissioners, irrespective of whether or not the title has been conveyed to the county. It is further pointed out in said opinion that:

" \* \* In all those cases in which the county has furnished money the law recognizes that both the county and the society have a joint interest and control."

In said opinion the then Attorney General points out that Section 9908, General Code, to which you refer, does not expressly say that an agricultural society may mortgage the premises when the fee to said premises is in the county but that it does appear that when the county commissioners have paid money for the purchase of real estate as a site for an agricultural society whereon to hold fairs, the society may mortgage such premises with the consent of the commissioners.

However, it will be noted that the conclusion of the 1923 opinion is based upon Section 9908, General Code, and facts entirely different from those which you present. In other words, the facts under consideration in the opinion mentioned, disclosed that money was being sought for the purpose of improving the grounds. Section 9908, General Code, expressly provides for the encumbrance "to pay the cost of necessary repairs and improvements." Under the facts you present, it would appear that the purpose of the contemplated mortgage is to acquire money to pay pre-existing debts. It follows that the only authority to mortgage

for the latter purpose is found in Section 9885, General Code, which relates to cases in which the title is in the society.

From what has been said it is clear that the facts in your case are entirely different from those under consideration in the 1923 opinion. A careful study of said opinion indicates that if the then Attorney General had been considering facts similar to those you present, the opposite conclusion in all probability would have been reached.

In view of the foregoing, it is my opinion that where the title to the grounds used by a county agricultural society is in the county, the society may not mortgage same either with or without the consent of the county commissioners for the purpose of paying pre-existing debts.

It is believed a more specific answer to your inquiry is unnecessary.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

3206.

APPROVAL, BONDS OF WEST LOVELAND RURAL NO. 7 SCHOOL DISTRICT, HAMILTON AND CLERMONT COUNTIES, OHIO—\$10,500.00.

COLUMBUS, OHIO, May 5, 1931.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

3207.

OFFICES COMPATIBLE—CITY BOARD OF HEALTH MEMBER AND LABORER IN SUCH CITY'S WATERWORKS DEPARTMENT.

*SYLLABUS:*

*A member of a municipal board of health may be employed by the city waterworks department as a laborer.*

COLUMBUS, OHIO, May 8, 1931.

HON. H. G. SOUTHARD, *Director of Health, Columbus, Ohio.*

DEAR SIR:—Your recent opinion request reads as follows:

“In the city of Mansfield there is a member of the Board of Health who has served in this capacity for several years. In the past few weeks he has been employed by the City Water Works Department as a laborer. The question has been raised that this man could not serve as a member of the Board of Health and also as an employe of the Water Works Department.