

OPINION 65-76**Syllabus:**

Funds appropriated by a board of county commissioners pursuant to Section 1711.15, Revised Code, for the payment of the indebtedness of an agricultural society cannot, by law, be expended for the payment of the accumulated monthly salary of its secretary, which item is a current operating expense rather than a pre-existing indebtedness.

To: Robert H. Huffer, Pickaway County Pros. Atty., Circleville, Ohio
By: William B. Saxbe, Attorney General, April 29, 1965

Your request for my opinion reads as follows:

"As Prosecuting Attorney of Pickaway County I request your informal opinion as to the following matter. Can a secretary of a duly organized agricultural society permit his salary to accumulate over a period of months and later submit a bill for the same requesting that it be paid from funds appropriated by the county commissioners under the section authorizing a maximum of \$20,000.00 to be appropriated to the agricultural society for improvements and past indebtedness? (O.R.C. 1711.15)"

Although you do not specify whether the agricultural society owns or leases real estate as a site on which to hold fairs, I must assume that it does since you refer to the appropriations by the board of county commissioners and Section 1711.15, Revised Code. See Opinion No. 5508, Opinions of the Attorney General for 1942.

Section 1711.15, Revised Code, provides in pertinent part:

"In counties in which there is a county agricultural society which has purchased, or leased, for a term of not less than twenty years, real estate as a site on which to hold fairs or in which the title to such site is vested in fee in the county, the board may erect or repair buildings or otherwise improve such site and pay the rental thereof, or contribute to or pay any other form of indebtedness of said society, if the director of agriculture has certified to the board that the county agriculture society is complying with all laws, rules, and regulations governing the operation of county agricultural societies. The board may appropriate from the general fund such an amount as it deems necessary for any of said purposes. If the amount appropriated to be expended in the purchase of such real estate or in the erection of buildings or other improvements or payments of rent or other forms of indebtedness of said society exceeds twenty thousand dollars in any one year, such expenditure shall not be made unless the question of a levy of the tax therefor is submitted to the qualified electors of the county at a general election, * * *"

(Emphasis added)

Section 1711.16, Revised Code, provides in pertinent part:

"When such appropriation is made by the board or when such tax is collected by the county treasurer, the county auditor shall place the proceeds in a special fund, designated the 'county agricultural society fund,'

indicating the purpose for which it is available, and on application of the treasurer of the society, said auditor shall issue his order for the amount of such appropriation or tax to said treasurer of the society, if the society has secured the certificate required under section 1711.05 of the Revised Code, on said treasurer's filing with said auditor a bond in double the amount collected, with good and sufficient sureties approved by said auditor, conditioned for the satisfactory paying over and accounting of such funds for the purposes for which they were provided. Said funds shall remain in the special fund in which they are placed by said auditor until they are applied for by the treasurer of the society and such bond is given, or until they are expended by the board for the purposes for which said fund was created. If such society ceases to exist or releases said fund as not required for the purposes for which the fund was created, the board may by resolution transfer said fund to the general fund of the county."

(Emphasis added)

In Opinion No. 1247, Opinions of the Attorney General for 1939, the then Attorney General had occasion to consider a similar question, and in the body of that opinion, it was stated, on page 1845:

"At the outset, it will be noted that the Legislature uses the term 'indebtedness' which necessarily means pre-existing indebtedness and not future indebtedness. The word 'indebtedness' means a sum of money now due or owing and not a sum which may become due in the future.

"The conclusion that such money may be used only in payment of pre-existing indebtedness was announced by a former Attorney General in the 1931 Opinions of the Attorney General, page 882. The first branch of the syllabus reads in part as follows:

"'County commissioners, may, within the limitations of Section 9887, General Code, appropriate money for the purpose of paying the pre-existing indebtedness of a county society, where said society holds a lease for not less than twenty years upon lands for the purpose of holding fairs.'

"Further answering your question, it appears that Section 9887, supra, contemplates the choice and designation by the county commissioners of the indebtedness which is to be paid. Whatever indebtedness the society may have would necessarily be definite and certain and when Section 9887, supra, provides for the payment of

'any other form of indebtedness', it would seem to contemplate a designation by the county commissioners of the indebtedness in the payment of which such money is to be used. Section 9887, *supra*, clearly does not contemplate that such money shall be used as an operating fund or for the purpose of paying premiums or other obligations arising in the future. However, it appears that the payment of such items could be made from the funds received by the society by virtue of Section 9894, General Code."
(Emphasis added)

The syllabus reads as follows:

"The funds appropriated by the county commissioners under the authority of Section 9887, General Code, may only be used for the purpose of paying pre-existing indebtedness of a county agricultural society and may not be used by the society as a general operating fund."

The holding of Opinion No. 1247, *supra*, was adhered to in Opinion No. 6546, Opinions of the Attorney General for 1956, beginning on page 356.

Giving effect to these two prior opinions in the light of the restrictions imposed by law upon the appropriation and actual expenditure of the funds appropriated, it is my opinion and you are hereby advised that:

Funds appropriated by a board of county commissioners pursuant to Section 1711.15, Revised Code, for the payment of the indebtedness of an agricultural society cannot, by law, be expended for the payment of the accumulated monthly salary of its secretary, which item is a current operating expense rather than a pre-existing indebtedness.