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1. AGRICULTURAL SOCIETY, COUNTY — OWNS REAL ESTATE USED AS SITE TO HOLD ANNUAL FAIRS OR EXHIBITS — IF SITE GREATER IN SIZE THAN REQUIREMENTS FOR NECESSARY USES OR NOT SUITABLE IN FORMATION OR CHARACTER, SOCIETY MAY SELL AND CONVEY A PORTION WITHOUT CONSENT OF COUNTY COMMISSIONERS TO SUCH SALE — IF COUNTY MAY HAVE CONTRIBUTED PART OR ALL OF COST OF ORIGINAL PURCHASE OF SUCH REAL ESTATE, NO CHANGE IN STATUS.
2. IF PROPERTY SOLD, PROCEEDS OF SALE MAY BE RETAINED BY SOCIETY — NO OBLIGATION TO PAY ANY PORTION OF FUNDS INTO COUNTY TREASURY.

SYLLABUS:

1. A county agricultural society which owns real estate used as a site whereon to hold annual fairs or exhibits may in case it finds such site to be greater in size than is necessary for the purposes and uses to which it is devoted or is not suitable in its formation or character, sell and convey a portion thereof without obtaining the consent of the county commissioners to such sale even though the county may have contributed part or all of the cost of the original purchase of such real estate so sold.

2. In the event of such sale the proceeds thereof may be retained by such society, and there is no obligation to pay the same or any portion thereof into the county treasury.

Columbus, Ohio December 12, 1944

Hon Richard E. Hole, Prosecuting Attorney
Greenville, Ohio

Dear Sir:

I have before me your request for my opinion, reading as follows:

“The Darke County Agricultural Society, organized under Section 9880 and cognate sections of the General Code of Ohio, approximately three years ago purchased additional acreage, contiguous to the Darke County Fair Grounds. The title to said real estate was taken in the name of the Agricul-

tural Society. The directors of the Society now desire to sell a portion of such recently acquired real estate, and several questions have arisen as to their power to sell and the action that should be taken by the Darke County Commissioners.

The original purchase price for the land acquired by the Society was \$6000. Shortly before the purchase, several horse barns burned at the Fair Grounds and the county had received \$800 in insurance. The Commissioners after this \$800 was paid into the county treasury, returned that amount together with \$4200 to the Agricultural Society to apply on the purchase price of this real estate and the Society itself put up \$1000.

Section 9900 of the General Code provides that in a case where the county has paid all or any portion of the purchase price that the written consent of the county commissioners must be obtained before the Society may sell all of the site of the Fair Grounds. Section 9900-1 of the General Code apparently applies to the situation which I have before me inasmuch as it pertains to selling or exchanging part of the Fair Grounds. I find nothing in said section which would require the written consent of the county commissioners before a part of the ground is sold.

Section 9902 of the General Code provides that if the whole site is sold before a new site is acquired, the money realized from the sale shall be applied on the purchase price of the new site and in the event bonds had been issued to purchase a site, money realized from the sale of the old site shall be placed to the credit of the sinking fund for the redemption of such bonds.

From these sections the following questions have arisen in the instant situation:

1. May the Agricultural Society sell a portion of its present site without any action of the county commissioners?
2. If such sale is made, should the proceeds thereof be paid to the county treasury or may the same be held by the Society?"

Sections 9880 to 9910, inclusive, General Code, relate to agricultural societies and support of the same by counties. These statutes give evidence of a policy beginning very early in the history of the state, to assist and encourage agriculture by way of providing grounds and buildings for holding fairs. There are provisions for the organization of county agricultural societies which, when organized by thirty or more persons resident of a county, are denominated corporate bodies, and by Section

9885 are given broad corporate powers. This section reads as follows:

“County societies which have been, or may hereafter be organized, are declared bodies corporate and politic, and as such, shall be capable of suing and being sued, and of holding in fee simple such real estate as they have heretofore purchased, or may hereafter purchase, as sites whereon to hold their fairs. They may mortgage the grounds of the society for the purpose of renewing or extending pre-existing debts, and for the purpose of furnishing money to purchase additional land. But if the county commissioners have paid money out of the county treasury to aid in the purchase of the site of such grounds, no mortgage shall be given without the consent of such commissioners.”

By the provisions of Section 9887, General Code, any county in which there is a duly organized county agricultural society is authorized through its board of county commissioners to purchase or lease real estate whereon to hold fairs under the management and control of such society, and to erect thereon suitable buildings and otherwise improve such real estate. It is further provided that whether the land is purchased or leased by the society itself or by the county, the county commissioners may erect buildings thereon or otherwise improve the site or pay the rental therefor or contribute to or pay any form of indebtedness of such society, and the commissioners are authorized to appropriate from the general fund “such an amount as they deem necessary for any of said purposes”. It is further provided in the same section that 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 shall exceed ten 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 and approved by the electors of the county.

Section 9894 General Code, further provides that the county commissioners shall appropriate annually from the general fund and contribute to such society, upon its request, not less than fifteen hundred dollars nor more than two thousand dollars for the purpose of encouraging agricultural fairs.

Section 9900 to which you call attention reads as follows:

“When a county society desires to sell its site in order to pur-

chase another, or if for any reason such site is unfit or insufficient for the purposes for which it is used, and at a regular meeting, by a vote of at least a majority of all the members of its board of directors, upon a call of the yeas and nays, it adopts a resolution for the purpose of securing the benefits hereof and declaring a desire to sell such site in order to buy another, or that the site has become unfit or insufficient, and that it is for the best interests of the society and county, that such site be sold or leased, and a new one bought or leased, the society may sell or lease such old site and buy or lease a new one for holding county fairs as hereinafter provided. But in cases where the county paid all or any portion of the purchase money for the site to be sold or leased, the written consent of the county commissioners shall first be given to such sale or lease. Within thirty days after its passage, such board of directors shall give notice in writing to the commissioners of such county of the adoption of such resolution declaring the necessity of selling or leasing such site and of buying or leasing a new site, which notice shall contain or have annexed thereto a certified copy of the resolution, signed by the president and secretary of the board of directors.”

This section, together with Sections 9901, 9902, 9903, 9904, 9905 and 9906, constituted Sections 3706, 3706a, 3706b and 3706c of the Revised Statutes, and these sections relate to the carrying out of the transaction contemplated by Section 9900. Section 9900-1 was passed some thirteen years later than the other sections just referred to, and notwithstanding its numerical position in the code, appears to deal with an entirely different situation. It will be observed that Section 9900 as well as its accompanying sections deal exclusively with the proposed sale or lease of its fair grounds for the purpose only of acquiring a new site and in such case it is provided that the board of directors of the society may sell or lease its site for that purpose by resolution expressly providing that a new one is to be acquired, and further that in cases where the county has paid all or any part of the purchase money for the site so to be sold or leased, the written consent of the county commissioners shall first be given to such sale or lease. Section 9900-1 General Code, provides:

“When the premises in the possession or under the control of an agricultural society and used by it as a site on which to hold annual exhibitions, is greater in size than is necessary for the purposes and uses to which it is devoted, or is not suitable in its formation or character, such society, or if the title thereof is in the county, the county commissioners, may sell any part thereof, or exchange any part thereof for other lands, so

as to reduce the size of such premises or site, or change the formation or character thereof.”

The section appears to be quite appropriate to the situation which you have before you.

Inasmuch as the legislature has by this later enactment given explicit authority for the sale of a portion of a site which, as stated in the statute, “is greater in size than is necessary for the purposes and uses to which it is devoted or is not suitable in its formation or character”, and has attached no condition to this authority looking to the consent of the county, even though the county may have furnished all or part of the purchase price, it appears to me that we must conclude that the legislature intended to give the society unrestricted authority to dispose of such property and to convey the same.

It was held by the Court of Appeals in the case of Licking County Agricultural Society vs. Commissioners, 48 O. App. 528, that a county agricultural society has authority under Section 9885, to convey by deed real property owned by it.

Coming to your second question, as to the disposition of the proceeds of such sale, I find no provision in the statutes that appears to contemplate that the proceeds of any such sale should be paid into the county treasury. In all of the statutes relating to a county agricultural society, the law seems to contemplate that it is an independent corporation having all the usual powers of a private corporation. Section 9884-2 General Code, provides for the election of a board of directors consisting of eight members, and Section 9884-3 General Code, provides for annual meetings and organization of the board by the election of a president, vice president, treasurer, secretary and such other officers as it may deem proper. The various statutes relating to contributions by the county commissioners provide for the payment of funds to the treasurer of the society.

The only provision which I note whereby the county becomes entitled to receive any of the property of such a society is that found in Section 9898, which provides:

“When a society is dissolved or ceases to exist, in a county where payments have been made for real estate, or improve-

ments thereon, or for the liquidation of indebtedness, for the use of such society, all such real estate and improvements shall vest in fee simple in the county by which the payments were made.”

It is accordingly my opinion in specific answer to your inquiries:

1. A county agricultural society which owns real estate used as a site whereon to hold annual fairs or exhibits may in case it finds such site to be greater in size than is necessary for the purposes and uses to which it is devoted or is not suitable in its formation or character, sell and convey a portion thereof without obtaining the consent of the county commissioners to such sale even though the county may have contributed part or all of the cost of the original purchase of such real estate so sold.

2. In the event of such sale the proceeds thereof may be retained by such society, and there is no obligation to pay the same or any portion thereof into the county treasury.

Respectfully,

THOMAS J. HERBERT

Attorney General