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ROADS ON FAIRGROUND SITE—COUNTY COMMISSIONERS
—UNDER NO DUTY TO PROVIDE FUNDS FOR CONSTRUCTION OR MAINTENANCE OF THE ROADS—COMMISSIONERS MAY CONTRACT WITH COUNTY AGRICULTURAL SOCIETY FOR FUNDS FOR THE PROJECT—COUNTY ENGINEER—MUST PREPARE PLANS AND SPECIFICATIONS—SECTIONS 315.08, 1711.16 RC.

SYLLABUS:

A board of county commissioners is under no duty to provide funds for the construction or maintenance of roads on a fairground site under the control of a county agricultural society but such board may provide funds for such purpose as provided in Section 1711.16, Revised Code, and where this is done the improvements involved should be made by contract by such society with the consent of such board after preparation of plans and specifications by the county engineer as provided by Section 315.08, Revised Code.

Columbus, Ohio, April 3, 1954

Hon. John Rossetti, Prosecuting Attorney
Stark County, Canton, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“Your opinion is requested on the following question which has been presented to us by the Stark County Commissioners and which involves a controversy between the Stark County Agricultural Society and the Stark County Engineer.

“Section 315.08, Revised Code, was amended by the legislature, effective October 2, 1953, to read that:

“The county engineer shall perform for the county all duties authorized or declared by law to be done by civil engineer or surveyor. He shall prepare all plans, specifications, details, estimates of costs and submit forms of contracts for construction, maintenance and repairs of all bridges, culverts, roads, drains, ditches, roads on county fairgrounds, and other public improvements, except buildings constructed under authority of any board within and for the county * * *’

“This statute had not before mentioned ‘roads on county fairgrounds’ and the agricultural society on advice from their State Manager’s Association now demands that our engineer at county expense prepare plans, specifications, details, estimates of costs, and submit forms of contract for the construction and repair of roads on county fairgrounds, and they are further requesting that at county expense he then proceed to furnish labor and material to do the work proposed in the plans, etc. The engineer maintains that he is merely required by this statute to make the plans, etc., but not to do the actual work and furnish the labor and material at county expense.

“Since we believe your office is in a more authoritative position to interpret the meaning of the wording in the statute and the intent of the legislature, we hereby request an opinion on this subject.”

The change in the statute pointed out in your inquiry was effected by the enactment of Amended Substitute House Bill No. 85, 100th General Assembly, becoming effective October 2, 1953. The scope of this bill did not extend beyond the amendment, to the extent already indicated, of Section 315.08 supra. The title of this bill is as follows:

“To amend section 315.08 of the Revised Code relative to including roads on county fairgrounds within the authorization and supervision of the county engineer for road construction, maintenance and repair.”

It seems quite clear to me that this enactment, standing alone, would be ineffective to require more than that the engineer is to prepare plans, etc., at county expense, “for the construction, maintenance and repair of * * * roads on county fairgrounds * * * constructed under the authority of any board within or for the county.” Although the title of Amended Substitute House Bill No. 85 refers to “supervision” by the engineer, neither the title nor the body of the enactment places any duty of this sort on such officer; and, of course, there is nothing in this act which would require the actual cost of construction, maintenance, etc., to be borne by the county.

It may well be that the society has in mind that road construction and repair work is to be carried on by force account under authority of the general statutory provisions as to roads under the control of the county authorities. The use of the force account method was the subject of my opinion No. 768, Opinions of the Attorney General for 1951, p. 504, the first paragraph of the syllabus in which is as follows:

“County commissioners themselves have no authority to carry on county road and bridge maintenance and repair by force account, and where such commissioners elect, under the provisions of Section 6948-1, General Code, that certain such work shall be undertaken by such method, they have no discretion but to commit the execution thereof to the county engineer under the provisions of Section 7198, et seq., General Code. (Opinion No. 2460, Opinions of the Attorney General for 1921, p. 895, approved and followed.)”

The statute there involved was Section 6948-1, General Code, since recodified as Section 5555.71, Revised Code. This section is one of general application, and both now and in the General Code it is found in the chapter on county road improvement. In the matter of improvements made on the grounds of county agricultural societies, however, we find special statutory provisions to be applicable. Thus, Section 1711.15, Revised Code, provides in 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 agricultural 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. * * *”

Section 1711.16, Revised Code, provides in part:

“When the control and management of a fairground is in a county agricultural society, and the board of county commissioners has appropriated an amount or levied a tax for the aid of such society as provided in section 1711.15 of the Revised Code, the society, with the consent of the board, may contract for the erection or repair of buildings or otherwise improve said site, to the extent that the payment for said improvement is provided by said board.”

It is thus to be seen that these special statutes permit, but do not require, the commissioners to supply funds, in limited amounts, for the construction, etc., of improvements on a county fairground site; and that when this is done the work is to be carried on only by contract executed by the society with the consent of the board.

It is well settled that a special statutory provision controls to the exclusion of a general provision which would otherwise comprehend the same subject matter. In the instant case, however, it does not readily appear that the general provision in Section 5555.71, Revised Code, would apply to road construction on the site of a county fairground even in the absence of the special provision above pointed out. This is true for the reason that roads on such sites can scarcely be regarded as coming within the general category of county roads, for an agricultural society, although for limited purposes deemed to be a "public institution designed for public instruction" (State ex rel. Leaverton v. Kerns, 104 Ohio St., 550), is essentially a corporate entity separate and distinct from the county in which it is located and is in no sense a branch of the county government. For this reason and because the special statutory provision relative to the use of county funds in the improvement of fairground sites appears to me to be exclusive of general county road improvement statutes, I conclude that in the instant case it will be necessary to proceed under the provisions of such special statutes.

Accordingly, in specific answer to your inquiry, it is my opinion that a board of county commissioners is under no duty to provide funds for the construction or maintenance of roads on a fairground site under the control of a county agricultural society but such board may provide funds for such purpose as provided in Section 1711.16, Revised Code, and where this is done the improvements involved should be made by contract by such society with the consent of such board after preparation of plans and specifications by the county engineer, as provided by Section 315.08, Revised Code.

Respectfully,

C. WILLIAM O'NEILL

Attorney General