

adoption is followed, and to this end it would be proper for you to make the discharge contingent upon the institution and culmination of the formal adoption proceedings. It is perhaps unnecessary for me to set forth herein the various methods by which adoption may be accomplished, since the statutes, commencing at Section 8024, of the General Code, set forth in detail the procedure to be followed.

I do desire, however, to call your attention to the fact that by the provisions of Section 8025, of the General Code, sub-paragraph (e) consent to the adoption of a child may be given by his next friend appointed as provided in Section 8024-1, of the Code, in the event that the parents are dead or their residence unknown and there is no legal guardian of the person of the child. This particular portion of the section would be applicable in the event that the child which it is desired to have adopted from the home is an orphan. Under the authority of Section 8024-1, General Code, the Probate Court may designate any institution or agency approved by the State Board of Charities to act as next friend and give consent. Since it is my understanding that your institution has received the approval of the State Board of Charities it would be proper for the Probate Court to appoint your institution to make the necessary investigation to determine whether or not the proposed foster parents and their home are suitable for the child. By this method you would have contact with the proceedings so as to enable you to see that everything is properly done for the welfare of the child.

Of course if there are living parents, the provisions of Section 8025 of the Code require that their consent to such adoption proceedings be first had. It is unnecessary to detail all of the remaining steps incident to adoption, since as I have before stated they are adequately set forth in the sections to which reference has been given.

I am accordingly of the opinion that the Board of Trustees of the Ohio Soldiers' and Sailors' Orphans' Home has the authority, under the provisions of Section 1933, of the General Code, and other related sections, to discharge a child admitted thereto for the purpose of permitting such child to be adopted, if in the judgment and discretion of said board, such action is for the benefit of the child.

Respectfully,

GILBERT BETTMAN,
Attorney General.

3377.

COUNTY COMMISSIONERS — CIRCUMSTANCES UNDER WHICH MONEY MAY OR MAY NOT BE APPROPRIATED FOR PAYMENT OF INDEBTEDNESS OF COUNTY AGRICULTURAL SOCIETY ON ITS LEASED REALTY—RIGHT OF COUNTY TO SUCCEED TO REMAINDER OF LEASE AFTER PAYMENT OF INDEBTEDNESS, DISCUSSED.

SYLLABUS:

1. *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. The fact that an annual exhibition is not held is not necessarily determinative of its right to exercise such power.*

2. *Where it is the purpose of a county society to cease holding fairs, the*

county commissioners are without power to appropriate money under Section 9887, General Code.

3. The statutes contain no provision to the effect that the county automatically becomes vested of the rights of a society in a lease by reason of paying its indebtedness when the society has ceased to function. However, it is believed that such a situation could be created by an agreement between the lessor and the society.

COLUMBUS, OHIO, June 30, 1931.

HON. C. LUTHER SWAIM, *Prosecuting Attorney, Wilmington, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion, which reads as follows:

"At the request of the County Commissioners of Clinton County, the Opinion of the Attorney General is respectfully requested upon the following questions:

1. May the County Commissioners lawfully appropriate and expend money for the payments of such indebtedness as interest on money borrowed, insurance and taxes during a year in which a duly organized County Agricultural Society, holding real estate for a term of twenty years by lease, does not hold a fair?

The above question specifically refers to the Agricultural Society of this county which had money borrowed from the Citizens National Bank of Wilmington, which is now in process of liquidation, and owing to the economic situation in this county due to the drought and the depression, it is possible that the Fair Board may decide not to hold a fair during the year 1931. The question, therefore, arises, may the Commissioners in the preliminary budget of July, 1931, appropriate money to pay the interest on the money borrowed, taxes, etc., and pay the same to the Fair Board or for them during the year 1932? Of course, the Fair Society would have no certificate from the State Director of Agriculture as to the holding of the Fair in such a case as no Fair would have been held during the year 1931.

2. The second inquiry is as to the right of the County Commissioners to pay off the indebtedness of a County Agricultural Society holding land by lease for twenty years after the society had ceased to hold fairs, although still legally existing as a society.

This case arises through the fact that the County Agricultural Society may decide to abandon its Fairs entirely owing to the necessity of liquidating its indebtedness to the Citizens National Bank at Wilmington, which is now in the process of liquidation. The question, therefore, arises under G. C. Section 9887, and following sections, as to the right of the County Commissioners to appropriate and expend money for the purpose of liquidation of such indebtedness when no Fair has been held and will not be held, although the Society itself still exists.

3. In case the County pays off such indebtedness, does the County become entitled to the remainder of the twenty year lease of the Agricultural Society, as the society itself does not own the land in freehold?"

Section 9887, General Code, to which you refer, reads in part:

"* * In counties wherein there is a county agricultural society which has purchased, or leased real estate for a term of not less than twenty

years, a site whereon to hold fairs are where the title to such site is vested in fee in the county, the county commissioners, if they think it is for the best interests of the county, and society, 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. The commissioners are authorized to appropriate from the general fund such an amount as they deem necessary for any of said purposes. Provided, however, 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 the qualified electors of the county at some general election, a notice of which, specifying the amount to be levied, has been given at least thirty days previous to such election, in one or more newspapers published and of general circulation in the county. * *

The above section expressly provides that the commissoiners may, subject to the limitations therein contained, pay any form of indebtedness of the county society when it owns or has leased land for not less than twenty years, as a site whereon to hold fairs. Nowhere in the section is the condition made that such fairs must be held annually. It is true that under Section 9880, General Code, the \$800.00 payments made to such a society as required by said section are contingent upon said society having held an annual exhibition. However, the expenditures to which you refer are not governed by the provisions of said section.

Section 9884, General Code, provides:

“County societies shall publish annually an abstract of the treasurer’s account, in a newspaper of the county, and make a report of their proceedings during the year. Also make a synopsis of the awards for improvement in agriculture and household manufactures which shall be made in accordance with the rules and regulations of the state board of agriculture, and be forwarded to the secretary of agriculture on or before the first Thursday after the second Monday in January of each year. No subsequent payment shall be made from the county treasury unless a certificate be presented to the county auditor, from the secretary of agriculture showing that such reports have been made.”

It would seem apparent that Section 9884, *supra*, does not apply so as to limit the power granted in Section 9887, General Code, but rather has reference to payments made under Section 9880, *supra*. If there can be said to be a conflict between the two sections, it will be noted that Section 9887 is the later in order of legislative enactment. In any event, your question has reference to the holding of future fairs, and apparently a fair was held in 1930. It therefore is my opinion, in answer to the first question presented by you, that the county commissioners may, under the circumstances described, appropriate money to aid in the payment of pre-existing debts so long as the society has not abandoned the intention of holding fairs.

Coming now to your second question, it must be kept in mind that the purpose of such contributions of the county is to promote the development of agriculture through the medium of fairs. If it is the intention of the society to cease holding fairs, it will be difficult to see how the interests of the county could be furthered by such a payment. Of course an entirely different situation would exist where, due to unusual conditions, the holding of a fair had been temporarily

suspended. However, where the purpose of the society is to cease functioning in connection with the holding of fairs, it is my opinion that the county commissioners are without power to liquidate the debts of the society.

In answering your third inquiry, your attention is directed to section 9898, General Code, which reads:

"When a society is dissolved or ceases to exist, in a county where payments have been made for real estate, or improvements 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."

This section apparently has application in those cases only in which the fee is in the society. Where the society holds the site by lease only, there appears to be no justification for saying that the lease vests in the county for the remainder of the period. A court of equity might, under such circumstances, decree that the rights of the county could be protected, but the statutes contain no such provision. It is apparent, of course, that a situation might arise wherein the obligation of paying the rentals would more than offset the advantage of having possession of the land. It is obvious that a burden of this nature could not be saddled upon the county.

In specific answer to your questions, in the order named, it is my opinion that:

First, 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. The fact that an annual exhibition is not held is not necessarily determinative of its right to exercise such power.

Second, where it is the purpose of a county society to cease holding fairs, the county commissioners are without power to appropriate money under Section 9887, General Code.

Third, the statutes contain no provision to the effect that the county automatically becomes vested of the rights of a society in a lease by reason of paying its indebtedness when the society has ceased to function.

Respectfully,

GILBERT BETTMAN,
Attorney General.

3378.

APPROVAL, LEASE FOR RIGHT TO TAKE WATER FROM OHIO CANAL,
SOUTH OF SUMMIT LAKE, OHIO—THE COLONIAL SALT
COMPANY.

COLUMBUS, OHIO, June 30, 1931.

HON. A. T. CONNAR, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your recent communication submitting for my examination and approval a certain water lease in triplicate executed by the state of Ohio through you as superintendent of public works and as director of said department, by which there is given and granted to The Colonial Salt Company of Akron, Ohio, a corporation organized and doing business in this state, the right to insert into the Summit Level of the Ohio Canal, opposite the plant of said company, south of Summit Lake, Ohio, a 24-inch horizontal