

82.

APPROVAL, BONDS OF VILLAGE OF HUBBARD, TRUMBULL COUNTY,
\$11,219.39.

COLUMBUS, OHIO, February 14, 1927.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.

83.

COUNTY COMMISSIONERS HAVE POWER TO LEASE COUNTY AGRICULTURAL EXPERIMENT FARM FOR OIL AND GAS PURPOSES—
FUNDS DERIVED SHALL BE USED FOR COUNTY PURPOSES.

SYLLABUS:

1. *In any county wherein a county agricultural experiment farm has been established under provisions of Sections 1174 to 1177-9, both inclusive, of the General Code, the board of county commissioners of said county, in whom the title to all of the property belonging to the county is vested, by virtue of Section 2486, General Code, has the power to lease said farm for oil and gas purposes, when, in its opinion, the county would be benefited thereby. This power is exclusively in the county commissioners.*

2. *Any funds derived from such lease shall be held and used for county purposes and may be expended for any lawful purpose that the county commissioners determine and direct, including any of those specified in General Code Section 1174-4.*

COLUMBUS, OHIO, February 15, 1927.

HON. VERNER E. METCALF, *Prosecuting Attorney, Marietta, Ohio.*

DEAR SIR:—I am in receipt of your letter of January 28, 1927, wherein you state that the board of county commissioners of Washington county, by provisions of Section 1174, et seq., of the General Code, established a county agricultural experiment farm. Said farm is now being used and operated for experimental purposes as provided by law and the board of county commissioners now desire to lease this farm for oil and gas purposes. You inquire:

1. Has the board of county commissioners of Washington county authority to lease this farm for oil and gas purposes?

2. If they do not have this authority in their own right may the director of the Ohio Agricultural Experiment Station, working in conjunction with the board of county commissioners, lease said farm for oil and gas purposes?

3. If it be legal to lease said farm for oil and gas purposes, may a portion of the rental and royalty be paid to the fund of the experiment farm for operating and maintaining the farm in lieu of being paid into the general fund of the county?

The so-called County Agricultural Experiment Farm Law is found in Sections 1174 to 1177-9, General Code.

Said sections empower the commissioners of a county to establish such a farm, enumerate the uses thereof, provide for the submission of a question to establish such a farm to the voters of the county, authorize the county commissioners, in the event of a favorable vote, to levy a tax for such purposes, provide for the selection and purchase of the farm, for the purchase of equipment and appropriation by the county commissioners therefor, for the management of said farm, how plans of work contemplated shall be submitted, for an assignment of a portion of such farm to the board of control, for the sale of surplus produce and the application of the proceeds thereof and for the sale by the county commissioners of an unused experiment farm and the application of the proceeds thereof.

The purpose of establishing such county experiment farms is to demonstrate the practical application, under local conditions, of the results of the investigations of the Ohio Agricultural Experiment Station and to increase the effectiveness of the agriculture in the various counties of the state.

Section 1175 of the General Code provides:

“The county experiment farms established under this act shall be used for the comparison of varieties and methods of culture of field crops, fruits and garden vegetables; for the exemplification of methods for controlling insect pests, weeds and plant diseases; for experiments in the feeding of domestic animals and in the control of animal diseases; for illustrations of the culture of forest trees and the management of farm woodlots; and for the demonstration of the effects of drainage, crop rotation, manures and fertilizers, or for such part of the above lines of work as it may be practicable to carry on.”

Established by the affirmative vote of a majority of the electors of a county, purchased with funds derived from a tax levy on all taxable property within such county, the farm itself being situated within said county, dedicated to the use and welfare of said county, and, if abandoned and sold, the proceeds of such sale reverting to the county treasury, there is no question but that said county experiment farm belongs to the county in which it is situate.

The board of county commissioners is the body—the quasi corporation—in whom is vested by law the title to all the property of the county. In one sense they are the agents of the county, and in another sense they are the county itself. It is in this latter sense that they acquire, and hold in perpetuity, the title to its property. In this capacity they not only act for the county, but also act as the county.

Section 2486, General Code, provides:

“When, in their opinion, the county would be benefited thereby, the commissioners may make, execute and deliver contracts or leases to mine iron ore, stone, coal, petroleum, salt, and other minerals, upon lands owned by such county, to any person, association or corporation, who may comply with the terms prescribed by the commissioners as to consideration, rights of way, occupancy of ground for necessary purposes, and all other matters of contract shall be such as the commissioners deem most advantageous to the county. Such contracts or leases shall be forfeited to the county for non-compliance with any of the terms therein set forth, and shall not operate as a conveyance of the fee of any part of the realty, or be valid for a longer term than fifteen years from date thereof. The consideration of such contract and leases shall be a rental, payable at least once in each year to the treasurer of the county, who shall give a receipt therefor, and be charged therewith by the county auditor, with whom such receipts, contracts and leases shall be de-

posited. The fund created by such payments shall be held and used for county purposes."

Upon examination of Section 1175, supra, it will be seen that a lease of a county experiment farm for oil and gas purposes would not necessarily be inconsistent with the use of such a farm for the purposes set forth in such section, and a lease could be drawn so as to protect the use of said farm for the purpose for which it was acquired.

For the reasons stated, I conclude, therefore, that in any county wherein a county agricultural experiment farm has been established under provisions of Sections 1174 to 1177-9, both inclusive, of the General Code, the board of county commissioners of said county in whom the title to all the property belonging to the county is vested, have the exclusive power, to lease said farm for oil and gas purposes, when, in their opinion, the county would be benefited thereby.

The answer to your first question answers your second inquiry.

In answer to your third question, Section 2486, General Code, provides that "the fund created by any payments or contracts or leases of mineral lands shall be held and used for county purposes."

If any fund be so created it belongs to the county, to be expended by the county, for any lawful county purpose. The purpose must be determined by those officers who represent the county and who are authorized to act for it. That authority is the board of county commissioners. It is the duty of this board to determine and direct into which fund this money shall be placed and if the county commissioners so determine and direct, such funds may be appropriated as provided in Section 1174-4, General Code, which reads in part as follows :

"The county commissioners shall appropriate for the payment of the wages of laborers employed in the management of such farms as may be established under this act, and for the purchase of supplies, materials, implements, live stock, stock feed and teams, and for the construction of buildings, drains and fences, necessary to the proper conduct of such farms, such sums not exceeding two thousand dollars annually for any farm, as may be agreed upon between such county commissioners and the board of control."

It is my opinion, therefore, that any funds derived from such lease shall be held and used for county purposes and may be expended for any lawful purpose that the county commissioners may determine and direct, including any of those specified in General Code Section 1174-4.

Respectfully,
EDWARD C. TURNER,
Attorney General.