

purposes, now constitutes a village school district, and has been a village school district since 1911.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1361.

COUNTY AGRICULTURAL SOCIETY—HAVING INDEBTEDNESS OF \$15,000 OR MORE RESULTING FROM PURCHASING GROUNDS AND CONDUCTING FAIRS SEVERAL YEARS AGO—HOW COUNTY COMMISSIONERS MAY PAY SUCH INDEBTEDNESS.

SYLLABUS:

Where a county agricultural society has purchased a site whereon to hold fairs and in the purchase of said grounds and in the conduct of fairs has incurred an indebtedness of \$15,000.00 or more, which is due and out-standing, the county commissioners of the county may provide for the payment of such indebtedness out of the proceeds of a special tax levy authorized by the electors of the county under the provisions of Section 9887, General Code, or out of the proceeds of bonds issued on the approval of the electors of the county as provided in Sections 9888, et seq., General Code. The county commissioners may provide for the payment of such indebtedness in the manner above stated, although such county agricultural society no longer owns the fair grounds and has not conducted any fairs in the county for several years.

COLUMBUS, OHIO, January 3, 1930.

HON. MARCUS C. DOWNING, *Prosecuting Attorney, Findlay, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your recent communication which reads as follows:

“Please submit your written opinion on the following set of facts:

The Hancock County Agricultural Society, an association organized under the laws of this state, on the 11th day of June, 1890, sold a tract of land in this county used for the purpose of holding fairs and with the proceeds paid one half of the purchase price for another tract which was better situate, and the Hancock County commissioners, by proper proceedings, paid the remaining one-half of the purchase price of this tract and on the 6th day of July, 1891, the title was vested in The Hancock County Agricultural Society and the Hancock County Commissioners as joint owners or tenants in common.

In order that this tract of land might be made suitable for fair purposes, it was necessary to construct a race track, grand stand, horse and cattle barns and other necessary buildings and improvements. All of these improvements were made with the consent of the Hancock County commissioners and in so doing this association expended a large sum of money.

In order that the association might meet these obligations and pay the losses which have accrued over a period of twenty (20) years, it was necessary for them to borrow money which they did and the members of the fair board signed the notes individually as surety, and due to this procedure there now exists an indebtedness of \$18,184.97. This tract of land was used for fair purposes up until a period of six (6) or seven (7) years ago, at which time

this Agricultural Society abandoned the premises for fair purposes and all the buildings thereon were dismantled. It has been leased ever since for grazing purposes and the rental therefrom has been paid to The Agricultural Society.

A certain bank of this city held a mortgage on this tract for approximately \$2300.00 to secure the payment of some of these notes which were signed by the fair board. The mortgage was foreclosed and these premises were sold at public sale and out of the proceeds the mortgage was paid first and the county commissioners and Agricultural Society shared equally in the balance of the fund.

All the money received by The Agricultural Society was paid to the bank and credit on the notes was given accordingly.

The members of The Agricultural Society were elected according to law. The election was advertised thirty days in the county paper and anyone in the county who purchased four tickets was eligible to vote.

The members of the fair board had no personal interest in the fair and these fairs were held solely for the benefit of the county and if there had been a profit the county would have been entitled to it. This association is still a live organization and holds annual meetings.

No fairs have been held in this county for a period of six or seven years and the question of law upon which I wish your opinion under the above stated facts is whether or not the commissioners of this county under Section No. 9887 of the General Code of Ohio, may pay any or all of the indebtedness of this society. The commissioners are willing to pay this indebtedness if they may do it legally. I advised them that they could not legally pay this indebtedness under this section for the reason that this section is applicable to fair boards who are holding current fairs and if there is a loss suffered during the current year then the county commissioners may pay this deficit. I have been advised that it was the intention of the Legislature at the time this statute was passed to grant the commissioners authority to pay fair board indebtedness, but I do not think it is broad enough to cover the situation that exists in our county. Please render your opinion at your earliest convenience."

The question presented in your communication is whether the county commissioners of Hancock County may provide for the payment of the outstanding indebtedness of the county Agricultural Society of said county, which Society has not conducted any fairs for six or seven years, and which does not own or hold under lease any ground for fair purposes, and it further appearing that the county does not own or hold any such grounds.

In the consideration of the question here presented, an outstanding legal principle that we have to reckon with is that with respect to the financial affairs of a county, the county commissioners have only such authority as is given to them by statute, and that such authority can not be extended by implication beyond the terms of the statute conferring such authority.

This proposition is stated in the opinion of the Supreme Court in *State, ex rel., vs. Manning*, 95 O. S. 87, 99, as follows:

"The legal principle is settled in this state that county commissioners, in their financial transactions, are invested only with limited powers, and that they represent the county only in such transactions as they may be expressly authorized so to do by statute. The authority to act in financial transactions must be clear and distinctly granted, and, if such authority is of doubtful import, the doubt is resolved against its exercise in all cases where a financial obligation is sought to be imposed upon the county."

The legal principle above stated was likewise noted and applied by the Supreme Court in its decision and opinion in the case of *Jones, Auditor, vs. Commissioners*, 57 O. S. 189.

The statutory provisions relating to the organization, powers and duties of county and other local agricultural societies, have been carried into the General Code as Sections 9880 to 9910, inclusive, and Section 9885, General Code, provides that county agricultural societies which have been, or may hereinafter be organized in the manner provided by Section 9880, General Code, shall have the status of bodies corporate and politic, and, that as such they shall be capable of suing and being sued, and of holding in fee simple such real estate as they may purchase as sites whereon to hold county fairs. However, the only sections of the General Code that are in any way applicable to the question at hand, are Sections 9887, as amended, 112 O. L. 84, 9888 and other related sections which are hereinafter quoted or referred to. Sections 9887 and 9888, General Code, are as follows:

Sec. 9887.

"In any county in which there is a duly organized county agricultural society, the board of county commissioners is authorized to purchase or lease, for a term of not less than twenty years, real estate whereon to hold fairs under the management and control of the county agricultural society, and may erect thereon suitable buildings and otherwise improve the same.

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 or where the title to such site is vested in fee in the county, the county commissioners, if they think it is for the best interest 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 county commissioners shall pass a resolution authorizing the submission of the question to the electors and certify their action to the board of deputy state supervisors of elections of the county who shall prepare and furnish the necessary ballots and other supplies. The form of the ballots cast at such election shall be:

'Agricultural tax—Yes.'

'Agricultural tax—No.'

If a majority of the vote cast be in favor of such tax, it may be levied and collected as other taxes."

Sec. 9888. "In counties wherein there is a county agricultural society which has purchased a site whereon to hold fairs, or if the title to such grounds is vested in fee in the county, and such society is indebted fifteen thousand dollars or more, upon the presentation of a petition signed by not less than five hundred resident electors of the county praying for the submission to the electors of the county of the question whether or not county bonds shall be issued and sold to liquidate such indebtedness, such commissioners,

within ten days thereafter by resolution shall fix a date which shall be within thirty days, upon which the question of issuing and selling such bonds, in amount and denomination such as are necessary for the purpose in view, shall be submitted to the electors of the county. They also shall cause a copy of such resolution to be certified to the deputy state supervisors of elections of the county, who, within ten days thereafter shall proceed to prepare the ballots and make all other necessary arrangements for the submission of such question to such electors at the time fixed by the resolution."

Looking to the provisions of Section 9887, General Code, above quoted, it is clear that in some cases the county commissioners may contribute to or pay the outstanding indebtedness of a county agricultural society. Under the terms of the statute this may be done "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 or where the title to such site is vested in fee in the county." In such cases the county commissioners, if they think it is for the best interest of the county, may erect or repair buildings or otherwise improve such ground, pay the rental thereof, if the same be held under lease, "or contribute to or pay any other form of indebtedness of said society."

Likewise, under the provisions of Section 9888, General Code, the county commissioners of a county are authorized to pay the indebtedness of a county agricultural society out of the proceeds of a county bond issue where "there is a county agricultural society which has purchased a site whereon to hold fairs * * * and such society is indebted fifteen thousand dollars or more." It is thus seen that the situation of fact relating to the Hancock County Agricultural Society is such as to bring it within the terms of both Sections 9887 and 9888, General Code. That is, it is a county agricultural society "which has purchased a site whereon to hold fairs," and it has an indebtedness incurred in acquiring a site for and holding fairs in said county. And although the question is one not free from doubt, I am constrained to the view that the county commissioners of Hancock County may provide for the payment of the indebtedness of the Hancock County Agricultural Society by proceeding under the provisions either of Section 9887 or of Section 9888, General Code.

Inasmuch as said indebtedness exceeds both the sum of ten thousand dollars mentioned in Section 9887, General Code, and the sum of fifteen thousand dollars mentioned in Section 9888, General Code, said county commissioners, in my opinion, are authorized to pay said indebtedness only out of the proceeds of a tax levy voted by the electors of the county in the manner provided by Section 9887, General Code, or out of the proceeds of bonds issued by the county commissioners on the vote of the electors of the county as provided in Section 9888, General Code.

Respectfully,

GILBERT BETTMAN,
Attorney General.