

744.

COUNTY COMMISSIONERS—DUTIES RELATIVE TO APPROPRIATING  
FOR COUNTY AGRICULTURAL SOCIETY.

## SYLLABUS:

*In so far as the funds in the county treasury will permit, having due regard for other expenditures made mandatory by statute, under the provisions of Section 9894, General Code, for the purpose of encouraging agricultural fairs, upon the request of any county or duly organized county agricultural society in such county which the society owns, or holds under a lease, real estate used as a site whereon to hold fairs and has control and management of such lands and buildings, it is the duty of the county commissioners annually to appropriate from the general fund not to exceed two thousand dollars or less than fifteen hundred dollars to such county agricultural society for such purpose.*

COLUMBUS, OHIO, July 19, 1927.

HON. EUGENE S. OWEN, *Prosecuting Attorney, Delaware, Ohio.*

DEAR SIR:—This will acknowledge receipt of your letter of recent date which reads as follows:

“In Delaware County we have an organized County Agricultural Society and recognized as such by the State. They have been operating for quite a number of years, but have no lease for 20 years or more, as required by Section 9887 of the General Code of Ohio.

The question is, is this Agricultural Society entitled to the money provided for under the provisions of Section 9874 of the General Code; or are the County Commissioners obliged, or are they authorized, to appropriate from the general fund not to exceed the sum of \$2000.00 or less than \$1500.00 for the purpose of encouraging Agricultural Fairs, for the benefit of this particular, or any other Agricultural Society, under the same conditions, to wit, not holding a lease for 20 years or more? Or would the fact that they have been operating for a number of years under a short term lease, give the society any right to the appropriation mentioned in Section 9874, General Code?

You will notice that the sections mentioned are changed somewhat by the last session of the Legislature.

I have been advising the County Commissioners that the Society must hold a lease for a term of at least 20 years before it is entitled to the money. Am I right?”

The method of organizing and the powers and duties of county agricultural societies are set out in Sections 9880 to 9910 of the General Code, both inclusive.

The 87th General Assembly, by an act passed March 10, 1927 (House Bill No. 83), and which became effective June 27, 1927, amended Section 9887, General Code, and enacted Section 9894, General Code.

Section 9887 now reads:

“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."

Section 9887, *supra*, authorizes a board of county commissioners in any county in which there is a duly organized *county agricultural society* 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, with power to 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 may deem necessary for any of said purposes, provided, however that if the amount appropriated to be expended for any of such purposes 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 be submitted to the qualified electors of the county at some general election for their approval or rejection, and a majority of the vote cast be in favor of such tax.

Section 9894, as enacted by the 87th General Assembly, reads:

"When a county or duly organized county agricultural society owns or holds under a lease real estate used as a site whereon to hold fairs and the county agricultural society therein has the control and management of such lands and buildings, for the purpose of encouraging agricultural fairs, the county commissioners shall, on the request of the agricultural society, annually appropriate from the general fund not to exceed the sum of two thousand dollars or less than fifteen hundred dollars for such purposes, and in any county

wherein is located one or more independent agricultural society or societies as provided for in Section 9880-1 herein, the county commissioners of said county, for the purpose of encouraging such independent agricultural society or societies, may appropriate, in addition to the sum appropriated for the county agricultural society a sum not greater than the amount appropriated for the county society. The appropriation made for said agricultural society or societies shall be paid by the treasurer of the county to the treasurer of the county society or independent society or societies upon an order from the county auditor, duly issued therefor."

Old Section 9894, which was repealed on March 27, 1925 (111 v. 238), read as follows:

"When a county or agricultural society owns or holds under a lease, real estate used as a site whereon to hold fairs, and the county agricultural society therein has the control and management of such lands and buildings, for the purpose of encouraging agricultural fairs, the county commissioners shall on the request of the agricultural society annually levy taxes of not exceeding a tenth of one mill upon all taxable property of the county, but in no event to exceed the sum of two thousand dollars, or be less than fifteen hundred dollars, which sum shall be paid by the treasurer of the county to the treasurer of the agricultural society, upon an order from the county auditor duly issued therefor. Such commissioners shall pay out of the treasury any sum from money in the general fund not otherwise appropriated, in anticipation of such levy."

As the section now reads it is mandatory that for the purposes of encouraging agricultural fairs the commissioners of any county, upon the request of a county or duly organized county agricultural society, which society owns, or holds under a lease, real estate used as a site whereon to hold fairs and has the control and management of such lands and buildings, annually shall appropriate from the general fund not to exceed two thousand dollars or less than fifteen hundred dollars for such purpose. In any county wherein there is located one or more independent agricultural society or societies, organized under Section 9880-1, General Code, the county commissioners of such county *may* appropriate, in addition to the sum appropriated for the county agricultural society, a sum not greater than the amount appropriated for the county society, for the purpose of encouraging such independent agricultural society or societies.

Paraphrasing the preceding paragraph the annual appropriation provided for in Section 9894, *supra*, is for the purpose of encouraging agricultural fairs and upon request is available to any county or duly organized county agricultural society, which owns, or holds under a lease, real estate used as a site whereon to hold fairs, such society having the control and management of such lands and buildings. To encourage independent agricultural societies organized under Section 9880-1, General Code, county commissioners *may* appropriate a sum not greater than the amount appropriated for the county society and in addition thereto.

No restriction or limitation appears in Section 9894, *supra*, that makes such an appropriation available only to those societies having a lease for twenty years or more.

I am therefore compelled to disagree with the conclusions reached by you as stated in your letter; and it is my opinion that in so far as the funds in the county treasury will permit, having due regard for other expenditures made mandatory by statute, under the provisions of Section 9894, General Code, for the purpose of encouraging agricultural fairs, it is the duty of the commissioners of any county, upon the request of any county or duly organized county agricultural society in such county which the

society owns, or holds under a lease, real estate used as a site thereon to hold fairs and has control and management of such lands and buildings, to appropriate annually from the general fund not to exceed two thousand dollars or less than fifteen hundred dollars for such purpose.

In passing it is deemed proper to point out that the constitutionality of acts providing for financial assistance to agricultural societies was upheld by the Supreme Court of Ohio in the case of *The State, ex rel., vs. Kerns*, 104 O. S. 550. See also *Commissioners vs. Brown*, 1. O. N. P. (N. S.) 357.

Respectfully,

EDWARD C. TURNER,  
*Attorney General.*

745.

COUNTY COMMISSIONERS—DUTIES RELATIVE TO MAKING APPROPRIATION FOR SALARY OF DEPUTY SEALER OF WEIGHTS AND MEASURES

SYLLABUS:

1. *It is the duty of the county commissioners to make an appropriation for the purpose of paying the salary of the deputy sealer of weights and measures for an entire year and to fix said salary within the amount of said appropriation, unless, in the exercise of a reasonable discretion, such commissioners determine that, within the funds available, such an appropriation cannot be made.*

2. *Opinion No. 59, rendered under date of February 9, 1927, followed and applied.*

COLUMBUS, OHIO, July 19, 1927.

*Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.*

GENTLEMEN:—Permit me to acknowledge receipt of your request for my opinion as follows:

“You are respectfully requested to furnish this department your opinion upon the following matter:

When the commissioners of a county have fixed the compensation of a deputy sealer of weights and measures under the provisions of Section 2622, G. C., and under the provisions of Section 5649-3g G. C., have appropriated the amount so fixed for the year, may such county commissioners when the year is half up and the deputy sealer has received one-half of the year's compensation, reduce the appropriation to one-half of the original amount so that there would be no available money to pay a deputy sealer for the last one-half of the year?”

Your question requires consideration of Sections 5649-3g and 2622 of the General Code.

Section 5649-3g provides as follows:

“At the beginning of each fiscal year, the county commissioners of every county, the board of education of every school district, including county