upon litigation, the city could not make an accord as to controversant matters, but must pursue the controversy to its ultimate result in the court." Among the many other authorities supporting this proposition the following cases are noted: *Oakman* vs. *City of Eveleth,* 165 Minn., 100; *Town of Petersburgh* vs. *Mappin,* 14 Ill., 193; *Prout* vs. *Pittsfield Fire District,* 154 Mass., 450; *O'Connell* vs. *Pacific Gas and Electric Company,* 19 Fed. (2d), 460. See *Springfield* vs. *Walker,* 42 O. S., 543.

Upon the considerations above noted and discussed, and without entertaining or expressing any views as to the expediency of the proposed settlement by the city of Dayton of the controversies existing between it and said occupying claimants on the tract of land here in question, I am clearly of the opinion that said city, acting through the city commission, its legislative authority, has the legal power and authority to compromise and settle such controversies, and to expend in good faith out of the public funds of said city such sums of money as may be necessary to effect such compromise and settlement.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1725.

COUNTY COMMISSIONERS—MAY ALLOW COUNTY AGRICULTURAL SOCIETY TO USE COUNTY HOME FARM PROPERTY FOR FAIRS.

SYLLABUS:

Section 2433-1, *General Code, empowers the board of county commissioners to allow the county agricultural society to use a portion of the county home farm not used for county home farm or for other public purposes, upon which to hold county fairs under the control and management of the county agricultural society.*

COLUMBUS, OHIO, April 3, 1930.

HON. DUSTIN W. GUSTIN, *Prosecuting Attorney, Portsmouth, Ohio.*

DEAR SIR:—This acknowledges receipt of your letter of recent date, which reads as follows:

> "Scioto County has owned a farm in fee simple with no restrictions as to the use it is to be put to, and with no reversion clause of any kind, since some time around 1870. The county infirmary is located on this farm.
>
> It will be greatly appreciated if your office will give a ruling on this question:
>
> Can the board of county commissioners legally grant the use of a certain portion of the county home farm to hold county fairs under the management of the county agricultural society."

It is my understanding from a recent conference with you that the part of the farm which you contemplate allowing the agricultural society to use, upon which to hold county fairs, is not used for any purpose in connection with the

county home, but is lying idle. I also understand that it is not contemplated making any sort of conveyance of the premises in question to the county agricultural society, and that you use the word "grant" in your communication in the sense of allowing or permitting the use as aforesaid.

I am of the opinion that Section 2433-1 of the General Code (110 O. L. 47, passed April 5, 1923), is determinative of your question, which provision of the Code reads as follows:

> "The county commissioners of any county may by resolution permit the use of public grounds or buildings under their control for public library or for any other public purpose, upon such terms or conditions as they see fit to prescribe."

We are confronted with the further question of whether the purpose to which the county commissioners contemplate appropriating the premises in question is public.

In *State ex rel. Leaverton et al.*, vs. *Kerns, County Auditor, et al.*, 104 O. S. 550, in the opinion by Marshall, C. J., it was held, at page 554, that an agricultural fair is " a public institution designed for public instruction, the advancement of learning and the dissemination of useful knowledge. Such fairs are the same type of institution as the farmer's institute, aid for which is provided by Sections 9916 to 9921, General Code."

Section 9881 of the General Code requires, in substance, that agricultural societies organized for the purposes of the one referred to in your communication shall offer premiums for the improvement of agricultural products, articles of domestic industry, etc. Section 9882, General Code, requires that such agricultural societies may make it a condition precedent to the awarding of any such premium that a statement of the process and methods of production of the products awarded premiums shall be given by the persons receiving such premiums.

Other provisions of the General Code prescribe in many respects the manner in which such fairs shall be conducted, for the apparent reason that such fairs serve a useful public purpose, and with the intent to promote this end to the greatest possible extent.

Section 9887, General Code (112 O. L. 84), empowers the county commissioners to purchase or lease real estate and erect buildings and other structures thereon, same to be placed in the control and management of the county agricultural society for the purpose of holding county fairs. Under this section of the General Code, I held in my Opinion No. 1406, issued under date of January 14, 1930, that county commissioners may purchase land from an agricultural society and lease the same back to said society upon such terms and conditions as the county commissioners deem just. The aid which the county commissioners of Scioto County contemplate extending to the county agricultural society is no more than a reasonable application of the policy approved in that opinion.

The power of the county commissioners to give the use of land in co-operation with and in assistance to a quasi-public corporation to be used for a distinctly public purpose, was recognized and approved by this office in an opinion found in Opinions of the Attorney General for 1917, Vol. 1, page 445. This opinion related to the power of the county commissioners of Miami County to grant to the Directors of the Miami Conservancy District the right to construct and maintain parts of levees and other works on county property. The then Attorney General therein said, at page 451:

> "The right to sell land, if given by the statute above mentioned

(Section 2447, authorizing county commissioners to sell real estate not needed for public use), might exclude the idea of giving it away, as is done in the present instance, which makes the above consideration of the authorities important. But it is safe to assume in a case like the present, where the transfer of an interest in real estate is in co-operation with another public body, and for a distinctly public purpose, that the commissioners have the right to make the grant."

The Attorney General in 1921, in an opinion relating to the same subject held:

"If the commissioners should not choose to dispose of the property under the provisions of Section 2447, General Code, above referred to, it is believed that they may hold the title to the same for the public benefit." (Opinions of the Attorney General for 1921, 183, 186.)

It should be noted that these opinions were rendered prior to the passage of Section 2433-1, General Code, which I have first cited. In fact, it seems inconsistent with the duty of holding land for public benefit to permit it to lie dile when the same could be used advantageously for a public purpose.

Section 2433-1, General Code, supra, grants county commissioners great discretionary powers, impliedly limited in the interests of the public. Without attempting to comprehensively define the limitations existing, they may be expressed briefly as follows: That a license to use public property should only be given by county commissioners for a public purpose and should not be given if it handicaps the county in its ability to exercise its major public duties.

In the recent decision of the Court of Appeals for Scioto County, *The Minamax Gas Company* vs. *The State, ex rel. McCurdy,* Prosecuting Attorney, 33 Ohio App. 501, 2 Ohio Bar No. 49 (March 4, 1930), it was held that county commissioners could not lease unused county land to a private corporation organized exclusively for profit for a definite term, for the reason that pending such a lease the county might need the land for public purposes. Due to altered conditions in the future, the portion of the county farm, the use of which the commissioners of Scioto County are considering giving to the county agricultural society, may be required for county home purposes or for some public purpose paramount to the use now contemplated. Applying the rule of the case above cited, it would seem a violation of the county commissioners' duty to so irrevocably give the use of the land in question to the county agricultural society that the county commissioners could not, should the need arise, appropriate the land to a greater or more pressing public need. This limitation was well expressed in *Richards* vs. *Railroad,* 44 N. H. 127, at page 136, where it was held:

"Corporations for public objects, to which large powers are given to enable them to accommodate the public, and upon which public duties are imposed for the benefit of the community, are held in England and in this state to be disabled to do any act which would amount to a renunciation of their duty to the public, or which directly and necessarily disables them from performing it."

You will note that Section 2433-1, General Code, provides that the permission to use the public grounds as contemplated in that section shall be evidenced by a resolution of the county commissioners.

Section 9906 of the General Code provides as follows:

"When the title to grounds and improvements occupied by agriculeural societies is in the county commissioners, the control and management of such lands and improvements shall be vested in the board of directors of such society so long as they are occupied and used by it for holding agricultural fairs. Moneys realized by the society in holding county fairs and derived from renting or leasing the grounds and buildings, or portions thereof, in the conduct of fairs or otherwise, over and above the necessary expenses thereof, shall be paid into the county treasury of the society, to be used as a fund for keeping such grounds and buildings in good order and repair, and in making other improvements from time to time deemed necessary by its directors."

Accordingly, the resolution required by Section 2433-1, General Code, supra, should vest the control and management of said premises and any improvements that shall be made thereon in the board of directors of the county agricultural society. For purposes of certainty, such resolution should contain a legal description of the part of the county home farm the use of which is being permitted, and, as further provided by Section 2433-1, General Code, such other terms and conditions as the county commissioners see fit to prescribe.

Compliance with Section 2445, General Code, is necessarily a condition precedent to the validity of all proceedings of county commissioners, but its terms are undoubtedly too familiar to you to require any quotation or discussion of the same in this opinion.

In specific answer to your inquiry, I am of the opinion that Section 2433-1, General Code, empowers the board of county commissioners to allow the county agricultural society to use a portion of the county home farm not used for county home farm or for other public purposes, upon which to hold county fairs under the control and management of the county agricultural society.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1726.

TRUSTEES OF FIREMEN'S PENSION FUND—UNAUTHORIZED TO MAKE RULE THAT FIREMEN MUST LEAVE SERVICE ON PENSION AT A GIVEN AGE.

SYLLABUS:

The trustees of a firemen's pension fund have no legal authority to adopt and enforce a rule to the effect that members of the fire department must leave the service of such department at a given age.

COLUMBUS, OHIO, April 4, 1930.

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

GENTLEMEN:—Acknowledgment is made of your recent communication requesting my opinion on the following question:

"May the Board of Trustees of a Firemen's Pension Fund, legally adopt and enforce a rule that members of the fire department must leave such fire department on pension, at the age of 65 years?"