

ment I have used in answer to your third question would be as fully applicable to your fourth question.

Therefore, in answer to your fourth question, you are advised that the special three mill levy should be discontinued and in any event could not be used by the board of education of the Van Buren township school district.

In connection with the answer to your second question, it is not meant that the board of education of Van Buren special school district No. 8 be continued indefinitely. The Constitution of Ohio, Article XII, section 11, provides that no bonded indebtedness shall be incurred unless in the legislation under which same is incurred provision is made for levying and collecting by taxation an amount sufficient to pay the interest and provide a sinking fund. In view of this provision it is presumed that a sufficient tax levy was provided at the time of issuing said bonds and before said board of education ceases to function it would only seem necessary for it to confirm sufficient of said several levies to retire said bonds and see to it that a sinking fund is created and sinking fund commissioners appointed.

Respectfully,

C. C. CRABBE,

*Attorney General.*

90.

COUNTY FAIR SOCIETY HOLDING TITLE TO LAND MAY BORROW MONEY FOR REPAIRS AND IMPROVEMENTS—MAY EXECUTE MORTGAGE TO SECURE PAYMENT—CONSENT OF COMMISSIONERS NECESSARY— ENCUMBRANCES MUST NOT EXCEED 50 PER CENT.

*SYLLABUS:*

Under the provisions of section 9908 of the General Code and other related sections a county society properly organized and in control of the management of its affairs and real estate used for fair purposes, the title of which is in the county, may legally borrow money for necessary repairs and improvements and execute a mortgage to secure the payment thereof when the consent of the county commissioners has been first duly entered upon their journal. Such encumbrances must not exceed fifty per cent. of the appraised value as provided for in section 9908.

COLUMBUS, OHIO, February 21, 1923.

HON. ALLAN G. AIGLER, *Prosecuting Attorney, Norwalk, Ohio.*

DEAR SIR:—In your recent communication you request my opinion upon the following:

“Title to the fair grounds property is held in fee by the county, but the Huron County Agricultural Society has control and management of same. The agricultural society, together with the County Commissioners, desire to mortgage same in order to pay the cost of improvements to said grounds, and they desire to know if this can be legally done under section 9908 G. C.”

Section 9908, to which you refer, provides:

“When the commissioners of a county have paid, or pay, money out of the county treasury for the purchase of real estate as a site for an agricul-

tural society whereon to hold its fairs, the society shall not encumber such real estate with any debt, by mortgage or otherwise, without the consent of the commissioners duly entered upon their journal.

When such consent is obtained the society may encumber such real estate in order to pay the cost of necessary repairs and improvements to an amount not exceeding fifty per cent of its value. In order to ascertain the value of such real estate the commissioners shall appoint three disinterested freeholder residents of the county to appraise such real estates. The appraisers so appointed shall, within ten days after their appointment, upon actual view of such premises, appraise such real estate and return such appraisement under oath to the board of county commissioners. And the appraisement so made shall be considered the value of such real estate for the purpose of mortgage or other encumbrance."

In order to properly determine your inquiry it will be necessary to give consideration to a number of sections of the General Code, which are in *pari materia*. Section 9885, provides:

"County societies which have been, or may hereafter be organized, are declared bodies corporate and politic, and as such, shall be capable of suing and being sued, and of holding in fee simple such real estate as they have heretofore purchased, or may hereafter purchase, as sites whereon to hold their fairs. They may mortgage the grounds of the society for the purpose of renewing or extending pre-existing debts, and for the purpose of furnishing money to purchase additional land. But if the county commissioners have paid money out of the county treasury to aid in the purchase of the site of such grounds, no mortgage shall be given without the consent of such commissioners."

It will be observed that the section last quoted declares county societies when properly organized to be "bodies corporate and politic, and as such capable of suing and being sued." Said section further expressly provides that the county society may encumber its real estate for the purpose of "renewing or extending pre-existing debts, etc.," but if the county commissioners have paid out money to aid in the purchase of the site, then the consent of the county commissioners must be first obtained.

In considering the entire sections of the General Code relating to county societies it will be observed that there are two distinct objects intended to be accomplished by the legislature in the various enactments upon the subject.

1. To aid such organizations to the end that agriculture may be encouraged.
2. To provide protection to the county when it has advanced funds from its treasury for the purchase or to aid in the purchase of a site used for the purpose of holding fairs.

Thus it will be seen that as soon as the county has advanced moneys for such purposes the property cannot be disposed of or encumbered without the consent of the commissioners and this is true whether or not the title has been conveyed to the county.

Under the provisions of section 9885 it will be observed that the fee will remain in the society and the equitable title will be in the county. In the situation you present the title is in the county and on account of the provisions of the law

authorizing the society to have the management and control of the property the equitable title must be in the society. In other words, in all those cases in which the county has furnished money the law recognizes that both the county and the society have a joint interest and control. While the former section limited the purposes for which an encumbrance could be given, it is an earlier enactment than section 9908 about which you inquire and the latter would seemingly extend the purposes for which the real estate may be encumbered to include "necessary repairs and improvements" within the limitations therein provided. While this section does not expressly say that a society may mortgage the premises when the fee to said premises is in the county, yet it does appear that when the county commissioners have paid money "for the purchase of real estate as a site for an agricultural society whereon to hold its fair," the society may mortgage such premises with the consent of the commissioners. It is probable that this section means when the title is in the county by reason of such a purchase, and it is not believed that such a construction is strained in view of the purposes intended. However, in the event that this authority does not expressly appear in this section it is believed that it is sufficiently clear by implication when the other related sections of the General Code and the intent and purposes of the entire law are taken into consideration.

Of course there are a number of other methods provided whereby the county commissioners may aid a society in the purchase of land for a site, liquidation of debts and the erection of improvements and provide for the levying of the tax or issuance of a bond within certain limitations to cover the county's share. However, it is believed that all of those methods are to be distinguished from the methods referred to in section 9908, wherein it is the purpose to enable the society to finance itself and give security therefor.

In view of the foregoing you are advised that it is the opinion of this department that a county society properly organized and in charge of the management of its affairs and in control of the real estate used for fair purposes may legally borrow money for necessary repairs and improvements and execute a mortgage upon the real estate of said society, the title of which is in the county, to secure the payment thereof when the consent of the county commissioners has been first duly entered upon their journal. Such encumbrance must not exceed fifty per cent of the appraised value as provided for in section 9908.

Respectfully,  
C. C. CRABBE,  
*Attorney General.*

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91.

APPROVAL, BONDS OF GRAFTON VILLAGE SCHOOL DISTRICT, LORAIN COUNTY, \$15,000, TO FUND CERTAIN DEFICIENCIES OF THE DISTRICT.

COLUMBUS, OHIO, February 21, 1923.

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