

property which formerly belonged to the decedent passed to them, not from him, but from his daughter. She has made such transfer, if any, as has given rise to their rights or interests. She herself has succeeded to all the property of her father, both in law and in equity. That she may have bound herself equitably to deal with that property in a certain way does not affect the extent or value of her succession.

Accordingly, it is the opinion of this department that K., the daughter of the decedent, the inheritance taxation of whose estate is now in question, is liable for inheritance tax on the whole amount of that estate not specifically disposed of to other persons by valid items of the will.

Respectfully,
JOHN G. PRICE,
Attorney-General.

1885.

COUNTY AGRICULTURAL SOCIETY—REAL ESTATE TRANSFERRED TO SAID SOCIETY FOR FAIR SITE SUBJECT TO MORTGAGE—SOCIETY MAY TRANSFER ITS TITLE TO COUNTY—HOW MONEYS PAID FROM COUNTY TREASURY FOR IMPROVEMENTS TO SUCH REAL ESTATE—HOW SAID REAL ESTATE SOLD.

1. *Where real estate has been transferred to a county agricultural society for a fair site, and is subject to a mortgage, said society may transfer its title to said real estate to the county.*

2. *Under such circumstances the county commissioners, under the provisions of section 9887 G. C., may pay from the county treasury an amount equal to that paid by the society, to be applied upon improvements of said premises and upon the payment of the encumbrance. However, under the provisions of section 5660 G. C., the commissioners may not enter into a binding obligation in this respect until a levy for such purpose has been placed upon the tax duplicate for collection.*

3. *Under the provisions of section 9898 G. C., when a county society is dissolved or ceases to exist, where payments have been made by the county for the purchase or improvement of real estate or for the liquidation of indebtedness for the use of such society, the real estate belonging to said society vests in fee simple in the county. County commissioners may sell such real estate under the provisions of sections 2447 G. C. et seq., or may hold the title to such premises for the benefit of the county.*

COLUMBUS, OHIO, March 2, 1921.

Department of Agriculture, Bureau of Fair Administration, Columbus, Ohio.

GENTLEMEN:—You request an opinion upon a statement of facts submitted to your department by the prosecuting attorney of Henry county, which may be restated as follows:

A fair ground has been owned by a corporation, the entire stock therein having been transferred to the agricultural society, and after liquidation there is a mortgage upon said premises equal to one half of the appraised value of said fair ground. The buildings on said property have been totally destroyed and improvements in general are necessary.

The county commissioners allow up to \$2,000 out of the treasury of the

county to the agricultural society for the maintenance of said ground. Two cents per capita is allowed the agricultural society for the maintenance of itself as a society.

Henry county is now being taxed the maximum rate.

QUESTIONS:

(1) May the agricultural society transfer the title by deed to the county commissioners subject to the encumbrance?

(2) In the event the agricultural society can transfer the title to the county commissioners, subject to this encumbrance, what method is provided to pay off this encumbrance, if any, by the county commissioners?

(3) In the event the agricultural society is dissolved and the property reverts to the county, what is done with said property?

The following are pertinent sections of the General Code to be considered in connection with this inquiry:

"Sec. 9885. 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."

"Sec. 9887. When a county society has purchased, or leased real estate whereon to hold fairs for a term of not less than twenty years, or the title to the grounds is vested in fee in the county, but the society has the control and management of the lands and buildings; if they think it for the interests of the county, and society, the county commissioners may pay out of the county treasury the same amount of money for the purchase or lease and improvement of such site as is paid by such society or individuals for that purpose, and may levy a tax upon all the taxable property of the county sufficient to meet such payment."

From the statement of facts it is assumed that the county society is properly organized, and recognized as such by the department of agriculture. It is also assumed that the mortgage indebtedness is less than fifteen thousand dollars.

Under the provisions of section 9887, supra, it clearly appears that under the proper circumstances the county society and the county commissioners may purchase land for a fair site, the county paying the same amount as is paid by the society. In view of the fact that the society owns the equity to the premises under consideration, it would seem to be within the implied power granted in said section for the commissioners to accept said conveyance subject to the mortgage. It is contemplated by said section and other related sections that the county commissioners may hold the title to the real estate, managed and purchased by a county society. It is believed that no material objections could be raised by reason of the society conveying the premises to the county subject to the mortgage encumbrance.

Aside from the provisions of the statute relating to the powers of the county commissioners in connection with the land purchased for a fair site, it is believed to be generally recognized by the courts that the commissioners have the power to

accept conveyances of lands for the benefit of the county. Page's Ohio Digest, page 4335. However, it is believed that in the event the county should assume payment of the mortgage this would render it such a contract as would require a certificate of the county auditor relative to the existence of the fund, under the requirements of section 5660 G. C., but in the event that the mortgage is not assumed, it is believed that such a certificate would not be required.

Therefore, in specific answer to the first inquiry presented, you are advised that it is the opinion of this department, upon the state of facts considered, that the county society may transfer the title to the real estate mentioned, by deed to the county, subject to the mortgage indebtedness.

In reply to the second inquiry presented, relating to the method of paying the mortgage indebtedness, it is believed that if the county becomes vested with the title to said premises, the provisions of section 9887, supra, which in substance says the county may pay out of the county treasury the same amount of money for the purchase and improvement of a site as is paid by the society and for such purpose may levy a tax, will provide a means for the payment of the indebtedness.

It is believed that under the state of facts being considered, the mortgage indebtedness operates the same as being a part of the purchase price, although it does not necessarily require the commissioners to assume the same in the sense that they have entered into a binding obligation for the payment of the same.

However, it is indicated from the facts given that the county has now reached the maximum levy provided by law. Your statement, of course, relates to the levies as authorized by the budget commissioners in June, 1920. However, under the provisions of section 5649-3a G. C. the commissioners will submit another budget in June, 1921, which could, of course, include the levy referred to. In any event, said section must be reckoned with by the commissioners in making a levy of this character. It is within the power of the commissioners to make a levy for said purpose, although the same cannot be placed upon the duplicate and collected until a future time.

It will at once be apparent that if the society has funds with which to make improvements, if said funds are applied both to the improvements and the liquidation of the mortgage indebtedness, which said indebtedness, as heretofore indicated, is in reality a part of the purchase price, it is within the power of the commissioners to pay an equal amount, and in this manner it is believed that the society and the commissioners may provide for the improvements as well as the payment of the mortgage.

Perhaps, under existing conditions, another logical method to pursue would be for the society to apply its funds which are properly available for said purpose to the payment of the mortgage indebtedness, and the commissioners would be empowered to provide for the improvements under the provisions of section 9887-1 G. C., which provides:

"In counties wherein there is a county agricultural society which has purchased a site whereon to hold fairs, and the title to such grounds is vested in fee in the county, but the society has the control and management of the lands and buildings, if they think it for the interest of the county and society, the county commissioners may levy a tax upon all the taxable property of the county for the purpose of improving such grounds not to exceed one-twentieth of one mill in any one year and not for a period of more than five years; and in anticipation of the collection of this tax the commissioners may issue and sell the bonds of the county, bearing interest not to exceed six per cent per annum payable annually."

However, in the final analysis, funds levied under sections 9887 and 9887-1 must be submitted to the budget commission under the provisions of section 5649-3a, which, among other things, provides:

"On or before the first Monday in June, each year, the county commissioners * * * shall submit * * * to the county auditor an annual budget, setting forth in itemized form an estimate stating the amount of money needed for their wants for the incoming year * * *.

The aggregate of all taxes that may be levied by a county, for county purposes, on the taxable property in the county on the tax list, shall not exceed in any one year three mills. * * *"

As above indicated, the fact that the present tax rate reaches the maximum does not necessarily mean that the same condition will prevail in June, 1921. While the commissioners may anticipate that a levy can be made at that time, under the provisions of section 5660 G. C. they are precluded from entering into a binding obligation until said levy is placed upon the duplicate for collection, at which time they may borrow money in anticipation of said collection.

In reference to the third inquiry presented, section 9898 G. C. provides:

"When a society is dissolved or ceases to exist, in a county where payments have been made for real estate, or improvements thereon, or for the liquidation of indebtedness, for the use of such society, all such real estate and improvements shall vest in fee simple in the county by which the payments were made."

It is evident that if the society is dissolved and ceases to exist, and the county has extended aid in paying for real estate or improvements thereon, or in the liquidation of indebtedness of the society, under such circumstances the real estate will vest in the county in fee simple. Of course, it follows the title to such real estate would be subject to any valid encumbrances thereon. However, it is not believed that this section would have any application in a case in which the county had not extended aid referred to therein.

In the event that real estate becomes so vested, you are advised that it may be disposed of in the manner provided in sections 2447 G. C. et seq.

In the case of *Reynolds vs. Commissioners*, 5 Ohio, 204, it is held:

"Where real estate is vested absolutely in the county commissioners, for public purposes, they may dispose of it in the same manner as individuals could."

If the commissioners should not choose to dispose of the property under the provisions of section 2447 G. C., above referred to, it is believed that they may hold the title to the same for the public benefit.

Respectfully,
 JOHN G. PRICE,
Attorney-General.