

matter of public business coming before such board or officer, and in the prosecution or defense of any action or proceeding in which such county board or officer is a party or has an interest in its official capacity."

In analyzing the provisions of Section 2412 of the General Code, it will readily appear that this section relates to civil cases as distinguished from criminal cases. The language expressly authorizes the board of county commissioners to employ legal counsel to assist the prosecuting attorney in any matter of public business coming before such board or officers and in the prosecution or defense of any action or proceeding in which such county board or officer is a party or has an interest in their official capacity. It is fundamental that the county is not a party to a criminal action. In criminal cases the State of Ohio is the party plaintiff and not the county or any officials thereof. Section 13562 of the General Code, referred to in my Opinion No. 2849, *supra*, furnishes the authority for the employment of legal counsel to assist prosecuting attorneys in criminal cases. It is believed that Section 2412, *supra*, in its present form does not include within its terms the power to employ counsel to assist the prosecutor in criminal cases.

In the case of *Ireton et al. vs. State ex rel.*, 21 *Ohio Circuit*, 412, the court had under consideration Section 845 of the Revised Statutes of Ohio. This section was later subdivided into a number of other sections, including Section 2412 of the General Code. (See Opinions of the Attorney General for 1916, Volume II, page 1416.) However, in the case of *Ireton et al. vs. State ex rel.*, *supra*, the court indicated that this section related to employment of such counsel for the benefit of the commissioners and not for other duties. It is pointed out in said opinion that the primary duties of a prosecuting attorney "are of a criminal nature" and that the duties of the commissioners are of a "civil nature." In other words, it clearly appears from said case to be the opinion of the court that Section 845, Revised Statutes, *supra*, did not relate to criminal actions. While the section has undergone some changes it is not believed the said changes would affect the situation in so far as your question is concerned.

In an opinion of the Attorney General, found in the Opinions of the Attorney General for 1919, Volume I, page 29, while not expressly so held, it is indicated that Section 2412, *supra*, relates to the employment of counsel to assist the prosecutor only in civil actions.

In view of the foregoing, you are specifically advised that Section 2412 of the General Code does not authorize the employment of attorneys to assist the prosecuting attorney in criminal cases, irrespective of the court in which such a case is pending. Employment of such attorneys in criminal cases being prosecuted in the Court of Common Pleas and Court of Appeals is provided for in Section 13562 of the General Code.

Respectfully,
EDWARD C. TURNER,
Attorney General.

3045.

COUNTY COMMISSIONERS—CONSTRUCTION OF CINDER TRAINING TRACK ON GROUNDS OF COUNTY AGRICULTURAL SOCIETY—COST PAYABLE FROM GENERAL FUND—SUBMISSION TO VOTERS MANDATORY WHEN ANNUAL APPROPRIATION FOR IMPROVEMENT EXCEEDS \$10,000.00.

SYLLABUS:

The construction of a cinder training track in connection with the race track on the fair grounds of a county agricultural society is an improvement, to the cost and expense of which the county commissioners are authorized to contribute out of the general fund of the county such amount as they deem necessary for said purpose, if they determine that said improvement is for the best interest of the county and of such county agricultural society. If the total amount appropriated to be expended in the purchase of real estate or in the erection of buildings or other improvements or payments of rent or other forms of indebtedness and the expenditure for the construction of said cinder track should in the aggregate exceed ten thousand dollars in any one year, such expenditure may not be made unless the question of a levy of a tax therefor is submitted to the qualified electors of the county.

COLUMBUS, OHIO, December 20, 1928.

HON. C. O. TURNER, *Prosecuting Attorney, Coshocton, Ohio.*

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

“I am writing you to ask you concerning a question that has been raised here in this county in regard to whether the county commissioners could legally expend any money for the building of a track in the center field of the Coshocton County fair grounds for the purpose of training horses, and if they could expend any money for this purpose out of what fund should the money be taken.

The Coshocton County Agricultural Society is willing and have agreed with our county commissioners that if the county would expend funds for the building of said track that they, the Coshocton County Fair Board, would contribute a certain portion of the amount required, and they would therefore go together and build said center track for the training of horses.

* * *

Please let me hear from you as to whether our county commissioners would be legally allowed to contribute any funds to be used for such purpose.”

In a communication subsequent to that above quoted, you advised me that the title to the fair grounds is in the Coshocton County Agricultural Society, and you further say:

“The proposed improvement is to be used as a training track, or, in other words, it is a cinder track to be used in the center field of the fair ground to prepare horses for racing; that is, they jog them during the winter months, the use of which is not to be rented to any individual for the training of trotting or other race horses belonging to such persons, but to be used simply for the accommodation of persons who may come here from other places to prepare their horses for racing during the winter months when the roads are bad and cannot be used for jogging purposes.

* * *

Of course, you understand that to use the regular track during the winter months cuts the track all up and makes an expense in the spring always to prepare the track for racing, and if we have a place to train the horses during the winter months on cinder in the center of the fair ground this will save the track.”

The statutory provisions relating to the organization, powers and duties of county and other local agricultural societies are found in Sections 9880 to 9910, inclusive of the General Code. Section 9885, General Code, provides that:

“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. * * *”

Aside from the payments required to be made to such county agricultural societies out of the county treasury under the provisions of Sections 9880 and 9880-1, General Code, Section 9894, General Code, as enacted by an act of the General Assembly, under date of March 10, 1927 (112 v. 85), provides that on request of any county agricultural society which owns, or holds under lease, real estate used as a site whereon to hold fairs, and has control and management of such lands and buildings thereon, it is the duty of the county commissioners annually to appropriate from the general fund not to exceed \$2,000, or less than \$1,500, to such county agricultural society for the purpose of conducting agricultural fairs.

By reason of the independent and corporate nature of the Coshocton County Agricultural Society under the laws providing for its organization, and its ownership of the county fair grounds, said society has full power to determine upon and carry out any improvement in and upon the fair grounds owned by it, having legitimate and proper relation to the matter of racing or to any other activity carried on by such society in the conduct of fairs on said grounds. *Dunn vs. Agricultural Society*, 46 O. S. 93, 100.

More immediately applicable to the question presented in your communication, Section 9887, General Code, as amended by said act of the General Assembly under date of March 10, 1927, above referred to (112 v. 84), provides in part as follows:

“* * * 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 question of the constitutionality of the above quoted, and other statutory provisions authorizing the expenditure of public funds by way of financial assistance to county agricultural societies, has been put to rest by the decision of the Supreme Court in the case of *State ex rel. Leaverton vs. Kearns, County Auditor*,

104 O. S. 550. It only remains for us to determine the construction and application of the above quoted provisions of Section 9887, General Code, to the question presented in your communication. Under said statutory provisions, where, as in the case here presented, the title to the fair grounds is in the county agricultural society, the county commissioners may erect or repair buildings, or otherwise improve such grounds, or they may "contribute to, or pay any other form of indebtedness of said society"; and the commissioners are authorized to appropriate from the general fund such amount as they deem necessary for any of said purposes. Under the facts stated in your communications, I am inclined to the view that the construction of the cinder track referred to therein is an improvement, having such relation to racing as an activity carried on in the conduct of the fair, as authorizes the county commissioners under the provisions of Section 9887, General Code, to construct such improvement or to contribute therefor out of the general fund of the county such sum of money as they may deem necessary and proper for the purpose, if they determine that such improvement is for the best interest of the county and of said county agricultural society. If the total amount appropriated to be expended in the purchase of real estate or in the erection of buildings or other improvements or payments of rent or other forms of indebtedness and the expenditure for the construction of said cinder track should in the aggregate exceed ten thousand dollars in any one year, such expenditure may not be made unless the question of a levy of a tax therefor is submitted to the qualified electors of the county.

Respectfully,
EDWARD C. TURNER,
Attorney General.

3046.

FOREIGN CORPORATION—TITLE GUARANTY COMPANY—NOT ADMITTED IN OHIO TO GUARANTEE REAL ESTATE TITLES.

SYLLABUS:

A foreign corporation cannot be admitted to this state for the purpose of engaging in the business of guaranteeing titles to real property.

COLUMBUS, OHIO, December 21, 1928.

HON. CLARENCE J. BROWN, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your communication, requesting my opinion as follows:

"We are submitting herewith a letter from the North American Title Guaranty Company, 8 W. 40th Street, New York.

Will you kindly give your opinion as to whether the company should qualify under the corporation laws or the insurance laws of Ohio."

Accompanying your letter, and to which you refer, is one from the North American Title Guaranty Company of New York, as follows: