

4. Under the provisions of Amended Senate Bill No. 28 the sheriff is required to file with the county commissioners each month an itemized and accurate account with all bills attached showing the actual cost of keeping and feeding prisoners and other persons placed under his charge and the said bills when approved by the county commissioners shall be paid by them direct to the persons presenting the bills on warrants of the county auditor.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

362.

COUNTY COMMISSIONERS—MUST APPROPRIATE MONEY FOR JUNIOR CLUB AND FARMERS INSTITUTE WORK AS PROVIDED FOR IN SECTIONS 9880-2 AND 9918, GENERAL CODE.

*SYLLABUS:*

*The provisions of Sections 9880-2 and 9918 of the General Code are mandatory, and in so far as the funds in the county treasury will permit, having due regard for other expenditures made mandatory by statute, it is the duty of the county commissioners to appropriate sufficient funds to enable the county auditor to file the certificate required by Section 5660, General Code, and to draw his warrant for the amounts and to the persons respectively named in Sections 9880-2 and 9918, upon compliance by the organizations described in such sections with all the terms and conditions thereof.*

COLUMBUS, OHIO, April 21, 1927.

HON. F. E. CHERRINGTON, *Prosecuting Attorney, Gallipolis, Ohio.*

DEAR SIR:—I acknowledge receipt of your letter of recent date reading as follows:

“I am in receipt of the enclosed communication from the president of the Gallia County Farm Bureau, in which he fails to tell me just what he wants, but I take it for granted from conversation with him, that the information wanted is whether the provisions of the sections referred to are mandatory.

On investigation I find there are four farmers' institutes in this county; Section 9918 provides not to exceed \$25.00 for each of these, or less if the expenses of each does not amount to that sum, and that \$175.00 be sent to the Dean of the Ohio State University, which makes up the \$275.00 mentioned in his letter.

Under Sec. 9880-2, requiring commissioners to pay expenses,—for premiums to Juvenile Clubs,—not to exceed \$500.00, the commissioners have appropriated but the sum of \$150.00 which it is claimed will very much hamper if not curtail Juvenile Club work.

My notion of these sections is that they are mandatory, but the commissioners think not, and refuse to care for these expenses, so I must ask your opinion in the matter.”

With your letter you transmit a communication from the president of the Gallia County Farm Bureau, in the following language:

“I wish to call to your attention that the county commissioners have not

appropriated the sum required by law for Farmers' institutes within Gallia county.

Said appropriation is provided for under Section 9918, Ohio Laws, and provides for the appropriation of \$275.00.

Also under Section 9880-2, page 89, Laws of Ohio, Vol. 111, an appropriation of \$500.00 shall be made to take care of money expended for Boys' and Girls' Club work."

Section 9880-2, General Code, referred to, supplements Section 9880 of the General Code, and provides:

"Upon the presentation of a certificate from the county commissioners certifying that any fair organization, either county or independent, that is then receiving state or county aid, has expended a definite and certain sum of money, such sum not being less than one hundred dollars, in the furtherance and carrying on of junior club work in the county, the county auditor annually shall draw an order on the treasurer of the county in favor of the said fair organization for an amount equal to the amount so expended in junior club work, provided said amount does not exceed five hundred dollars, and in case such amount exceeds five hundred dollars, then such order shall be for the amount of five hundred dollars. The treasurer of the county shall pay said order upon presentation thereof."

Your attention is directed to a former opinion of this department, found in the Opinions of the Attorney General for 1925, page 295, the syllabus of which reads as follows:

"Under the provision of Section 9880-2, General Code, as enacted in House Bill No. 193, of the eighty-sixth general assembly, when as a matter of fact it definitely appears that a county or independent society receiving state aid has expended a definite and certain sum of money, not less than one hundred dollars, in the furtherance of carrying on junior club work in the county, it is the mandatory duty of the county commissioners to certify such fact to the county auditor."

This opinion was in reply to an inquiry as to whether or not it is mandatory for the county commissioners to certify to the county auditor that any fair organization has expended a certain sum of money within the year for junior club work.

In the opinion, at page 297, it is said:

"Of course, if it should appear that the commissioners in any sense have a discretionary power then, of course, it will follow that mandamus cannot control discretion, but it is believed that the commissioners while having certain duties that are discretionary, have other duties to perform which are of a ministerial nature. In the present case it would be absurd to hold that the commissioners could arbitrarily defeat the intention of the legislature to aid such projects as the clubs which are referred to, by refusing to certify as to the existence of a certain fact.

Based upon the authorities hereinbefore cited, it is my opinion that when as a matter of fact it definitely appears that a county or independent society receiving state aid has expended a definite and certain sum of money, not less than one hundred dollars, in the furtherance of carrying on junior club work in the county, it is the mandatory duty of the county commissioners to certify such fact to the county auditor."

Section 9918, General Code, provides:

“When a society so organized has held annual farmers’ institute meetings in accordance with the rules of the trustees of the Ohio state university, the dean of the college of agriculture shall issue certificates, one to the president of the farmers’ institute society and one to the county auditor, setting forth such facts. *On the presentation of such certificates to the county auditor, he, each year shall draw orders on the treasurer of the county as follows:* One in favor of the dean of the college of agriculture of Ohio state university for one hundred and seventy-five dollars and one in favor of the president of each farmers’ institute society in the county holding meetings under the auspices and by the direction of the trustees of the Ohio state university for the amount of the actual expenses and not to exceed twenty-five dollars to pay necessary local expenses, and when such expenses have been itemized and certified to by the president of an institute and submitted to the dean of the college of agriculture of the Ohio state university, he shall authorize the auditor to issue a warrant, and the treasurer of the county shall pay them from the county fund. But in no county shall the total annual sum exceed three hundred dollars, nor shall the payment of the farmers’ institute society exceed the expenses, as per detailed statement provided in the following section.” (Italics the writer’s.)

The above quoted section provides that when annual farmers’ institute meetings have been held in accordance with the rules of the trustees of the Ohio State University the Dean of the College of Agriculture shall issue certificates, one to the President of the Farmers’ Institute Society and one to the County Auditor, setting forth such facts. On the presentation of such certificates the County Auditor, each year, shall draw orders on the Treasurer of the county.

In the case of *State, ex rel. The Franklin County Agricultural Society vs. Stroop, et al.*, 100 O. S. 522, a similar question was considered. That case was an action in mandamus involving sections 9880 to 9884 of the General Code.

Section 9880, General Code, provides that the Auditor shall draw certain warrants upon the presentation of a certificate from the president and secretary of the State Board of Agriculture that certain things have transpired with reference to the conducting of a fair. A similar provision is contained in Section 9918, *supra*.

In the case last above cited the court held that mandamus would not lie to compel the president and secretary of the State Board of Agriculture to issue a certificate upon which the relator would have been entitled to receive a warrant for the moneys provided by law, for the reason, that it did not appear that all necessary things had been done. The court said, among other things, that:

“Said officers are not required to make such certificate on the filing of such report, but only after the board and the officers have made the necessary investigation to ascertain whether the requirements of the sections referred to have been complied with in the particular instance.”

While the case does not expressly so hold it is inferable from the discussion in the opinion that if all of the conditions had been properly complied with the court would have held that it was the mandatory duty of the officers to issue the certificate demanded. The court said:

“Mandamus will lie to compel the performance of an act which is clearly shown to be specially enjoined by law as a duty upon a public officer.”

By the plain terms of Sections 9880-2 and 9918, *supra*, and in view of the authorities above referred to, it seems clear that the provisions of these sections are man-

datory, and that the legislature intended that, upon compliance with the terms and conditions of said sections, the county should pay and that "the fair organization" in the one case (Section 9880-2) and the "dean of the college of agriculture" and the "president of each farmers' institute society in the county" in the other case (Section 9918), should receive the money directed to be paid by the respective sections. To hold that the commissioners can arbitrarily refuse to appropriate funds to enable the county auditor to make the certificate required to be filed by Section 5660, General Code, and to draw his warrant for the sums and to the persons prescribed by the sections under consideration, would give to the county commissioners power utterly to defeat the plainly expressed intention of the legislature to extend financial aid and support to the projects in question. I am of the opinion, therefore, that it is the mandatory duty of the county commissioners to appropriate funds to care for the expenditures specifically directed to be paid by Sections 9880-2 and 9918, supra, in so far as the county funds will permit, having due regard for other expenditures made mandatory by statute.

In connection with the legality of these expenditures, your attention is directed to the case of *State, ex rel. Leaverton, et al. vs. Kerns, County Auditor, et al.*, 104 O. S. 550, the second syllabus of which reads as follows:

"The aid provided by Section 9880-1, General Code, is not for the purpose of furnishing financial assistance to a private enterprise, nor for lending the credit of the state thereto, but, on the contrary, is in aid of a public institution designed for public instruction, the advancement of learning, and the cause of agriculture, and is not in violation of Sections 4 and 6, Article VIII of the Ohio Constitution."

Specifically answering your question, it is my opinion that the provisions of Sections 9880-2 and 9918 of the General Code are mandatory, and that in so far as the funds in the county treasury will permit, having due regard for other expenditures made mandatory by statute, it is the duty of the county commissioners to appropriate sufficient funds to enable the county auditor to file the certificate required by Section 5660, General Code, and to draw his warrant for the amounts and to the persons respectively named in Sections 9880-2 and 9918, upon compliance by the organizations described in such sections with the terms and conditions thereof.

Respectfully,

EDWARD C. TURNER,  
*Attorney General.*

363.

ADJUTANT GENERAL—AUTHORITY TO ACCEPT GIFTS OR DONATION  
OF LAND FOR MILITARY PURPOSES—FORM OF PROPOSED DEED  
FROM CITY OF CLEVELAND TO STATE OF OHIO APPROVED.

SYLLABUS:

1. *Form of proposed deed from the city of Cleveland to the state of Ohio of land for the erection of hangars and other buildings necessary for the housing and training of the 37th Division Air Service approved.*

2. *The Adjutant General of Ohio may accept gifts or donations of land, money or other property for the purpose of aiding in the acquisition of grounds or the purchase, building, furnishing or maintaining of an armory or other building for military purposes.*