

3179.

FAIRS, AGRICULTURAL—BOARD OF COUNTY COMMISSIONERS—MAY NOT PURCHASE REAL ESTATE SUBJECT TO A MORTGAGE OR ASSUME A MORTGAGE ON REAL ESTATE WHEREON TO HOLD AGRICULTURAL FAIRS.

SYLLABUS:

*A board of county commissioners may not, in connection with the acquisition of real estate whereon to hold agricultural fairs, assume a mortgage, or purchase such real estate subject to a mortgage thereon.*

Columbus, Ohio, December 30, 1940.

Hon. W. Ralph Pence, Prosecuting Attorney,  
Hillsboro, Ohio.

Dear Sir:

This will acknowledge receipt of your request for my opinion as follows:

“The County Agricultural society of Highland County is desirous of acquiring a parcel of real estate and putting title in

the County so it will be able to participate in federal aid. There is a mortgage on the real estate and the contention is that the County has authority to accept a deed for real estate and to assume a mortgage if the real estate is to be used for fair purposes. However, I am unable to locate any authority that would permit the County to accept a deed wherein a mortgage is assumed. I would appreciate any information you can give me along this line. In addition, would there be any prohibition against such a deed if the conveyance were subject to the mortgage and there was no assumption?"

With reference to the purchase by a county of land as a site whereon to hold agricultural fairs, Section 9887, General Code, provides in part:

"In any county in which there is a duly organized county agricultural society, the board of county commissioners is authorized to purchase or lease, for a term of not less than twenty years, real estate whereon to hold fairs under the management and control of the county agricultural society, and may erect thereon suitable buildings and otherwise improve the same."

The foregoing section provides no method for the purchase of such site other than for cash. Consequently, the purchase can be effected in no other manner. In 32 O. J. at pages 933 and 934, it is stated:

"As a general rule public officers have only such powers as are expressly delegated them by statute and such as are necessarily implied from those so delegated. These powers must be exercised in the mode prescribed by statute. It is equally well settled that where the statute prescribes the mode by which power conferred upon a public officer or board shall be exercised the mode specified is also the measure of power granted."

Section 9908, General Code, provides in part:

"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 agricultural 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.  
\* \* \*

It will be noted that a county agricultural society may mortgage the land whereon it holds fairs in order to make necessary repairs or improvements. However, the law does not authorize an encumbrance for any other purpose.

In the case of Fidelity Trust and Guaranty Co. vs. Fowler Water Company, et al., 113 Fed. 566, the fourth branch of the headnote reads in part:

“A municipal corporation having no power to incumber its property by mortgage in the absence of express legislative authority is without power to purchase and hold property which is subject to a mortgage. \* \* \*”

The same principle was pronounced in the case of Stripe vs. Waukegan, et al., 254 Ill. App. 74, wherein the fourth branch of the syllabus reads:

“When a municipal corporation has no power to mortgage its property it can not purchase and hold property which is subject to a mortgage in the absence of express legislative authority even though it does not expressly obligate itself to pay the mortgage debt.”

It is obvious that a county has no general authority to mortgage its real estate. This being true, a county may not purchase real estate and take subject to or assume a mortgage thereon. Although Section 9908, General Code, authorizes an encumbrance of land whereon agricultural fairs are held, to make necessary repairs and construct improvements thereon, there is no authority to mortgage for any other purpose.

In view of the above and in specific answer to your inquiry, I am of the opinion that a board of county commissioners may not, in connection with the acquisition of real estate whereon to hold agricultural fairs, assume a mortgage or purchase such real estate subject to a mortgage thereon.

Respectfully,

THOMAS J. HERBERT,  
Attorney General.