

National Bank that the Treasurer of Ohio University has deposited \$40,000 in said bank in a special account designated as "Ohio University PWA Dormitory Fund," and also a certificate of the Bank of Athens that the Treasurer of Ohio University has deposited in said bank \$21,000 in a special account designated as "Ohio University PWA Dormitory Fund."

You have also submitted with the documents in this connection, estimate of cost, notice to bidders, proof of publication, certificate of premium payment to the Industrial Commission of Ohio showing that the contractor had qualified for the benefits under the Workmen's Compensation Law, letter of recommendation to the Board of Trustees of Ohio University by John P. Schooley, State Architect, direction of Treasurer of Ohio University to the Director of Public Works for entering into this contract, recommendation of the Department of Public Works, certificate of Auditor of State that certain documents are on file in his office, tabulation of bids and form of proposal, with contract bond contained therein with the Royal Indemnity Company of New York, properly countersigned in this state.

Finding said contract and bond in proper legal form, I have this day noted my approval thereon and return the same herewith to you, together with the various documents submitted in this connection.

Respectfully,

HERBERT S. DUFFY,

Attorney General.

2887.

COUNTY AGRICULTURAL SOCIETY—WHEN EMPOWERED TO APPROPRIATE FUNDS FOR PAYMENT OF PRE-EXISTING INDEBTEDNESS WHERE SUSPENSION IMMINENT—LEASING OF FAIR GROUNDS—MONEYS—OFFICERS AND DIRECTORS ENTITLED TO FEES FOR ATTENDING MEETINGS.

SYLLABUS:

1. *The provisions of Section 9887, General Code, empower a board of county commissioners to appropriate funds for the payment of the preexisting indebtedness of a county agricultural society when the suspension of activities of such society is conditioned on the payment of the indebtedness of the society. Opinions of the Attorney General, 1931, Vol. II, page 992, approved and followed.*

2. According to the provisions of Section 9906, General Code, moneys realized from the leasing of fair grounds are payable directly to the county agricultural society if the property was at the time of the execution of the lease under the control of the society. Opinions of the Attorney General, 1934 Vol II, page 449, approved and followed.

3. Within the limits set forth in Rule 5 of Rules for the Organization and Management of County and Independent Agricultural Societies, officers and directors of county agricultural societies are entitled to the payment of fees for attending meetings out of funds which may be expended according to the provisions of Section 9906, General Code. Opinions of the Attorney General, 1922, Vol. I, page 895, approved and followed.

COLUMBUS, OHIO, August 30, 1938.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN: This will acknowledge receipt of your recent communication which reads as follows:

"We are enclosing herewith copy of a resolution adopted by the Mercer County Agricultural Society, and contract entered into by the Agricultural Society, the board of county commissioners and the American Legion.

In the resolution you will note that the title of the ground is vested in the board of commissioners of Mercer County, and that due to the existing indebtedness, the society agrees to discontinue its annual fairs until the debts of the society have been paid in full by the county commissioners; that the society its organization in tact and hold a certain number of meetings each year, and provides compensation for each member attending such meetings.

In August, 1934, the society and the board of county commissioners leased said grounds to the American Legion, with the provision that a portion of the net profits be paid to the society.

May we respectfully request your opinion upon the following:

1. May the county commissioners lawfully appropriate and expend money to pay off the indebtedness of the society, after the society ceased to hold fairs, although still existing as a society?

2. When the title to the grounds is vested in the county commissioners, is the society entitled to the money which accrues by reason of the leasing of said grounds?

3. May the officers and members of the society be legally paid from funds received by the society for their services and for attending meetings?"

The power of a board of county commissioners to appropriate funds for the conducting of fairs under the management and control of a county agricultural society is contained in Section 9887, General Code, which reads 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. * * "

The powers described herein were considered in Opinions of the Attorney General, 1931, Vol. II, page 882, in which it was concluded that the wide classification of purposes for which a board of county commissioners could appropriate funds on the basis of these provisions, includes the payment of preexisting indebtedness. Of course, such appropriations must fulfill the conditions enumerated in this section. According to your communication there exists a county agricultural society in Mercer County; the title to the fair ground site is vested in the county; finally, the Board of County Commissioners has presumably deemed the appropriation to be necessary.

There remains only the determination of whether the implied condition referred to in the 1931 opinion has been fulfilled; in other words, is the society adhering to its primary purpose of conducting functions in the interest of agriculture? If such is the case, then according to the conclusion of the 1931 opinion, the fact that an annual exhibit is not held, does not preclude the Board of County Commissioners from appropriating funds to the society.

It is therefore necessary to determine the intention of the Directors of the Mercer County Agricultural Society with regard to their carrying on the recognized purpose of the society. On July 22, 1932, the Board of Directors adopted a resolution, the essential part of which reads as follows:

“Be it resolved that the proposal of the commissioners of Mercer County, Ohio, who hold title to the Fair Grounds mentioned, and the buildings etc. thereon, that the society will continue to hold its organization in tact, hold at least two meetings a year, pay each member \$2.00 for each meeting he attends, and at these meetings transact such business as necessary, if necessary to pass a resolution each year to discontinue holding annual fairs, if this be done, and if not conflicting with the law it is hereby understood and agreed that *the holding of annual fairs shall discontinue from year to year, until the debts of the society are paid*, and that the money received from the commissioners of Mercer County, annually, shall be applied first to the payment of interest at the rate of 6% per annum on its obligations and the residue of money to be paid to the creditors, proportionately in accordance with the amount of each claim towards the reduction of the principal of each debt.” (Italics the writer’s.)

Herein it is apparent that the Directors contemplated discontinuing their annual fair only so long as the society is in debt. Certainly, the adoption of the salutary business policy of “pay as you go” does not imply that it is the intention of the society to go no further in the course of accomplishing its purpose. The Directors made it clear that the suspension of activities with respect to conducting an annual fair would continue as long as the society remained in debt.

Nowhere in the provisions relating to the power of boards of county commissioners to appropriate funds for county agricultural societies is the exercise of such power conditioned upon the holding of such fairs annually. Thus, the limitation enunciated in the 1931 opinion, which requires the constant intention to continue the purpose of the society, is in this case fulfilled. Therefore, I am of the opinion that the first question should be answered in the affirmative, namely, the Board of County Commissioners of Mercer County is empowered by the provisions of Section 9887, General Code, to appropriate funds in amounts determinable according to the provisions of Section 9894, General Code, to pay off the preexisting indebtedness of the Mercer County Agricultural Society.

The answer to your second question is found in the provisions of Section 9906, General Code, which relates to the use and control of fair ground sites and the distribution of proceeds from the use of such property when the control thereof rests in the hands of an agricultural society with title vested in the county. The pertinent part of this section reads as follows:

“Moneys realized by the society in holding county fairs and derived from renting or leasing the grounds and buildings, or portions thereof, in the conduct of fairs or otherwise, over and above the necessary expenses thereof, shall be paid into the county treasury of the society, to be used as a fund for keeping such grounds and buildings in good order and repair, and in making other improvements from time to time deemed necessary by its directors.”

This section provides that moneys realized from the use of property under the control of a county agricultural society may be used, first, in currently meeting necessary expenses and, secondly, if there remains a surplus, it is paid into the county treasury of the society. In either event, the funds derived from the use of the property accrue to the society.

The agreement entered into between the society, the Board of County Commissioners and The American Legion, Celina Post 210, is in effect a lease of the fair ground site executed by the society and the County Commissioners to The American Legion for a period of five years. According to the conclusion reached in Opinions of the Attorney General, 1934, Vol. I, page 449, the leasing of lands controlled by a county agricultural society must be made in the name of the society even though title to the land is in the county. Such is the case before us. Thus, the lease in question was executed by the agricultural society and, according to the provisions of Section 9906, *supra*, the income from such a lease properly goes to the society. Here it should be observed that the society would have no authority to enter into a lease agreement the terms of which would preclude the use of the fair grounds by the society when it is again in a position to effectuate its purpose of holding agricultural fairs.

Finally, you inquire as to the propriety of the officers and members of the society receiving fees for their attendance at meetings as outlined in their resolution. The provisions of Section 9906, *supra*, empower a county agricultural society to expend its funds within bounds of what is reasonably necessary to accomplish the purposes thereof. The only fact presented in this case is that the Directors have set their fees for attending two meetings a year at the rate of \$2.00 a meeting. According to Opinions of the Attorney General, 1933, Vol. I, page 895, a member of the board of directors of an agricultural society is limited by Rule 5 of Rules for the Organization and Management of County and Independent Agricultural Societies to \$4.00 and mileage for attending each meeting and conducting the affairs of the society, with the maximum number of twelve meetings a year. The rule referred to is currently

in effect. The contemplated two meetings a year and the payment of a \$2.00 fee for each meeting are within the boundaries of this regulation. Therefore, it is my opinion that these payments may be legally paid from funds in the hands of the society.

Thus, all three questions presented by you are answerable in the affirmative on the basis of the following conclusions:

First, the provisions of Section 9887, General Code, empower a board of county commissioners to appropriate funds for the payment of the preexisting indebtedness of a county agricultural society when the suspension of activities of such society is conditioned on the payment of the indebtedness of the society.

Secondly, according to the provisions of Section 9906, General Code, moneys realized from the leasing of fair grounds are payable directly to the county agricultural society if the property was at the time of the execution of the lease under the control of the society.

Finally, within the limits set forth in Rule 5 of Rules for the Organization and Management of County and Independent Agricultural Societies, officers and directors of county agricultural societies are entitled to the payment of fees for attending meetings out of funds which may be expended according to the provisions of Section 9906, General Code.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

2888.

APPROVAL—BONDS OF MAYFIELD VILLAGE SCHOOL DISTRICT, CUYAHOGA COUNTY, OHIO, \$6,000.00.

COLUMBUS, OHIO, August 30, 1938.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

GENTLEMEN:

RE: Bonds of Mayfield Village School Dist., Cuyahoga County, Ohio, \$6,000.00.

The above purchase of bonds appears to be part of an issue of bonds of the above school district dated December 31, 1926. The transcript relative to this issue was approved by this office in an opinion