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AGRICULTURAL SOCIETY, COUNTY — BUILDING BURNED ON FAIR GROUNDS OWNED BY COUNTY BUT UNDER CONTROL AND MANAGEMENT OF SOCIETY—PROCEEDS OF FIRE INSURANCE CARRIED BY COUNTY ON BUILDING—SHOULD BE PAID INTO GENERAL FUND OF COUNTY.

SYLLABUS:

Where a building is burned which had been under the control and management of a county agricultural society, but located on a fair grounds owned by a county, the proceeds of the fire insurance carried by the county on such building should not be paid to the county agricultural society but should be paid into the general fund of the county.

Columbus, Ohio, July 30, 1946

Hon. Charles Varner, Prosecuting Attorney
Ottawa, Ohio

Dear Sir:

I hereby acknowledge receipt of your request for my opinion, which reads in part:

“Putnam County has now and has had for more than 50 years last past a regularly organized agricultural society occupying 30 or more acres of land adjoining the village of Ottawa, Ohio, on which land have been constructed various buildings to be used in connection with fairs to be held annually on said premises.

The fee simple title to the ground upon which these buildings, used for fair purposes, are located is in Putnam County or the Putnam County Commissioners. No written lease has ever been made by the Putnam County Commissioners to the Putnam County Agricultural Society, although as stated above the said grounds and buildings thereon have been used by the Putnam County Agricultural Society for more than 50 years.

In compliance with G. C. 9899, the Putnam County Commissioners insured the buildings on said premises against fire and lightning and a few months ago fire destroyed one of said buildings. The loss has been adjusted for \$7054.00 and the checks in payment of said loss have been made payable to the Putnam County Commissioners and are now in the possession of the auditor of this county.

The commissioners have inquired as to whether they should endorse the checks in payment for the loss and turn them over directly to the Agricultural Society or whether they should be endorsed and placed to the credit of the general fund of Putnam County. The Attorney General Opinion No. 1764, rendered in 1930, deals with the payment of insurance on fair buildings, but the commissioners are not certain as to the distribution of this loss inasmuch as the title to the grounds is not in the Putnam County Agricultural Society. * * *

Section 9899, General Code, to which you refer, reads:

“The county commissioners of a county shall insure the buildings *on the grounds of the county agricultural society* for the benefit of such society.” (Emphasis added.)

In your request for my opinion you also refer to Opinion No. 1764, 1930 Opinions Attorney General, p. 616, the syllabus of which provides:

“When county commissioners insure the buildings on the grounds of a county agricultural society by authority of section 9899, General Code, and a loss occurs, the proceeds of the insurance collected on account of said loss should be paid directly to the agricultural society for the benefit of whom such insurance had been effected.”

The facts upon which this opinion was rendered varied from those which you recite in your letter in that in your case the building which burned was on ground owned by the county rather than on ground owned by the county agricultural society. I am aware that it has been argued that the phrase “on the grounds of the county agricultural society,” as used in Section 9899, General Code, *supra*, can be construed to mean grounds under the control and management of a county agricultural society rather than grounds owned by such society. The basis for this argument is that Section 9906, General Code, vests in a county agricultural society such complete control of lands owned by the county, which are used for the purpose of a site whereon to hold fairs, that for all intents and purposes such a site is “grounds” of such society. Said Section 9906, General Code, reads:

“When the title to grounds and improvements occupied by agricultural societies is in the county commissioners, the control and management of such lands and improvements shall be vested

in the board of directors of such society so long as they are occupied and used by it for holding agricultural fairs. 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."

However, a study of the history of both Section 9899 and Section 9906, General Code, does not cause me to agree with such argument.

Section 9899, General Code, in its original form was enacted in 1898 (93 O. L. 40), and read:

"That the county commissioners of any county owning agricultural or fair ground property be and are hereby authorized to keep the buildings thereon insured, if deemed proper by said commissioners."

This law simply authorized the county commissioners to expend county funds to insure certain property owned by the county. In 1902 this section was amended (95 O. L. 123) to read:

"That the county commissioners of any county are hereby authorized to keep insured all buildings owned by the county agricultural society, or by the county, for the benefit of the county agricultural society, or the county, as the case may be, if deemed proper by said commissioners."

This amendment only authorized the insuring of buildings owned by the county agricultural society for the benefit of the society and buildings owned by the county for the benefit of the county. This amendment is particularly important because the same general assembly which enacted it also enacted Section 9906 (95 O. L. 505), *supra*. Had this general assembly intended that property owned by the county but used by a county agricultural society as a site for fairs was to be considered as property of such society, there would have been no necessity for the separation of the two ownerships of property as contained in Section 9899, General Code, as it was then enacted. Furthermore, this law specifically required that insurance carried on county buildings be for the benefit of the county.

Section 9899, hereinbefore quoted, was enacted in its present form in 1919 (108 O. L. Part 1, p. 385). This amendment makes it the mandatory duty of the county commissioners to insure buildings *on the grounds* of the county agricultural society for the benefit of such society.

In all of the statutes relating to a county agricultural society, the law seems to contemplate that it is an independent corporation having the usual powers of a private corporation. Section 9884-2, General Code, provides for the election of a board of directors, and Section 9884-3, General Code, provides for annual meetings and organization of the board by the election of a president, vice-president, treasurer, secretary, etc. The various statutes relating to contributions by the county commissioners provide for the payment of funds to the treasurer of the society. This, together with the foregoing review of the history of Sections 9899 and 9906, General Code, makes it apparent that the general assembly has always dealt with a county agricultural society as being separate and distinct from the county in which it is located, and that its property which can be insured with county funds is separate and distinct from that of the county. It should be remembered that statutes dealing with the payment of money from the public treasury should be strictly construed, and that only such payment of money is authorized as is clearly within the statute (32 O. Jur. 734).

I therefore cannot read into the clear and simple language used in Section 9899, General Code, any requirement that the county commissioners shall insure buildings on the county's land for the benefit of a county agricultural society.

In specific answer to your inquiry, it is therefore my opinion that where a building is burned which had been under the control and management of a county agricultural society, but located on a fair grounds owned by a county, the proceeds of the fire insurance carried by the county on such building should not be paid to the county agricultural society but should be paid into the general fund of the county.

Respectfully,

HUGH S. JENKINS,
Attorney General