

of the General Code, may not lawfully enter into a contract with an undertaker for the burial of a person described in said section, who dies without dependents and leaves an estate which is sufficient to defray such expense.

(2) In the event that such burial committee has determined that the family is unable, for want of means, to defray such expenses, and a contract has been entered into with an undertaker, and payments made to such undertaker who has performed his part of the contract, a recovery may not be had against such undertaker, in the absence of fraud or collusion, in which such undertaker participates, notwithstanding it develops that the decedent left an estate sufficient to defray such expenses and left no dependents.

(3) Under such circumstances, when payments have not been made, the county commissioners or county auditor may set up as a defense to an action to recover upon such contract the fact that the same was illegally entered into on account of the financial status of the decedent.

Respectfully,
GILBERT BETTMAN,
Attorney General.

821.

COUNTY COMMISSIONERS—MAY MAKE SUPPLEMENTAL APPROPRIATION UNDER SECTION 9921-1c, GENERAL CODE, FOR COUNTY AGRICULTURAL AGENT IN EXCESS OF AMOUNT APPROPRIATED UNDER REPEALED SECTION 9921-4, GENERAL CODE.

SYLLABUS:

Under the provisions of Section 9921-1c, General Code, enacted as a part of House Bill No. 72, passed by the 88th General Assembly, the board of county commissioners of a county may make a supplemental appropriation to be covered into the state treasury for the compensation and expenses of the county agricultural agent of such county in excess of the original appropriation for such purposes made by said county commissioners, under the then provisions of Section 9921-4, General Code, provided such supplemental appropriation, if the same, together with previous appropriations during the fiscal year for such purposes, exceeds three thousand dollars, is made by the unanimous action of all of said county commissioners, and provided further that such supplemental appropriation, together with all other appropriations against the general fund of the county, does not exceed the amount set forth as available for expenditure from such fund in the official certificate or amendment thereof filed with the county commissioners by the budget commission prior to the making of such supplemental appropriation.

COLUMBUS, OHIO, September 3, 1929.

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

GENTLEMEN:—This is to acknowledge receipt of your recent communication, which reads as follows:

“Section 9921-4 of the General Code, authorizing county to make appropriations for support and expense of a county agricultural agent, not to exceed \$1,500.00 annually, was repealed in House Bill No. 72, enacted by the 88th General Assembly, effective July 19, 1929, and Section 9921-1c, was enacted,

which provides that the county commissioners of each county of the state are authorized and empowered to levy a tax within the limitations prescribed by law, and to appropriate money from the proceeds thereof or from the general fund of the county to be paid into the state treasury to the credit of said agricultural extension fund and expended for the purposes prescribed in Section 9921-1a of this act for the benefit of said county. This section further provides that amounts appropriated in excess of \$3,000.00 for each agent employed must have the unanimous consent of the board of county commissioners of the various counties.

Since it is now possible to make appropriations for county agricultural agents in excess of \$1,500.00, under the new law, could this increased appropriation be legally made before January 1, 1930, when it could be included in the budget?"

Section 9921-1c, referred to in your communication, was enacted as a part of House Bill No. 72, passed by the 88th General Assembly under date of March 13, 1929, and which became effective on July 18, 1929. Prior to the effective date of said House Bill No. 72, the only statutory provisions relating to the subject matter covered by said House Bill were those carried into the General Code as Sections 9921 to 9921-6, inclusive, of the General Code.

Section 9921-1, General Code, which is still in full force and effect, provides that moneys apportioned to the State of Ohio by the United States under the act of Congress, approved May 8, 1914, together with the moneys appropriated by the state and any county or counties, to make available the aid extended by the United States by said act of Congress, shall be set aside and designated as "the agricultural extension fund," to be used for extending the service of the College of Agriculture of the Ohio State University. It is further provided by this section that the trustees of the Ohio State University shall expend in accordance with law all moneys in the state treasury to the credit of the agricultural extension fund.

Section 9921-2, General Code, provided that from the moneys appropriated by the state for the employment of agricultural agents, not to exceed \$3,000.00 in any one year, should be expended for any county that should raise at least \$1,000.00 for the support of an agricultural agent for one year, and should give satisfactory assurance to the trustees of the Ohio State University that a like sum would be raised by such county for a second year.

Section 9921-4, General Code, provided that "each and every county of the state is authorized and empowered to appropriate annually not to exceed fifteen hundred dollars, for the maintenance, support and expense of a county agricultural agent, and the county commissioners of said county or counties are authorized to set apart and appropriate said sum of money and transmit the same to the state treasurer, who shall place it to the credit of the agricultural extension fund to be paid for the purposes aforesaid, on warrant issued by the Auditor of State in favor of the Ohio State University."

By section 9921-5, General Code, it was provided that where a county agricultural agent was provided for and established in any county upon a vote of the electors of such county, the county commissioners of such county should continue to make such annual appropriations for the work of such county agricultural agent, as the trustees of the Ohio State University might direct, not exceeding the sum of \$1,500.00 annually for a period of five years.

Section 9921-6, General Code, was enacted as an act passed on April 19, 1919, to further supplement Section 9921, General Code, by authorizing the employing of home demonstrating agents of the several counties of the state, and providing for the further development of agriculture. This section provided that the county commis-

sioners of each and every county of the state, in addition to the powers conferred upon them by Section 9921-4, General Code, were authorized and empowered to make additional appropriations annually to further the development of agriculture and country life in the counties of the state, including the employment of a home demonstration agent, and the county commissioners of said county or counties were authorized to set apart and appropriate moneys so appropriated and transmit the same to the state treasurer, who was required to place the same to the credit of the agricultural extension fund to be paid for the purposes aforesaid by warrant issued by the Auditor of State on vouchers approved by the Ohio State University.

Touching the operation and effect of Section 9921-6, General Code, this department, in an opinion under date of June 13, 1927, found in Opinions of the Attorney General for 1927, Volume 2, at page 1047, held that the trustees of the Ohio State University were without authority to disburse moneys appropriated by the commissioners of a county under authority of Section 9921-6, General Code, and transmitted to the state treasurer, for the purposes of the agricultural extension fund, for the payment of additional salary to the county agricultural agent or the payment of office expenses of such agent.

Sections 9921-2 to 9921-6, General Code, above referred to, were repealed by the enactment of House Bill No. 72, and their place in the statutory law of the state was taken by Sections 9921-1a, 9921-1b and 9921-1c, General Code, which were enacted in and by said House Bill No. 72.

Section 9921-1a provides that the trustees of the Ohio State University may employ such county extension agents, including agricultural agents, home demonstration agents, boys' and girls' club agents and such other employes as said trustees may deem necessary, and provide for the payment of their reasonable compensation and expenses incurred in the discharge of their duties, including the maintenance of proper offices and equipment and supplies therefor, from said agricultural extension fund.

Section 9921-1b provides specifically with respect to the duties of said county extension agents and Section 9921-1c, General Code, which is more immediately applicable in the consideration of the question presented in your communication, provides as follows:

"The county commissioners of each county of the state are authorized and empowered to levy a tax, within the limitations prescribed by law, and to appropriate money from the proceeds thereof or from the general fund of the county to be paid into the state treasury to the credit of said agricultural extension fund and expended for the purposes prescribed in Section 9921-1a of this act for the benefit of said county. Amounts appropriated in excess of \$3,000 for each agent employed must have the unanimous consent of the board of county commissioners of the various counties. Any money paid into the state treasury under this section which remains unexpended for two years from the time of payment shall be returned to the county from which it came."

From a consideration of the provisions of Section 9921-1c, General Code, above quoted, it is seen that instead of the appropriations for a county agricultural agent and for a home demonstration agent, authorized respectively by Sections 9921-4 and 9921-6, General Code, the county commissioners of each county are authorized to levy a tax within the limitations prescribed by law and to appropriate money from the proceeds of such levy or from the general fund of the county to be paid into the state treasury to the credit of the agricultural extension fund and to be expended for the compensation and expenses of the county extension agents mentioned in Section 9921-1a, General Code, as may be employed in such county; and, so far as the pro-

visions of Section 9921-1c are concerned, there does not appear to be any limitation to the amount of the appropriations that the county commissioners of a county may make for this purpose in any fiscal year other than that made in the provision of Section 9921-1c, General Code, that amounts appropriated in excess of three thousand dollars for each agent employed must have the unanimous consent of the county commissioners of the county. However, with respect to the question here presented, the provisions of Section 9921-1c are required to be read and considered in connection with the pertinent provisions of the budget law relating to appropriations by county commissioners for county purposes.

Touching the question presented in your communication, it is noted that Section 5625-29, General Code, now as before its amendment in House Bill No. 426, passed by the 88th General Assembly, provides that on or about the first day of each year the taxing authority of each subdivision or other taxing unit shall pass an annual appropriation measure and thereafter, during the year, may pass such supplemental appropriation measures based on the revised tax budget and the official certificate of estimated resources and amendments thereof. Section 5625-32, General Code, further provides that any appropriation measure may be amended or supplemented from time to time provided such amendment or supplement shall comply with all the provisions of law governing the taxing authorities in making an original appropriation.

The provisions of Section 5625-27, General Code, operate as a limitation upon the appropriation which the taxing authority of the county or other political subdivision is authorized to make under the provisions of Section 5625-29, and 5625-32, General Code, above noted. By Section 5625-27, General Code, it is provided, among other things, that the total of the appropriations made at any time during the fiscal year from any fund shall not exceed the amount set forth as available for expenditure from such fund in the official certificate of estimated resources or amendment thereof, certified by the budget commission prior to the making of the appropriation or supplemental appropriation.

It follows, therefore, from a consideration of the provisions of Section 9921-1c, General Code, and of the sections of the General Code above noted forming a part of the budget law, that the board of county commissioners of a county may, under the authority granted to them by Section 9921-1c, General Code, make supplemental appropriations to be covered into the state treasury for the compensation and expenses of the county agricultural agent in excess of the original appropriation, not exceeding \$1,500.00, made by the county commissioners for such purpose under the then provisions of Section 9921-4, General Code, provided such additional or supplemental appropriation is made in accordance with the provisions of Section 9921-1c of the General Code, imposing a limitation with respect to the requirement of unanimous action on the part of the county commissioners in cases where the appropriation for such county agricultural agent, together with other appropriations for him during the fiscal year, exceeds \$3,000, and provided, further, that the additional and supplemental appropriation so made, together with all other appropriations against the general fund of the county, does not exceed the amount set forth as available for expenditure from such fund in the official certificate or amendment thereof filed by the budget commission prior to the making of such additional or supplemental appropriation.

Respectfully,

GILBERT BETTMAN,

Attorney General.