

The first six bonds are undoubtedly executed pursuant to the provisions of sections 1183 and 1182-3, General Code, which state, in so far as pertinent:

"Sec. 1183. * * * Such resident district deputy directors shall * * * give bond in the sum of five thousand dollars. * * *

"Sec. 1182-3. * * * All bonds hereinbefore provided for shall be conditioned upon the faithful discharge of the duties of their respective positions, and such bonds * * * shall be approved as to the sufficiency of the sureties by the director (of highways), and as to legality and form by the attorney general, and be deposited with the secretary of state. * * *" (Words in parenthesis the writer's.)

While the first listed bond of Lyle B. McBride, Resident District Deputy Director in Trumbull County, is in the penal sum of \$5,000, and has been approved by you in accordance with the above statutory provisions, I am unable to approve said bond at this time because the power of attorney attached to the bond does not purport to give G. C. Bolz power to execute a bond of this nature. I would advise that a power of attorney authorizing Mr. Bolz to sign a bond to guarantee the faithful performance of the duties of any official be obtained. When this is obtained and the bond returned to this office, same will be approved.

The remaining bonds, with the exception of the last listed bond, are executed properly in accordance with the above quoted statutory provisions. However, the bond of Bert Beucler should have added in the first line of the bond, beginning with the words "That we, Bert Beucler" the following words "and the Aetna Casualty and Surety Company." Moreover, the bonds of J. L. McCormick, C. W. Metcalf and Earl C. Ford do not have attached financial statements of the bonding companies. Subject to these omissions being corrected, I am approving these five bonds.

The last listed bond of John Jaster, Jr., is undoubtedly executed pursuant to pertinent provisions of section 1182, General Code, and the provisions of section 1182-3, General Code, above quoted. Section 1182, General Code, states, in so far as pertinent:

"Each division deputy director shall give bond in the sum of five thousand dollars, conditioned for the faithful performance of his duties with sureties to the approval of the state highway director. * * *

Said bond is properly executed in accordance with the above provisions of the Code, and I am hereby approving it as to form. All the bonds are being returned herewith.

Respectfully,
JOHN W. BRICKER,
Attorney General.

42.

COUNTY AGRICULTURAL SOCIETY—CANNOT BE DISSOLVED BY COUNTY COMMISSIONERS OR BY A VOTE OF PEOPLE.

SYLLABUS:

1. *A county agricultural society existing by virtue of sections 9880, et seq.,*

of the General Code is a private corporation not for profit.

2. Such a society cannot be dissolved either by action of the board of county commissioners or by the voters upon submission of the question at an election.

COLUMBUS, OHIO, January 20, 1933.

HON. EDWIN S. DIEHL, *Prosecuting Attorney, Defiance, Ohio.*

DEAR SIR:—I have your letter of recent date which reads as follows:

"The Board of County Commissioners of Defiance County, Ohio, have asked me to request your opinion upon the following matters:

Section 9880 of the General Code provides for the organization of agricultural societies and the authority to draw annually the sum of \$800.00. Section 9880-2 permits the expenditure of the sum of \$500 for Junior Club work. Section 9894, O. G. C. authorizes the expenditure of not less than \$1500 to be appropriated for county fairs or agricultural societies in addition to the sums authorized by the two preceding sections.

Defiance County owns real estate and buildings whereon county fairs are held. Considerable opposition has arisen in Defiance County with reference to the appropriations above mentioned and the Board of County Commissioners have sought my advice as to the legality of disbanding the agricultural society in this county.

1. Have the Board of County Commissioners the right under the law to take action to disband the agricultural society?
2. May the question of the continuance of county fairs held by the agricultural society be submitted to the electorate of the county and if so what procedure is necessary to place this question before the electorate of the county?"

The statutory provisions governing the formation, powers and organization of county agricultural societies are contained in sections 9880 to 9910, inclusive, of the General Code. Section 9880 reads:

"When thirty or more persons, residents of a county organize themselves into a county agricultural society, which adopts a constitution and by-laws, selects the usual and proper officers, and otherwise conducts its affairs in conformity to law, and the rules of the state board of agriculture, and when such society has held an annual exhibition in accordance with sections 9881, 9882, and 9884 of the General Code, and made proper report to the state board, then upon presentation to the county auditor, of a certificate from the president of the state board attested by the secretary thereof, that the laws of the state and the rules of the board have been complied with, the county auditor of each county wherein such agricultural societies are organized, annually *shall* draw an order on the treasurer of the county in favor of the president of the county agricultural society for the sum of eight hundred dollars, and the treasurer of the county shall pay it. The total amount of such order shall not exceed one hundred per cent (100%) of the amount paid in regular class premiums." (Italics the writer's.)

Section 9894 provides as follows:

"When a county or duly organized county agricultural society owns or holds under a lease real estate used as a site whereon to hold fairs and the county agricultural society therein has the control and management of such lands and buildings, for the purpose of encouraging agricultural fairs, the county commissioners *shall*, on the request of the agricultural society, annually appropriate from the general fund not to exceed the sum of two thousand dollars or less than fifteen hundred dollars for such purposes, and in any county wherein is located one or more independent agricultural society or societies as provided for in section 9880-1 herein, the county commissioners of said county, for the purpose of encouraging such independent agricultural society or societies, *may* appropriate, in addition to the sum appropriated for the county agricultural society, a sum not greater than the amount appropriated for the county society. The appropriation made for said agricultural society or societies shall be paid by the treasurer of the county to the treasurer of the county society or independent society or societies upon an order from the county auditor, duly issued therefor." (Italics the writer's.)

Payment by the county to the county society of the sums provided in these sections is made mandatory as is shown by the use of the word "shall" as distinguished from "may" used in section 9894 with reference to independent agricultural societies. As long as the county society continues to exist and abide by the law, the commissioners cannot withhold the sums mentioned in the statute. Presentation of a certificate from the State Board of Agriculture to the effect that the county society has complied with the law is a condition precedent to drawing the sum provided in section 9880. Section 9884-4 provides:

"If it be shown from the report of any county agricultural society, from witnesses or otherwise, that the annual exhibition held by such society was not conducted along moral or agricultural lines or was not of sufficient educational value to justify the expenditure of the per capita tax as provided by section 9880 of the General Code, the certificate for such financial aid may be withheld by the state board of agriculture."

The discretion to withhold this certificate for violations of this section is lodged in the State Board of Agriculture, as was held in an opinion of this office reported in Opinions of the Attorney General, 1920, Vol. 1, page 61. So long as the State Board grants this certificate, the county must provide the sum specified. Thus, it is clear that the county commissioners cannot withhold funds from a subsisting county society which obeys the law.

We come to the question of the dissolution of such a society. Since the statute is silent upon this question, it is necessary to consider the nature and legal status of these organizations. Section 9884-1 specifies who may be members. Section 9884-2 concerns the board of directors, the terms of office of its members and their election. Section 9884-3 provides for the annual meeting and the organization of the board. Section 9885 reads as follows:

"County societies which have been, or may hereafter be organized, are declared bodies corporate and politic, and as such, shall be capable of suing and being sued, and of holding in fee simple such real estate

as they have heretofore purchased, or may hereafter purchase, as sites whereon to hold their fairs. They may mortgage the grounds of the society for the purpose of renewing or extending pre-existing debts, and for the purpose of furnishing money to purchase additional land. But if the county commissioners have paid money out of the county treasury to aid in the purchase of the site of such grounds, no mortgage shall be given without the consent of such commissioners."

It appears from these sections, especially section 9885, that county agricultural societies are corporations. The question whether they are public or private corporations then arises.

It is stated in Clark and Marshall on Private Corporations, at page 66:

"A state board of agriculture, or agricultural society, composed of private individuals, and incorporated for the purpose of promoting agriculture, holding agricultural fairs, etc., is not a public corporation, though the state has made an appropriation of money for its benefit."

To the same effect are *Dunn vs. Agricultural Society*, 46 O. S. 93; *Markley vs. State*, 12 O. C. C. (N. S.) 81; and *Chemical Company vs. Calvert*, 7 O. N. P. (N. S.) 103. The proposition was also held in an opinion by one of my predecessors, which will be found in the Annual Report of the Attorney General for 1913, Vol. II, page 1253. That opinion recognized the applicability of fencing statutes to those associations just as to individuals and private business corporations. The courts of this state have also held such associations to be liable for their torts.

In *Dunn vs. Agricultural Society*, *supra*, at page 99, we find language to this effect concerning governmental power over these societies:

"From this summary of the statutes, it is apparent, that corporations formed under them, are not mere territorial or political divisions of the state; nor are they invested with any political or governmental functions, or made public agencies of the state, to assist in the conduct of its government. Nor can it be said, that they are created by the state, of its own sovereign will, without the consent of the persons who constitute them, nor that such persons are the mere passive recipients of their corporate powers and duties, with no power to decline them, or refuse their execution. On the contrary, it is evident that societies organized under the statutes, are the result of the voluntary association of the persons composing them, for purposes of their own. It is true, their purposes may be public, in the sense, that their establishment may conduce to the public welfare, by promoting the agricultural and household manufacturing interests of the county; but, in the sense, that they are designed for the accomplishment of some public good, all private corporations are for a public purpose, for the public benefit, is both the consideration and justification for the special privileges and franchises conferred on them. These agricultural societies are formed of the free choice of the constituent members, and by their active procurement; for, it is only when they organize themselves into a society, adopt the necessary constitution, and elect the proper officers, that they become a body corporate. *The state neither compels their incorporation, nor controls their conduct after-*

ward. They may act under the organization, or at any time dissolve, or abandon it." (Italics the writer's.)

Paragraph one of the syllabus of an opinion reported in Opinions of the Attorney General, 1922, Vol. I, page 40, reads as follows:

"County agricultural societies organized under the provisions of section 9880 et seq. of the General Code are private corporations, whose officers and directors in the management of the societies' affairs, are governed by the same rules of conduct as those applied to similar officers of private corporations generally."

In *Lawrence County Commissioners vs. Brown*, 14 O. D. 241, such societies were declared to be "for the promotion of agriculture and not for private profit". From these authorities, it appears that county agricultural societies are private corporations not for profit. (Also see *State, ex rel., vs. Kerns, Aud.*, 104 O. S. 550.)

The only mention of dissolution of these organizations appears in section 9898, General Code, which reads:

"When a society is dissolved or ceases to exist, in a county where payments have been made for real estate, or improvements thereon, or for the liquidation of indebtedness, for the use of such society, all such real estate and improvements shall vest in fee simple in the county by which the payments were made."

This section was construed in the case of *Toledo Exposition Company vs. Kerr*, 8 O. C. C. (N. S.) 369, 18 C. D. 547. This was an action by the County Commissioners of Lucas County for the recovery of real estate owned by the county and used by the County Agricultural Society for giving fairs. It was held that the society, by ceasing to give fairs and leasing its grounds to another organization to carry out that purpose, did not fall within the statutory provision that when such a society is "dissolved or ceases to exist" its real estate and improvements thereon shall vest in the county. The court held that the society must cease to exist as a corporation and not merely cease to give fairs before the realty shall vest in the county.

Unfortunately, neither this case nor any other authority which has come to my attention offers any suggestion as to the procedure necessary to dissolve such corporation. Since there is no statutory provision giving either the commissioners or the voters of the county the power to dissolve a county agricultural society and since it is a private corporation, I am of the opinion that both your first and second questions must be answered in the negative.

Respectfully,
JOHN W. BRICKER,
Attorney General.