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REGARDING EXPENDITURE OF MONEY FOR HORSE RACE PURSES AT COUNTY FAIRS BY COUNTY AGRICULTURAL SOCIETY AND WHAT MUST BE DONE WITH AMOUNT NOT SPENT—I.E., RETURNED TO "OHIO FAIRS FUND"—§3769.082 R.C.

SYLLABUS:

1. Where pursuant to the first paragraph of division (C) of Section 3769.082, Revised Code, a county agricultural society receives twenty-five hundred dollars to be used as purse money for horse races at the fair in a particular year, but uses only two thousand dollars for such purpose at that fair, the society may not use the remaining five hundred dollars for any other purpose; and such amount should be returned to the director of agriculture to be deposited in the "Ohio fairs fund," from which it came.

2. Where pursuant to the second paragraph of division (C) of Section 3769.082, Revised Code, a county agricultural society receives two thousand dollars to be used at the fair in a particular year to conduct four stake races, with the minimum purse for each race to be one thousand dollars, such two thousand dollars is to be prorated as purse money for such four stake races, with five hundred dollars being expended for each race; and the society must likewise expend five hundred dollars for each race to provide the one thousand dollar minimum purse.

If, under said second paragraph, a society receives two thousand dollars to conduct four such stake races at the fair in a particular year, but only conducts three of said races at that fair, the society has properly expended fifteen hundred dollars of the two thousand dollar grant but may not use the remaining five hundred dollars for any other purpose; thus, if it is too late to use the five hundred dollars for an authorized stake race at that fair, such amount should be returned to the director of agriculture to be deposited in the "Ohio fairs fund," from which it came.

3. An agricultural society which under "(1)," or "(2)," above, is required to return money to the director of agriculture for deposit in the "Ohio fairs fund," and which does not do so within a reasonable time, may be presumed to be in violation of division (J) of Section 3769.082, Revised Code, which division provides a penalty for using moneys distributed under that section for an unauthorized purpose.

Columbus, Ohio, January 9, 1962

Hon. Robert H. Terhune, Director
Department of Agriculture
Ohio Departments Building, Columbus 15, Ohio

Dear Sir:

I have before me your request for my opinion in which you refer to division (C) of Section 3769.082, Revised Code, and state:

“When a county agricultural society receives two thousand five hundred dollars for horse races and also two thousand dollars for four stake races under the above Division (C), I request your opinions to the following fact situations.

“(1) A county agricultural society schedules five (5) horse races at its annual fair, and the said society plans to distribute five hundred dollars as purse money for each of the five (5) races. Each of the five (5) races, with the exception of the last one, was run, and five hundred dollars in purses was distributed at each of the races that were run. The last race was not run, for inclement weather made it imperative that this race be declared off. My questions are:

“What disposition should this agricultural society make of the remaining five hundred dollars? If you decide that this remaining five hundred dollars should be returned to the State of Ohio, can it be deposited to the credit of the ‘Ohio Fairs Fund’?

“(2) The above county agricultural society also scheduled four (4) stake races for two-year-old and three-year-old colts and fillies. A minimum purse of one thousand dollars plus entrance fees was going to be paid for each of the stake races. Three of the stake races were conducted and purses paid; however, the last stake race was declared off because of inclement weather. My question is:

“Are there any moneys remaining in this situation received from the State that have to be returned to the State of Ohio, or has the complete two thousand dollars been used for the purpose of conducting four (4) stake races as this county agricultural society contends?”

Section 3769.082, *supra*, reads in pertinent part as follows:

“There is hereby created in the state treasury a fund to be known as the ‘Ohio fairs fund.’ Moneys to the credit of the ‘Ohio fairs fund’ shall be distributed by the auditor of state on order of the director of agriculture annually on or before the first day of March, beginning with the year 1958, as follows:

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“(C) To each county agricultural society and each independent agricultural society conducting horse races during their annual fair, the sum of two thousand five hundred dollars *to be used as purse money for horse races* in accordance with the provisions of this section, and the additional sum of five hundred dollars to each of such county agricultural societies and independent agricultural societies to be used for race track maintenance

and other expenses necessary for the conducting of such horse races or colt stakes.

"To at least fifty per cent of those county agricultural societies and independent agricultural societies, as designated by the director of agriculture, conducting horse races at their annual fair, the additional sum of two thousand dollars each, which sum shall be used for the purpose of conducting four stake races for two-year-old and three-year-old colts and fillies, with the minimum purse offered for each race to be not less than one thousand dollars, exclusive of entrance fees. Such stake races shall be distributed as evenly as possible throughout the racing season.

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"(G) The stake races conducted for two-year-old and three-year-old colts and fillies under this section shall be conditioned to admit only those colts and fillies wholly owned by a resident of Ohio as a two-year-old on the first day of January of the year that such colt or filly would be eligible to race as a two-year-old, and, also, wholly owned by a resident of Ohio on the day that the race is contested, or bred by a resident of Ohio, or sired by a horse standing in Ohio the full season of service during which the dam was bred to produce such colt or filly. Such races shall be open for nomination not earlier than the first day of January in the year the race is to be held. Total entrance and other fees in each of said race events shall not exceed two hundred dollars for each colt or filly in those races conducted by the Ohio expositions commission and the total entrance and other fees in each of said events shall not exceed forty dollars for each colt or filly in those races conducted at county or independent fairs under this section. *All entrance fees in such events shall be added to the moneys distributed in this section as purse money.*

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"(J) Any county agricultural society or independent agricultural society which uses the moneys distributed under the provisions of this section for any purpose other than that provided in this section is not eligible to receive distribution from the 'Ohio fairs fund' for a period of two years after such misuse of such moneys occurs.

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(Emphasis added)

A county agricultural society in order to be eligible to receive the two thousand five hundred dollars in the first paragraph of division (C), *supra*, must conduct horse races during its annual fair. This sum must then be used as purse money for the horse races, and I am of the opinion that it must be used for that purpose in the same year received. This sum

is an *annual* grant of moneys from the "Ohio fairs fund," and the races are to be held by the society *during its annual fair*.

"The county agricultural society in fact situation "(1)" did not use as purse moneys the entire two thousand five hundred dollars received. One of the five races the county agricultural society had scheduled was not run because of inclement weather ; and the five hundred dollars, which would have been paid out as purse money had the fifth race been run, is presently being held by the county agricultural society.

Clearly, the agricultural society is now prohibited from using the money being held. That money was for a specific purpose and it is now too late to accomplish that purpose. If the society does now use that money, it is subject to the penalty provided by division (J) of Section 3769.082, *supra*.

Accordingly, the society should return the five hundred dollars not used to the director of agriculture, to be deposited in the "Ohio fairs fund," from which it came ; and failure to so return that money within a reasonable time would, in my opinion, create a presumption of a violation of the provisions of division (J), *supra*.

Coming to fact situation "(2)," it appears that the same county agricultural society also received two thousand dollars under the second paragraph of division (C), *supra*, for the purposes included therein.

To be eligible to receive the additional sum of two thousand dollars under said second paragraph, a society must not only conduct horse races at its annual fair but the said county agricultural society must be designated by the director of agriculture to receive the same. The sum received must then be used by the society for the purpose of conducting four stake races for two-year-old and three-year-old colts and fillies. The minimum purse offered for each race must be not less than one thousand dollars, exclusive of entrance fees.

Although this second paragraph of division (C) does not specifically state that this two thousand dollars is to be used for purse moneys, such may be reasonably implied from the language used ; and the last sentence in division (G) clarifies any ambiguity of language. Said last sentence reads :

"All entrance fees in such events shall be added to the moneys distributed in this section as purse moneys."

Clearly, therefore, the two thousand dollars granted under the second paragraph of division (C), *supra*, is to be used as purse moneys. Further, the requirement that such sum is to be used for the purpose of conducting four stake races with a minimum purse of one thousand dollars offered for each stake race, makes it clear that the intent of the legislature was that this sum was to be pro-rated as purse moneys for the four stake races, with the balances necessary to make the minimum one thousand dollars purses required to be offered for each stake race to be furnished by the county agricultural society.

Obviously, therefore, the two thousand dollars could be used only for four stake races and could not be used for only three stake races; and to hold that the two thousand dollars was used in the three stake races would mean that the society had violated division (J), *supra*.

Since I have already concluded that under the second paragraph of division (C), *supra*, five hundred dollars of the "fairs fund" was contributed for each of four stake races, it follows that in the instant situation the society has properly expended fifteen hundred dollars but holds five hundred dollars which it cannot expend. That is, it is now too late to use the money for a stake race, and the money cannot be expended for any other purpose. Again, therefore, the society must return the five hundred dollars to the director of agriculture for deposit in the "Ohio fairs fund," from which it came, or be subject to penalty under division (J), *supra*.

In conclusion, it is my opinion and you are advised:

1. Where pursuant to the first paragraph of division (C) of Section 3769.082, Revised Code, a county agricultural society receives twenty five hundred dollars to be used as purse money for horse races at the fair in a particular year, but uses only two thousand dollars for such purpose at that fair, the society may not use the remaining five hundred dollars for any other purpose; and such amount should be returned to the director of agriculture to be deposited in the "Ohio fairs fund," from which it came.

2. Where pursuant to the second paragraph of division (C) of Section 3769.082, Revised Code, a county agricultural society receives two thousand dollars to be used at the fair in a particular year to conduct four stake races, with the minimum purse for each race to be one thousand dollars, such two thousand dollars is to be prorated as purse money for such four stake races, with five hundred dollars being expended for each

race; and the society must likewise expend five hundred dollars for each race to provide the one thousand dollar minimum purse.

If, under said second paragraph, a society receives two thousand dollars to conduct four such stake races at the fair in a particular year, but only conducts three of said races at that fair, the society has properly expended fifteen hundred dollars of the two thousand dollar grant but may not use the remaining five hundred dollars for any other purpose; thus, if it is too late to use the five hundred dollars for an authorized stake race at that fair, such amount should be returned to the director of agriculture to be deposited in the "Ohio fairs fund," from which it came.

3. An agricultural society which under "(1)," or "(2)," above, is required to return money to the director of agriculture for deposit in the "Ohio fairs fund," and which does not do so within a reasonable time, may be presumed to be in violation of division (J) of Section 3769.082, Revised Code, which division provides a penalty for using moneys distributed under that section for an unauthorized purpose.

Respectfully,

MARK McELROY

Attorney General