

2454.

COUNTY AGRICULTURAL SOCIETY—ONLY ONE MAY EXIST IN COUNTY—UNTIL IT DISBANDS OR DISSOLVES, NO NEW COUNTY SOCIETY MAY BE ORGANIZED—SECTIONS 9880 TO 9910 G. C.

SYLLABUS:

Under the provisions of law relating to county agricultural societies (Sections 9880 to 9910, inclusive, General Code), only one county agricultural society may exist in the county and until such society disbands or is dissolved, no new county society may be organized.

Columbus, Ohio, June 25, 1940.

Hon. John T. Brown, Director of Agriculture,
State Office Building, Columbus, Ohio.

Dear Sir:

This will acknowledge receipt of your request for my opinion as follows:

“In your opinion No. 1369, in 1939, it was held by you that, ‘The failure of a county agricultural society to make proper reports within the time specified by law and the Rules of the Department of Agriculture in any one year does not preclude such society from participating in county funds in succeeding years.’

In 1936 and again in 1937, the certificates referred to in Sections 9880 and 9884 were withheld from a county society by the former director of agriculture because of the failure of such society to submit reports within the time limitation.

Under date of February 19, 1937, the former director of agriculture wrote to the secretary of the society, as follows:

‘Under date of January 19, 1937, I called your attention to the fact that the official report of the _____ County Agricultural Society, covering the year 1936, had not been filed in compliance with Section 9884 of the General Code.

Inasmuch as I have not, at this time, received your report, I am assuming that the society has disbanded itself and I am marking the department records accordingly. If this is not correct, kindly let me hear from you at once. (Signed—Director of Agriculture)’

From the records of the Department of Agriculture, no reply was received from this letter and said society was stricken from the official list of Fairs of the Department.

The certificate, covering the 1938 Fair of the society, was withheld by the present director of agriculture as the result of a protest signed by six taxpayers of the county, in which the fair was held, when it was proven that the society had violated certain sections of the laws of Ohio.

Under date of December 20, 1938, with the consent of the former director of agriculture, a new society was permitted to organize. This new society adopted a constitution and by-laws in conformity with the rules of the Department of Agriculture and conducted a fair in 1939. Likewise, the old society conducted a fair in 1939.

The question now arises as to which of these two societies is entitled to receive, from the director of agriculture, the certificates referred to by Sections 9880 and 9884 of the G. C. Did the old society, whose name had been stricken from the records of the Department of Agriculture, lose its rights when a new society was given permission to organize?"

Sections 9880 and 9880-1, General Code, provide for the organization of agricultural societies as follows:

Section 9880, General Code:

"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."

Section 9880-1, General Code:

"When thirty or more persons of a county or of contiguous counties, not to exceed three, shall have been organized into an independent agricultural society and has held an annual exhibit

for three years previous to January 1st, 1919, in a county where-in is located a county agricultural society, and when such independent society has held an annual exhibition, in accordance with the three following sections and made proper report to the state board, then, upon the presentation to the county auditor of a certificate from the president of the state board attested by the secretary thereof, that the laws of Ohio and the rules of the board have been complied with, the county auditor of the county, if the fair board be residents of one county, shall draw an order on the treasurer of the county in favor of the president of the independent association for a sum equal to one hundred per cent of the amount paid in regular class premiums, as calculated in section 9880 herein, but which shall not exceed the sum of eight hundred dollars, and the treasurer shall pay said order.

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Under the provisions of the preceding section, an independent agricultural society must have held an annual exhibit for three years prior to January 1, 1919 in order to receive financial aid from the county. Therefore, the new society in the instant situation can not qualify under the provisions of Section 9880-1, supra.

The legislative intent in enacting Section 9880-1, General Code, is significant and should be given consideration. With reference thereto, it was stated in Opinions of the Attorney General for 1916, Vol. II, at page 1452:

“As observed by you, this section, being supplemental to section 9880 G. C., must be read in connection with said latter section. The evident intention of the legislature, in the enactment of said supplemental section, was to extend the scope of section 9880 G. C. by giving to an independent agricultural society, other than the one theretofore officially recognized as the county agricultural society, and as such, entitled to county aid under provisions of the latter part of section 9880 G. C., the right to receive from the county treasurer a sum equal to that paid to said officially recognized county society, * * * .”

In Opinions of the Attorney General for 1919, Vol. I, page 416, it was ruled as disclosed by the syllabus:

“When one agricultural society has been formed in a county, and is operating in compliance with law as a county society, and is receiving the official recognition of the state department of agriculture as such, the statutes do not contemplate the existence

of additional societies with the status of 'county society,' but apply to them the status of 'independent societies.'"

On page 418 of that opinion, it was stated:

"It must be said that the various statutes relating to the creation and administration of agricultural societies are encumbered with a great deal of uncertainty and their proper construction and the mode and manner of distinguishing between the so-called county society and the independent society fraught with much doubt.

However, it appears to have long been determined by administrative construction that section 9880 G. C., and its predecessors in the development of the legislation, as well as the several other sections providing for public aid in various forms for county societies, contemplate the existence of but one county society, and that when the field has once been occupied by the proper formation and continuation of a society, the authorization in that regard has been exhausted. Such other societies as may be formed within the county are thus relegated to the domain of independent societies.

Thus construed it is at once apparent that the one society first establishing its identity as the county society may avail itself of the several provisions for public aid to county societies, while the remainder of the species must look only to the provision of section 9880-1 G. C., as the source and extent of their authority for acquiring aid from the public treasury.

There has been no judicial determination of the correctness of the interpretation established in the administration of the law, but upon investigation I find it has been quite uniformly pursued and acquiesced in, and has received the approval of this department on a number of occasions as well as of the state department of agriculture."

It seems apparent, in view of the above observations, that under the provisions of Section 9880, General Code, only one county agricultural society is authorized in each county. If the Legislature had intended otherwise, there would have been no need for the enactment of Section 9880-1, General Code.

In order to answer your question it is necessary to determine the exact status of a county agricultural society organized in accordance with the provisions of Section 9880, General Code. Section 9885, General Code, provides in part:

"County societies which have been, or may hereafter be or-

ganized, 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. * * *

In the case of *Dunn v. Agricultural Society*, 46 O. S. 93, the court said at page 99:

“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 afterward. They may act under the organization, or at any time dissolve, or abandon it.”

Further comment on the status of such societies is found in the case of *Licking County Agricultural Society vs. County Commissioners*, 48 O. App. 528, wherein it is stated, at page 531:

“In other words, this society is a corporation, and as such it has the attributes of any other corporation which has been called into being by the voluntary action of the individuals forming the same for their own advantage, convenience or pleasure.”

In the *Opinions of the Attorney General for 1922*, Vol. I, page 40, it was ruled, as disclosed by the first branch of the syllabus:

“County agricultural societies organized under the provisions of section 9880, et seq. of the General Code are private corpo-

rations, 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."

Similarly in Opinions of the Attorney General for 1933, Vol. I, page 29, it was ruled:

"A county agricultural society existing by virtue of sections 9880, et seq., of the General Code is a private corporation not for profit."

It has been pointed out that under the provisions of Section 9880, General Code, only one county agricultural society may exist in a county. Once such a society has been organized, no other county society may be organized under Section 9880, General Code, until such former society has disbanded, or been dissolved as are other private corporations. It may be stated in passing that the new society in the instant situation can not qualify as an independent society under Section 9880-1, General Code, inasmuch as it did not hold an annual exhibit for three years previous to January 1st, 1919, as required by said section.

From the facts stated in your letter, it is apparent that the old society is still in existence. Therefore, it was legally impossible to organize a new county agricultural society under the provisions of law above quoted.

Since such an organization has all the attributes of a private corporation, it obviously follows that the action of the former Director of Agriculture in striking from the rolls of official fairs the name of the old society was ineffective. The Legislature has provided that in event of the failure of a society to comply with the laws of Ohio and the rules of the Department of Agriculture its right to financial assistance from the county shall be forfeited. See Sections 9880 and 9884, General Code. However, as mentioned in your letter, I ruled in an opinion reported in Opinions of the Attorney General for 1939, Vol. III, page 2029:

"The failure of a county agricultural society to make the proper reports within the time specified by law and the rules of the Department of Agriculture in any one year does not preclude such society from participating in county funds in succeeding years."

Excepting the forfeiture of the right just mentioned, no further penalty is set out in the statute.

It would appear, therefore, that such new society is not entitled to receive, as an independent society, from the Director of Agriculture, certificates authorizing the extension of financial assistance from the county so long as the old society continues in existence. On the other hand, the old society is entitled to receive from the Director of Agriculture the certificates above referred to only when and if it complies with the laws of Ohio and the rules of the Department of Agriculture.

Respectfully,

THOMAS J. HERBERT,
Attorney General.