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AGRICULTURAL SOCIETY, MONTGOMERY COUNTY—PRIVATE CORPORATION—NOT PROHIBITED BY OHIO LAW FROM ELECTING TO HAVE INSURANCE SYSTEM ESTABLISHED BY TITLE 2, FEDERAL SOCIAL SECURITY ACT EXTENDED TO SERVICE PERFORMED BY ITS EMPLOYEES—SECTION 1426, TITLE 26, USC AMENDED BY ACT OF AUGUST 28, 1950.

## SYLLABUS:

The Montgomery County Agricultural Society is a private corporation and, as such, is not prohibited by Ohio law from electing, under the provisions of Section 1426, Title 26, United States Code, as amended by the act of August 28, 1950, to have the insurance system established by Title 2 of the Federal Social Security Act extended to the service performed by its employees.

Columbus, Ohio, July 31, 1951

Hon. Mathias H. Heck, Prosecuting Attorney  
Montgomery County, Dayton 2, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"In 1950, to become effective January 1st, 1951, the Federal Social Security Act, Sub chapter A of Chapter 9 of the Internal Revenue Act, was amended to become effective January 1st, 1951, so as to provide coverage for employes of certain non profit organizations.

"This includes employes of non profit Religious, Charitable, Scientific, Literary, Educational or Humane Organizations that are exempt from the payment of income tax under Section 101 (6) of the Internal Revenue Code.

"The Montgomery County Agricultural Society is at present classified under the Federal Internal Revenue Code as an organization not for profit, and exempt from the payment of federal income tax.

"In the opinion of the Collector of Internal Revenue, Cincinnati, it may also be for the purpose of Social Security, classified as an Educational Organization and eligible to join with its employes in obtaining for the benefits of the employes the coverage of Federal Social Security under the act as amended. This

would necessarily obligate the Agricultural Society to contribute from its funds its share of the tax under the Federal Insurance Contribution Act, which contribution would be solely for the benefit of the employees.

“The Montgomery County Agricultural Society desires to join with its employes in securing for the benefit of the employes coverage under the Federal Social Security Act as amended. Agricultural Societies are controlled by Sections 9880 to 9910, both inclusive, of the General Code.

“As this is a state wide matter, the Montgomery County Board desires to know if it has the authority to expend the money of the Society for this purpose.

“I might add that the Montgomery County Agricultural Society was organized and still operates under a special act of the legislature, being House Bill No. 446, 87 Ohio Laws, page 135, passed April 1st, 1890.”

The Federal Social Security Act, in effect, provides for the levy and collection of two taxes, each based on a percentage of the salary or wage of the employe, one being levied against the employe, and one against the employer. By the terms of paragraph (b) of Section 1426, Title 26, United States Code, “employment” is defined as not including “service (other than service which, under subsection (k), constitutes covered transportation service) performed in the employ of a state, or any political subdivision thereof, or any instrumentality of any one or more of the foregoing which is wholly owned by one or more states or political subdivisions \* \* \*.” This has the effect of excluding from the coverage of the Act employes of the state, a political subdivision thereof or of any instrumentality of the state or such political subdivision wholly owned by one or more states or political subdivisions.

In addition to this exclusion from the compulsory features of the Act, organizations which are exempt from income tax under Section 101(6), Title 26, United States Code, are also exempt. Such organizations are “Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, \* \* \* no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation; \* \* \*.”

Subparagraph (L) (1) of Section 1426, Title 26, United States Code,

as amended August 28, 1950, C.809, Title 2, 64 Stat.—, provides that such organizations may file a certificate in such form and manner and with such official as may be prescribed by regulations made under this subchapter, certifying that it desires to have the insurance system established by Title 2 of the Social Security Act extended to the service performed by its employes and that at least two-thirds of its employes concur in the filing of the certificate.

I note from your letter that the Montgomery County Agricultural Society, with the concurrence of its employes, desires voluntarily to take the necessary steps to secure coverage for its employes under the Social Security Act, which action, of course, would commit it to paying the tax therein levied against employers. The Federal authorities apparently are willing to accept such action on the part of the Society and consider that the Society qualifies thereunder.

The question of whether, under the Federal statutes, the Society is eligible to make such voluntary election, of course, is one to be decided by such Federal authorities. The basic question presented for my consideration is whether, under Ohio law, this Society lawfully may expend its funds for such purpose. No question as to the right of the Federal government to compel such payment is involved since the election, in the first instance, is purely voluntary on the part of the Society.

The answer to this basic question necessarily must be predicated upon a consideration of the governmental status, if any, of such Society.

The general rule as to the powers of governmental bodies or "civil corporations" is well established in 32 Ohio Jurisprudence, page 933, Section 74, where it is said:

"\* \* \* As a general rule, public officers have only such powers as are expressly delegated them by statute, and such as are necessarily implied from those so delegated. \* \* \*"

This is to be contrasted with the general rule as to the powers of a private corporation. Here a grant of authority to engage in a certain undertaking carries with it the power to act in the same manner as an individual in the same pursuit and such corporation possesses for this purpose the usual and ordinary means of accomplishing its purpose in the same manner as though it were a natural person. 10 Ohio Jurisprudence, page 820.

The State of Ohio has not authorized such a Society to so expend its funds, either by specific enabling legislation or by necessary implication of legislative enactment. It, therefore, would follow that if the Society is a governmental body or "civil corporation," it is without power to so expend its funds. On the other hand, if it is a private corporation, such expenditure would appear to be lawful.

As a necessary part of the consideration of the character and status of the Montgomery County Agricultural Society, I first must determine the character and status of a county agricultural society generally. As noted in your letter, such societies are organized and operated under the provisions of Sections 9880 to 9910, inclusive, General Code. These sections are included within Title IX, Private Corporations, Division VI, Corporations Not for Profit, along with salvage companies, educational institutions, religious and benevolent institutions, humane societies, charitable trusts and cemetery associations.

County agricultural societies are organized pursuant to the provisions of Section 9880, General Code, which 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."

Section 9881, General Code, provides that such societies shall annually offer or award premiums for the improvement of livestock, grain, etc. Section 9884-1, General Code, provides for membership in such a society upon payment of an annual membership fee fixed by the society or its board of directors. Section 9884-2, General Code, defines the method of election of the board of directors by those persons holding mem-

bership certificates. Section 9885, General Code, provides that all county agricultural societies that have been or may hereafter be organized are bodies corporate and politic, capable of suing and being sued. Section 9894, General Code, directs the county commissioners, on the request of such a society, to annually appropriate from the general fund to such society not to exceed the sum of two thousand dollars and not less than fifteen hundred dollars. Sections 9888, 9889, 9890, 9891 and 9892, General Code, permits the county commissioners, upon petition of a certain number of electors, to submit to a vote of the people the question of issuing bonds in order to liquidate the indebtedness of the society and to levy a tax to pay such bond issue. Section 9893, General Code, prohibits the use of any money raised by taxation for any of the purposes specified therein except for the purpose for which raised. Other sections provide for the acquisition or sale of land by the society, for the use of the society of land the title to which is in the county commissioners, for the encumbrance of real estate, etc.

The nature of a county agricultural society was considered by the Supreme Court in *Dunn v. Agricultural Society*, 46 Ohio St., 93. In that case the society was held to be liable in damages as a private corporation despite its claim that it was a civil corporation or quasi corporation in the same class as counties, townships, school districts and the like. The statutes then in effect were substantially in accord with the present statutes. I quote from the opinion of that case, page 99:

“\* \* \* 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. \* \* \*”

In the case of *County Commissioners v. Brown*, 1 N. P. (N. S.) 357, it was held that the furnishing of aid to a county agricultural society from the funds of the county did not violate Section 4 or Article VIII of the Ohio Constitution, which prohibits the state from lending its credit to or becoming a joint owner or stockholder in any company or association in the state.

In *State, ex rel. Leaverton v. Kerns*, 104 Ohio St., 550, the Supreme

Court held, as to an independent agricultural society organized under Section 9880-1, General Code, that it too was eligible to receive financial assistance from the county without violating the provisions of the Ohio Constitution.

The basis of these holdings was that the constitutional prohibition related only to private *business* enterprises and that an agricultural fair is upon an entirely different basis, being for the advancement of learning and the dissemination of useful knowledge. The prior holding of the Supreme Court in the Dunn case that a county agricultural society is a private corporation was not overruled or modified in any way by the Kerns case. Thus, it would appear that by the specific holding of the Supreme Court a county agricultural society, organized and operating pursuant to the provisions of Sections 9880 to 9910, inclusive, General Code, is a private corporation.

My predecessors in office have consistently held that such societies are private corporations. In Opinion No. 700, Opinions of the Attorney General for 1915, page 1459, it was held that the prosecuting attorney of a county is neither authorized nor required to act as the legal adviser of the directors of a county agricultural society. To the same effect see Opinion No. 3015, Opinions of the Attorney General for 1931, page 341. In Opinion No. 2827, Opinions of the Attorney General for 1922, page 40, it was held that county agricultural societies organized under the provisions of Section 9880, et seq., General Code, are private corporations whose officers and directors, in the management of the society's affairs, are governed by the same rules of conduct as those applying to similar officers of private corporations generally. In Opinion No. 2531, Opinions of the Attorney General for 1930, page 1645, it was held that the board of trustees of a county agricultural society may create the office of honorary secretary of the society and provide for the payment of the salary to the incumbent of such office, even though such honorary secretary performed and was required to perform no duties. In Opinion No. 2672, Opinions of the Attorney General for 1930, page 1791, it was held that there was no incompatibility between the positions of member of a village council and secretary of the county agricultural society since the secretary of an agricultural society is an officer of a private corporation.

I turn now to a consideration of the character and status of the Montgomery County Agricultural Society.

Section 1 of House Bill No. 446, 87 Ohio Laws, page 135, passed April 1, 1890, does not specifically mention Montgomery County. Said Section 1 reads as follows:

“Be it enacted by the General Assembly of the State of Ohio, That in counties having at the last federal census, seventy-eight thousand five hundred and fifty inhabitants, the agricultural society shall be governed by a board of directors consisting of one member from each township and eight members from any city of the second class in such county, to be styled ‘the county agricultural board.’ ”

Section 2 of such Act divided the townships of such county into two classes in alphabetical order and provided that in Montgomery County the townships of Butler, Clay, German, Harrison, Jackson, Jefferson and Madison shall constitute the first class and the townships of Mad River, Miami, Perry, Randolph, Van Buren, Washington and Wayne shall constitute the second class. Section 3 provided for an election of one member of the agricultural board from each township and an election of eight members of the board by the city council of said city of the second class. In townships of the first class, the election was for one year, with two year terms thereafter, and in townships of the second class, elections for two years. Section 4 of the Act provided that the election of members in the townships shall be governed in all respects by the laws governing township officers. Section 5 directed the members so elected to organize and elect officers. Section 6 reads as follows:

“The agricultural board when so organized shall supersede the incumbent county agricultural board, and said board shall have all the power and be governed by such laws and regulations as govern county agricultural societies and not inconsistent herewith.”

Although you state in your letter that the Montgomery County Agricultural Society was organized under House Bill No. 446, passed April 1, 1890, it would appear from this Act that the county agricultural society therein had been organized and was operating prior to the passage of such Act. The Act, by its terms, does not authorize the organization of a county agricultural society. Instead, recognizing the existence of a county agricultural society, it provides that such society shall be governed by a board of directors elected in the manner there provided. At the same time, it

should be noted that such board was given all the power as governs, county agricultural societies not inconsistent therewith.

Having concluded that county agricultural societies generally, organized and operating pursuant to Sections 9880 to 9910, inclusive, General Code, are private corporations, the sole remaining question is whether House Bill No. 446 had the effect of changing the character and status of the Montgomery County Agricultural Society from that of a private corporation to that of a civil corporation or quasi corporation.

Article II, Section 26 of the Ohio Constitution reads as follows :

“All laws, of a general nature, shall have a uniform operation throughout the State ; nor, shall any act, except such as relates to public schools, be passed, to take effect upon the approval of any other authority than the General Assembly, except, as otherwise provided in this constitution.”

The effect of the holdings of the Supreme Court of Ohio in *Hixon v. Burson*, 54 Ohio St., 470; *Platt v. Craig*, 66 Ohio St., 75 and *New York Central Railroad Co. v. Bucyrus*, 126 Ohio St., 558, 571 is that an act is unconstitutional if its subject matter is general while its operation and effect are local.

House Bill No. 446 dealt with the subject matter of county agricultural societies. Such societies being authorized throughout the State of Ohio, it would appear that the subject matter of said House Bill No. 446 was general.

To hold that other county agricultural societies are private corporations and that the Montgomery County Agricultural Society is not a private corporation would be to give House Bill No. 446 an interpretation which would necessarily result in its violating the constitutional provisions of Article II, Section 26. Giving to such Act the necessary constitutional interpretation, it is my opinion that the Montgomery County Agricultural Society is vested with the same general powers and duties as those provided for any other agricultural society under the provisions of Sections 9880 to 9910, inclusive, General Code.

I am not holding, and in fact it is beyond my power to hold, that the provisions of said Act providing for election of the board of directors are unconstitutional. My opinion is limited to a consideration of the power

of the existing Montgomery County Agricultural Society to voluntarily expend its funds for the purpose of securing coverage for its employees under the Federal Social Security Act.

It is my opinion and you, therefore, are advised that the Montgomery County Agricultural Society is a private corporation and, as such, is not prohibited by Ohio law from electing, under the provisions of Section 1426, Title 26, United States Code, as amended by the act of August 28, 1950 to have the insurance system established by Title 2 of the Federal Social Security Act extended to the service performed by its employees.

Respectfully,

C. WILLIAM O'NEILL  
Attorney General