I am therefore returning the articles of incorporation of The Youngstown Fraternal Society without my approval.

<div align="center">Respectfully,

HERBERT S. DUFFY,

Attorney General.</div>

522.

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UNEMPLOYMENT INSURANCE ACT — EMPLOYMENT COUNTY AGRICULTURE SOCIETY—NOT SUCH EMPLOYMENT.

SYLLABUS:

Employment by a county agricultural society organized and existing under authority of Sections 9880, et seq., General Code, does not constitute employment within the meaning of the term as used in the so-called Ohio Unemployment Insurance Act, Sections 1345-1, et seq., General Code.

<div align="center">COLUMBUS, OHIO, April 27, 1937.</div>

HON. HAROLD K. BOSTWICK, *Prosecuting Attorney, Chardon, Ohio.*

DEAR SIR: This is to acknowledge receipt of your letter of recent date, requesting the opinion of this office in answer to the following question:

> "Our county fair board has asked me to obtain your opinion upon the following question: Is a fair, such as the one here in Geauga County, which is purely agricultural, educational and non-profiting organization owned and operated by the county, subject to the Unemployment Compensation Laws of Ohio, to-wit: Section 1345-1?"

Section 1345-1, General Code, defines the terms as used in the so-called Ohio Unemployment Insurance Law. Such employment as is within the terms of this act is defined in such section in paragraph d thereof, which contains certain exceptions. The pertinent portion of the definition of such employment reads as follows:

> "d. 'An employment,' except where the context clearly shows otherwise, means an employment in which all or the greater part of the employee's work is performed within the

State of Ohio, under any contract of hire, express or implied, oral or written, including all contracts entered into by helpers and assistants of an employee, whether paid by employer or employee, if employed with the knowledge actual or constructive of the employer; and shall include any trade, occupation, profession or process of manufacture, or any method of carrying on said trade, occupation, profession or process of manufacture in which any person may engage; except that for the purpose of this act it shall not include:

* * *   * * *   * * *

(4) Employment by any governmental unit, municipal or public corporation, political subdivision, or instrumentality of the United States or of one or more states or political subdivisions, or instrumentality of the United States or of one or more states or political subdivisions in the exercise of purely governmental functions;

In view of the above exception as to employment by a public corporation or instrumentality of a political subdivision in the exercise of purely governmental functions, is is necessary to determine whether or not the organization to which you refer comes within such category. While you do not expressly so state in your letter, I presume that the county fair in question is conducted by a county agricultural society organized and existing under authority of Sections 9880, et seq., General Code, and I shall therefore consider the question of whether or not persons employed by such county agricultural societies may be said to be employed by a public corporation, or by an instrumentality of a county as one of the political subdivisions of the state. If the answer to this question is in the affirmative, such employment is exempt from the provisions of this Unemployment Insurance Law by the express language contained in paragraph d (4) of Section 1345-1, supra.

The question submitted is answered by the case of *State, ex rel.* vs. *Kerns,* 104 O. S. 550, which case held that such societies are entitled to aid from public funds, the court grounding its decision upon the holding that such societies are public institutions. The syllabus of the case is as follows:

"1. Section 9880-1, General Code, which provides for furnishing aid to independent agricultural societies, makes no requirement as to the form and manner of incorporating such societies. If organized by the required number of qualified persons, and exhibitions are held, and the laws of Ohio and the rules of the state board of agriculture have been complied with

and properly certified by the state board as required by that section, the right of the independent society to such aid is complete.

2. The aid provided by Section 9680-1, General Code, is not for the purpose of furnishing financial assistance to a private enterprise, nor for lending the credit of the state thereto, but, on the contrary, is in aid of a public institution designed for public instruction, the advancement of learning and the cause of agriculture, and is not in violation of Sections 4 and 6, Article VIII of the Ohio Constitution."

The foregoing decision in my judgment would be ample authority for holding that a county agricultural society organized and existing under Sections 9880, et seq., of the General Code, is an instrumentality of a political subdivision, to-wit, a county, in the exercise of a purely governmental function, but it is also observed that under Section 9885, General Code, such societies are declared bodies corporate. This section was referred to by the Supreme Court in the Kerns case, supra, the opinion at page 553 reading as follows:

By virtue of the provisions of Section 9885, General Code, it is clearly not necessary for either a county agricultural society or an independent agricultural society to be organized under the general incorporation laws of the state, either for profit or not for profit. That section reads in part 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 * * *'."

In view of the foregoing and in specific answer to your inquiry, it is my opinion that employment by a county agricultural society organized and existing under authority of Sections 9880, et seq., General Code, does not constitute employment within the meaning of the term as used in the so-called Ohio Unemployment Insurance Act, Sections 1345-1, et seq., General Code.

Respectfully,

HERBERT S. DUFFY,

Attorney General.