

OPINION NO. 75-041

Syllabus:

The county commissioners of Guernsey County, Ohio, may not properly appropriate and expend public funds for the benefit of the Buckeye Tourist Council, Inc. (a private nonprofit corporation) the purpose of which is to promote the tourism industry.

To: James R. Scott, Guernsey County Pros. Atty., Cambridge, Ohio
By: William J. Brown, Attorney General, June 12, 1975

I have before me your request for my opinion on the following questions:

"(1) May the County Commissioners of Guernsey County, Ohio, properly appropriate and expend public funds to the Buckeye Tourist Council, Inc. (a private non-profit corporation) for the purpose of promoting the tourism industry in a twenty county area which includes said Guernsey County?

"(2) If such appropriation and expenditures of public funds may be properly made by the County Commissioners, for such purposes, may such funds be delivered over to said private corporation for disbursement at the direction of the Board of Directors of said private corporation, or must they be retained in the County Treasury to be disbursed upon vouchers submitted to, and approved by, the County Commissioners, and warrants issued by the County Auditor?

The purpose of the Buckeye Tourist Council, Inc. as described in its By-Laws which you provided with your request is:

"[A] united effort to promote, advertise and publicize the recreational and vacation attractions of the counties of The Buckeye Tourist Council, Inc., to promote increased all-year travel and longer vacations to this area; to create a friendly relationship among members of the organization; to work for the improvement and development of accommodations and services; to conduct programs and participate in the programs with civic organizations plus local, state and federal organizations aimed at improving travel conditions within the 12-county area; and to develop among all its citizens a full appreciation of the value of the tourist and recreation business as an important and vital segment of economy of the State of Ohio."

You made it clear in your letter of request that the questioned appropriation and expenditure of public funds to the Buckeye Tourist Council, Inc., would facilitate the future operations of that private nonprofit corporation which were previously funded by a federal grant now about to terminate. Your letter also makes it clear that the appropriation and expenditure is to be distinguished

from membership dues to be collected from individuals and businesses in the involved area. Accordingly, should public funds be appropriated and expended for the benefit of the Buckeye Tourist Council, Inc., those funds would be in the nature of a subsidy to a private nonprofit corporation.

It is well settled that county boards and officials, such as a board of county commissioners, as creatures of statute possess only such powers and privileges as may be delegated to or conferred upon them by statute, and these powers must be strictly construed. State, ex rel. Howl v. Goubeaux, 110 Ohio St. 287, 288 (1924); Portage County v. Gates, 83 Ohio St. 19, 30 (1910); 1974 Op. Att'y Gen. No. 74-015. Thus, it must be determined whether the appropriation and expenditure of public funds for the benefit of the Buckeye Tourist Council, Inc. is specifically authorized or necessarily implied from the powers and duties granted to the board of county commissioners by statute.

A review of all of the statutes pertaining to counties and boards of county commissioners reveals no specific or implied authorization for the appropriation and expenditure involved here.

The only statute which at first might appear to authorize the proposed appropriation and expenditure is R.C. 325.21. That section specifically provides that county commissioners may authorize a county's payment of dues, subscription costs or membership charges in associations or nonprofit organizations. Payments pursuant to R.C. 325.21 however, may only be made to entities formed for the improvement of county government. 133 Ohio Laws 2376. While the work of the Buckeye Tourist Council, Inc., may promote tourism and business prosperity of a county, I can find nothing in its By-Laws which would indicate that it was incorporated for the purpose of improving county government, or that any such resulting improvement would be other than an indirect and incidental byproduct. In addition, the proposed appropriation and expenditure would not be dues, subscription costs, or membership charges but would instead be in the nature of an operating subsidy. Thus, I find it evident that R.C. 325.21 can neither be expressly nor impliedly read to authorize such a proposal.

Further, because it is clear from your request that the public funds will be employed along with private funds, gathered from membership dues, any statute which would seemingly authorize the use of funds as proposed would be in direct conflict with Article VIII, Section 6 of the Constitution, which provides in pertinent part:

"No laws shall be passed authorizing any county, city, town or township, by vote of its citizens, or otherwise, to become a stockholder in any joint stock company, corporation, or association whatever; or to raise money for, or to loan its credit to, or in aid of, any such company, corporation, or association. . . ."

The purpose of this constitutional provision was described by the Ohio Supreme Court in Walker v. Cincinnati, 21 Ohio St. 14 (1871). Addressing the substantially equivalent predecessor of Article VIII, Section 6, the Court stated:

"The mischief which this section interdicts is a business partnership between a municipality

or subdivision of the State, and individuals or private corporations or associations. It forbids the union of public and private capital or credit in any enterprise whatever."

My predecessor in 1952 Op. Att'y Gen. No. 2185, discussed Article VIII, Section 6 and Walker v. Cincinnati, *supra*, pursuant to a request to allow a municipality to pay membership dues to a local chamber of commerce. In that opinion he stated:

"For the city to contribute even a small amount of money along with private individuals and firms for the maintenance of an organization such as a chamber of commerce, is certainly a union of public and private capital in a business enterprise, and clearly violative of the letter and spirit of the constitutional provision "Article VIII, Section 61. . . ." *Id.* at 804.
See also 1973 Op. Att'y Gen. No. 73-016.

Accordingly, it is clear that there is neither specific nor implied authorization which could permit a board of county commissioners to appropriate and expend public funds as proposed.

Based upon the foregoing, it is my opinion and you are so advised, that the county commissioners of Guernsey County, Ohio, may not properly appropriate and expend public funds for the benefit of the Buckeye Tourist Council, Inc. (a private nonprofit corporation) the purpose of which is to promote the tourism industry.