

OPINION NO. 65-163

Syllabus:

A County Agricultural Society is not a local authority within the purview of Chapter 135, Revised Code, and is therefore not bound to comply with the uniform depository act.

To: Tom Richards, Carroll County Pros. Atty., Carrollton, Ohio
By: William B. Saxbe, Attorney General, August 31, 1965

You have inquired whether a county agricultural society is a "local authority" as defined by Section 135.01, Revised Code, so that it must comply with the uniform depository act.

Section 135.01, Revised Code, provides in part as follows:

"(A) 'Public moneys' means all moneys in the treasury of the state or any subdivisions of the state, or moneys coming lawfully into the possession or custody of the treasurer of state or of the treasurer of any subdivision. 'Public moneys of the state' includes all such moneys coming lawfully into the possession of the treasurer of state; and 'public moneys of a subdivision' includes all such moneys coming lawfully into the possession of the treasurer of the subdivision.

"(B) 'Subdivision' means any county, school district, municipal corporation, except a municipal corporation or a county which has adopted a charter under Article XVIII or Article X, Ohio Constitution, having special provisions respecting the deposit of the public moneys of such municipal corporation or county, township, municipal or school district sinking fund, special taxing or assessment district, or other district or local authority electing or appointing a treasurer. In the case of a school district, special taxing or assessment district, or other local authority for which a treasurer, elected or appointed primarily as the treasurer of a subdivision, is authorized or required by law to act as ex officio treasurer, the subdivision for which such a treasurer has been primarily elected or appointed shall be considered to be the 'subdivision.' Said term also includes a union or joint institution or enterprise of two or more subdivisions, which is not authorized to elect or appoint a treasurer, and for which no ex officio treasurer is provided by law."

Section 1711.01, Revised Code, provides for the organization of a county agricultural society in the

following manner:

"When thirty or more persons who are residents of the same county organize themselves into a county agricultural society which adopts a constitution and bylaws, selects officers, and otherwise conducts its affairs in conformity to law, and to the rules of the department of agriculture, and when such society has held an annual exhibition in accordance with sections 1711.04 and 1711.05 of the Revised Code and made proper report to the department, then, upon presentation to the county auditor of a certificate from the director of agriculture that the laws of the state and the rules of the department have been complied with, the auditor of each county in which such a society is organized shall annually draw an order on the county treasurer of such county in favor of the president of such society for the sum of eight hundred dollars, and the treasurer shall pay it. The total amount of such order shall not exceed the amount paid in regular class premiums."

Section 1711.05, Revised Code, requires that a county agricultural society annually shall publish an abstract of its treasurer's account in a newspaper of the county and make a report of its proceedings during the year.

The powers of this organization are set forth in Section 1711.13, Revised Code, as follows:

"County agricultural societies are hereby declared bodies corporate and politic, and as such they shall be capable of suing and being sued and of holding in fee simple any real estate purchased by them as sites for their fairs. They may mortgage their grounds for the purpose of renewing or extending pre-existing debts, and for the purpose of furnishing money to purchase additional land; but if the board of county commissioners has caused money to be paid out of the county treasury to aid in the purchase of such grounds, no mortgage shall be given without the consent of such board.

"Deeds, conveyances, and agreements in writing made to and by such societies, for the purchase of real

estate as sites for their fairs,
shall vest a title in fee simple to
the real estate therein described,
without words of inheritance."

According to Section 1711.081, Revised Code, members of the board of directors, officers, and employees of a county or independent agricultural society are not public offices, and persons holding such positions are eligible to hold public office.

In view of the statutes cited hereinabove, it becomes necessary in answering your question to determine the exact legal nature of a county agricultural society. In the case Dunn v. Agricultural Society, 46 Ohio St., 93, the Court after reviewing the statutes concerning the powers, duties, and membership of an agricultural society, stated, at page 99, as follows:

"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.* * *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.* * *"

Based on the sound logic of the Court's conclusion in the Dunn case, supra, that a county agricultural society is a private corporation, I believe that such a private organization does not come within the legislative contemplation of a "local authority electing or appointing a treasurer" as provided in Section 135.01 (B), supra.

A reading of Section 135.01 (B), supra, reveals that the specific words "deposit of the public moneys" are used. It is well established that the deposit of public moneys is the concern of Chapter 135.01, Revised Code. See Opinion No. 5427, Opinions of the Attorney General for 1942, page 661; Opinion No. 7398, Opinions of the Attorney General for 1956, page 768; Opinion No. 2497, Opinions of the Attorney General for 1938, page 1086.

In view of the judicial commitment to the proposition that a County Agricultural Society is a private corporation joined with the statutory declaration that membership or holding office in a society does not amount to "public office," I am compelled to conclude that the funds of the organization are not "public moneys" as defined in Section 135.01 (A), supra.

It is my opinion that a County Agricultural Society

is not a local authority within the purview of Chapter 135, Revised Code, and is therefore not bound to comply with the uniform depository act.