

Note from the Attorney General's Office:

1957 Op. Att'y Gen. No. 57-516 was overruled by 1988
Op. Att'y Gen. No. 88-026.

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COUNTY AGRICULTURAL SOCIETY — COUNTY COMMISSIONERS — COUNTY-OWNED LAND — POWER OF SOCIETY TO APPOINT OPERATING AGENTS — SECTIONS 1711.15, 1711.31, 1701.98(B) — SPONSORSHIP OF ENTERTAINMENT ENTERPRISES—SOCIETY, CONTRACT INDEBTEDNESS—SOCIETY NOT BOUND BY GEN. CORP. LAW, CHAPTER 1701. RC.

SYLLABUS:

1. When, under the provisions of Sections 1711.15 *et seq.*, Revised Code, a board of county commissioners erects or improves a building for a county agricultural society and title to such building and the land on which it is erected is in the society, exclusive control and management of such land and building is in the society.

2. Where, under the provisions of Sections 1711.15 *et seq.*, a board of county commissioners erects a building on county-owned land, and title to such building is in the county, and where such land and building is occupied by the county agricultural society, control and management of such land and building is vested in the society by Section 1711.31, Revised Code, so long as such premises are occupied by the society and used by it for holding agricultural fairs. The holding of one agricultural fair each year agreeably to the requirements of the director of agriculture as provided in Section 1711.15, Revised Code, satisfies such condition of occupancy and use as provided in Section 1711.31, Revised Code.

3. A county agricultural society has the power to appoint an agent to manage and control a building owned by it, or to exercise its powers of management and control over a county-owned building as granted in accordance with Section 1711.31, Revised Code, and such agent may be a board of which less than all members are members of the county agricultural society.

4. A county agricultural society is bound by the provisions of statute law specifically applicable to it, principally Chapter 1711., Revised Code, and not to the provisions of the General Corporation Law, Chapter 1701., Revised Code, except where it appears that a provision of the special statute on county agricultural societies is cumulative, in which case provisions of Chapter 1701., Revised Code, may apply as provided in Section 1701.98 (B), Revised Code.

5. A county agricultural society can independently contract indebtedness separate and apart from any joint liability with the board of county commissioners, and the \$20,000 limitation of Section 1711.15, Revised Code, applies only with regard to appropriations by a board of county commissioners.

6. A county agricultural society can lawfully participate in the promotion of a hockey team, and the rentals received by the society from a hockey team or similar sporting or entertainment enterprises which use the real property owned by or under the control and management of the society are not public funds.

Columbus, Ohio, May 16, 1957

Hon. Robert O. Stout, Prosecuting Attorney
Marion County, Marion, Ohio

Dear Sir:

Your request for my opinion reads in part as follows:

"I would appreciate receiving your opinion with respect to the following situation:

"Marion County has a County Agricultural Society whose members annually buy memberships. (R. C. 1711.01). In 1948 and 1949 a coliseum was erected by the Agricultural Society on the county fairgrounds, the funds for said building having been raised by a tax levy under the provisions of Gen. Code 9887 (now R. C. 1711.15), for the purpose of building a Coliseum and Exhibit Hall for the Marion County Agricultural Society, said building to be known as a Veteran's Memorial Coliseum in honor of veterans of all wars. The fairgrounds are owned by the county. The building was called "Veteran's Memorial Coliseum."

"Thereafter, on November 15, 1949, the Executive Board (Board of Directors) of the Marion County Agricultural Society recommended "that in order to get a committee of Board of Managers to operate the Veterans Memorial Coliseum the following resolution be adopted. In substance, it provided, that except for the period of the annual exhibition of the Agricultural Society, the control and management of the Veteran's Memorial Coliseum shall be vested in a Board of Governors which shall consist of seven members—four of whom shall be directors of the Agricultural Society, one of whom shall be a member of the Board of County Commissioners of Marion County, and two of whom shall be residents of the county and not directors of said agricultural society or members of the Board of Commissioners.

"Of the four Agricultural Society director members, the President and Treasurer of the Society shall serve and the two

remaining are elected by the directors of the Society; the County Commissioners elect or otherwise choose their one member; choose, as they may determine, the remaining two members of said Board required to be residents of the County and not directors of the Agricultural Society or members of the Board of Commissioners. Said Board members held office for one year periods.

“One of our county commissioners (changed yearly) has always been a member of the Board of Governors. Over the years, the two members selected by the five, have been residents of the county but not members of the Agricultural Society or Board of County Commissioners.

“In 1953, a purported contract of sale was entered into between the Marion County Agricultural Society and the Board of Governors of the Coliseum, as one party, and Ohio Sportservice, Inc., as the other party, involving ice equipment for the Coliseum and approximately \$70,000.00 in amount.

“Further, during the past several years, said Board of Governors has elected within its membership of seven, a President, and Secretary. Also, it has designated one of its members as Manager, who has handled the major portion of the bookings, attractions, and renting of the Coliseum. The manager, during the past several years, has been a member of the Agricultural Society Directors as well as being on the Board of Governors. They have booked such attractions as the Roy Rogers show, Ice-Capades, Horse Show, Dog Show, installed ice equipment, sponsored a hockey team, and district basketball tournaments.”

You raise six questions, which I shall consider in turn. Since, however, all of your questions raise the issue of the nature and powers of a county agricultural society, I shall first give some consideration to that subject.

Section 1711.13, Revised Code, reads, in pertinent part, 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. * * *”

In 2 Ohio Jurisprudence, 2d, 311, there is a brief discussion of the nature and powers of county agricultural societies, reading in part as follows:

“Upon organization, county agricultural societies are declared by statute to be bodies corporate and politic. Such societies are private corporations and not public corporations, although their purpose may be public in that their establishment is conducive

to the public welfare. As corporations, county agricultural societies have the attributes of any other corporation which has been called into being by the voluntary action of the individuals forming the same for their advantage, convenience, or pleasure.”

In *Dunn v. Agricultural Society*, 46 Ohio St., 93, the Supreme Court of Ohio said, at page 99:

“* * * it is apparent, that corporations formed under (the statutes authorizing the creation of county agricultural societies) 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.”

The statutes there under discussion were not, of course, the same as Chapter 1711., Revised Code, but they were markedly similar.

In *Licking County Agricultural Society v. Board of County Commissioners of Licking County et al.*, 48 Ohio App., 528, the Court said, 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.”

The Court of Appeals then cited the Dunn case.

Finally, I invite your attention to State, *ex rel.* Leaverton, v. Kerns, 104 Ohio St., 550, in which the second paragraph of the syllabus reads:

“The aid provided by Section 9880-1, General Code, (Section 1701.02, Revised 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.”

These observations on the nature and powers of county agricultural societies must condition the answers to each of your several questions.

Your first question is:

“1. Under R. C. 1711.15 and R. C. 1711.31, is the control and management of such Coliseum, located on county property, solely and exclusively in the Agricultural Society and its Board of Directors?”

Section 1711.15, Revised Code, reads:

“In any county in which there is a duly organized county agricultural society, the board of county commissioners may purchase or lease, for a term of not less than twenty years, real estate on which to hold fairs under the management and control of the county agricultural society, and may erect thereon suitable buildings and otherwise improve it.

“In counties in which there is a county agricultural society which has purchased, or leased, for a term of not less than twenty years, real estate as a site on which to hold fairs or in which the title to such site is vested in fee in the county, the board may erect or repair buildings or otherwise improve such site and pay the rental thereof, or contribute to or pay any other form of indebtedness of said society if the director of agriculture has certified to the board that the county agriculture society is complying with all laws, rules, and regulations governing the operation of county agricultural societies. The board may appropriate from the general fund such an amount as it deems necessary for any of said purposes. If the amount appropriated to be expended in the purchase of such real estate or in the erection of buildings or other improvements or payments of rent or other forms of indebtedness of said society exceeds twenty thousand dollars in any one year, such expenditure shall not be made unless the question of a levy of the tax therefor is submitted to the qualified electors

of the county at a general election, a notice of which, specifying the amount to be levied, has been given at least thirty days previous to such election, in one or more newspapers published and of general circulation in the county. The board shall pass a resolution authorizing the submission of the question to the electors and certify their action to the board of elections of the county which shall prepare and furnish the necessary ballots and other supplies. Such certification shall be made to the board of elections not later than four p. m. of the ninetieth day before the day of the election. The form of the ballots cast at such election shall be:

“Agricultural tax - Yes.”

“Agricultural tax - No.”

“If fifty-five per cent of the vote case is in favor of such tax, it may be levied and collected as other taxes.

“The requirement that the question of a tax levy be submitted to the electors shall not apply where the funds to be expended have been received as reparation for damage to the fairground caused by use thereof for military purposes.”

Section 1711.16, Revised Code, reads, in pertinent part:

“When the control and management of a fairground is in a county agricultural society, and the board of county commissioners has appropriated an amount or levied a tax for the aid of such society as provided in section 1711.15 of the Revised Code, the society, with the consent of the board, may contract for the erection or repair of buildings or otherwise improve said site, to the extent that the payment for said improvement is provided by said board.”

Section 1711.31, Revised Code, reads:

“When the title to grounds and improvements occupied by an agricultural society is in the board of county commissioners, the control and management of such lands and improvements shall be vested in the board of directors of such society so long as they are occupied by it and used by it for holding agricultural fairs. Moneys realized by the society in holding county fairs and from renting or leasing all or part of the grounds and buildings for the conduct of fairs *or otherwise*, over and above the necessary expenses thereof, shall be paid into the treasury of the society and used as a fund for keeping such grounds and buildings in good order and repair and for making other improvements deemed necessary by the society’s directors.”

(Emphasis added.)

Two situations are implied in these statutes. In one the county agricultural society owns real property and the board of county commissioners may erect or repair buildings as a form of aid to the society. In such a case the fact that public funds were so expended does not appear to operate to divest the society of exclusive control. In the other situation the board of county commissioners erects buildings on county land and retains title to both land and buildings. In such a case, control and management of the land and buildings may yet be vested in the county agricultural society by operation of Section 1711.31, *supra*. It would seem also that holding one fair each year, agreeably to the requirements of the director of agriculture, Section 1711.15, Revised Code, would be sufficient to vest the society with control throughout the year. That such is the case is strongly implied by the language of the second sentence of Section 1711.31, Revised Code, indicating that the society may derive money from the use of county-owned lands by holding fairs *or otherwise*. See also Opinion No. 2488, Opinions of the Attorney General for 1934, page 449. Thus, in either case control and management of such property as your coliseum is in the county agricultural society, provided only that a proper agricultural fair is held each year.

I will consider your second and third questions together They are :

“2. Although there is no provision in Chapter 1711, Revised Code, for the delegation of the authority of control and management, and likewise no prohibition against delegation of authority, can such authority to control and manage the Coliseum be delegated?”

“3. If the answer to No. 2 is “yes”, can such authority be delegated to the present Board of Governors of which 3 of the 7 members are, or may, not be members of the Agricultural Society, or is such Board of Governors illegal?”

What has been said about the nature and powers of county agricultural societies governs the answer to this question. They have general corporate powers, and those powers would reasonably include the right to appoint agents to conduct a portion of the affairs of a society. Of course, a society could not create an independent body with authority of its own and exclusively liable for its acts. Further, the power to appoint an agent would include the power to set up such a board as the society should deem best to exercise the agency.

Your fourth question reads:

“4. Is the Agricultural Society and its Board of Directors, being a body corporate and politic, and in the nature of a private corporation, in the absence of specific statutory provisions governing its duties, powers and authorities, under Chapter 1711, Revised Code bound and held to the standards set forth in the statutes and case law applying to private corporations for profit?”

Section 1701.03, Revised Code, a section of the General Corporation Law, provides:

“A corporation may be formed for any purpose or purposes, other than for carrying on the practice of any profession, for which natural persons lawfully may associate themselves, *provided that when there is a special provision in the Revised Code for the formation thereunder of a designated class of corporations, a corporation of such class shall be formed thereunder.* A corporation for the erection, owning and conducting of a sanitarium for receiving and caring for patients, medical and hygienic treatment of patients, and instruction of nurses in the treatment of disease and in hygiene is not forbidden by this section.”

(Emphasis added.)

Section 1701.98, Revised Code, provides, in pertinent part:

“(B) Special provisions in the Revised Code for the organization, conduct, or government of designated classes of corporations shall govern to the exclusion of the provisions of sections 1701.01 to 1701.98, inclusive, of the Revised Code on the same subject, except where it clearly appears that a special provision is cumulative, in which case it and the provisions of said sections on the same subject shall apply.”

Your fifth question is:

“5. Can the Agricultural Society create indebtedness separate and apart from any joint liability with the County Commissioners? Assuming the answer to be “yes”, can the Agricultural Society legally contract for an indebtedness of \$70,000.00 under R. C. 1711.15?”

“I construe the \$20,000.00 limitation to apply only to the situation where the “Board of County Commissioners *may erect . . . or otherwise improve such site . . . The Board may appropriate from the general fund . . . If the amount appropriated to be expended . . . exceeds \$20,000.00 in any one year . . .*” Chapter 1711 intimates a County Agricultural Society purchasing or acquiring a site in its own right independently. I

find no prohibition against said Society erecting buildings, making improvements or adding equipment and fixtures, from its own funds or expected revenues from the operation of its available buildings.”

Again the nature and powers of county agricultural societies as discussed above clearly indicate their authority to create indebtedness. In addition there are statutory implications of that authority, especially Section 1711.15, Revised Code, which provides that a board of county commissioners can contribute to or pay the indebtedness of these societies. It is my opinion, then, that county agricultural societies can create indebtedness separate and apart from any joint liability with the board of county commissioners.

I agree with your interpretation of the application of the \$20,000 limitation; the language of Section 1711.15, Revised Code, clearly indicates that it applies only with regard to appropriations by the board of county commissioners.

Specifically, a county agricultural society can lawfully contract an indebtedness of \$70,000.

Your sixth question reads:

“6. The proceeds of rentals and leasing are to be deposited in the Agricultural Society treasury and are not to be paid into the County General Fund (R. C. 1711.31). It is also my understanding that the Directors of the Agricultural Society are not public officers, but agents of a private corporation (1954 O.A.G. 4691). Can the Agricultural Society legally engage in and participate in the promotion and operation of a local hockey team as a business venture? Assuming a lease or rental arrangement with a hockey team, are the rentals received from the hockey team, the Roy Rogers show, the Ice-Capades, etc., whether on a fixed rental or percentage arrangement, public monies?”

Section 1711.31, *supra*, clearly implies that a county agricultural society can engage in activities other than agricultural fairs and may use the fairgrounds for such activities even if only occupied by it and not owned, when it speaks of money realized from the conduct of fairs *or otherwise*. In Opinion No. 2488, Opinions of the Attorney General for 1934, page 449, this section was construed as impliedly authorizing the conduct of pari-mutuel betting on such fairgrounds. The promotion of a hockey team or other sporting or entertainment enterprises would seem as much justified.

Again I must refer to the nature and powers of county agricultural societies as discussed above. As private corporations they apparently can engage generally in any business ventures permitted to private corporations and not specifically prohibited to this class of corporations, and the proceeds of such ventures are not public funds. However, you will recall that in the case of *State, ex rel. Leaverton, v. Kearns*, cited above it was held that public funds paid to these societies were "in the aid of a public institution designed for public instruction, the advancement of learning and the cause of agriculture." Some question remains open as to how far the courts will go in permitting the use of publicly owned lands and the revenues therefrom for purposes manifestly not public purposes. The question involves the constitutionality of the statutes which confer these very broad powers, and it is not the function of this office to question the constitutionality of legislative enactments.

In sum, it is my opinion, and you are advised:

1. When, under the provisions of Sections 1711.15 *et seq.*, Revised Code, a board of county commissioners erects or improves a building for a county agricultural society and title to such building and the land on which it is erected is in the society, exclusive control and management of such land and building is in the society.

2. Where, under the provisions of Sections 1711.15, *et seq.*, a board of county commissioners erects a building on county-owned land, and title to such building is in the county, and where such land and building is occupied by the county agricultural society, control and management of such land and building is vested in the society by Section 1711.31, Revised Code, so long as such premises are occupied by the society and used by it for holding agricultural fairs. The holding of one agricultural fair each year agreeably to the requirements of the director of agriculture as provided in Section 1711.15, Revised Code, satisfies such condition of occupancy and use as provided in Section 1711.31, Revised Code.

3. A county agricultural society has the power to appoint an agent to manage and control a building owned by it, or to exercise its powers of management and control over a county-owned building as granted in accordance with Section 1711.31, Revised Code, and such agent may be a board of which less than all members are members of the county agricultural society.

4. A county agricultural society is bound by the provisions of statute law specifically applicable to it, principally Chapter 1711., Revised Code, and not to the provisions of the General Corporation Law, Chapter 1701., Revised Code, except where it appears that a provision of the special statute on county agricultural societies is cumulative, in which case provisions of Chapter 1701., Revised Code, may apply as provided in Section 1701.98 (B), Revised Code.

5. A county agricultural society can independently contract indebtedness separate and apart from any joint liability with the board of county commissioners, and the \$20,000 limitation of Section 1711.15, Revised Code, applies only with regard to appropriations by a board of county commissioners.

6. A county agricultural society can lawfully participate in the promotion of a hockey team, and the rentals received by the society for a hockey team or similar sporting or entertainment enterprises which use the real property owned by or under the control and management of the society are not public funds.

Respectfully,

WILLIAM SAXBE

Attorney General