

OPINION NO. 88-026**Syllabus:**

1. Pursuant to R.C. 1702.03, nonprofit county agricultural societies and nonprofit independent agricultural societies must be formed under the provisions of R.C. Chapter 1711, rather than under the general nonprofit corporation provisions of R.C. Chapter 1702.
2. Pursuant to R.C. 1702.58(B), special provisions of R.C. Chapter 1711 relating to the organization, conduct, or government of county agricultural societies or independent agricultural societies govern to the exclusion of provisions of R.C. Chapter 1702 on the same subject; however, when there is no special provision governing a certain aspect of the operation of county agricultural societies or independent agricultural societies, then the appropriate provisions of R.C. Chapter 1702 govern that aspect of the operation of nonprofit county agricultural societies or nonprofit independent agricultural societies. (1957 Op. Att'y Gen. No. 516, p. 141 overruled to the extent that it is inconsistent with this opinion.)

To: Sherrod Brown, Secretary of State, Columbus, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, April 21, 1988

I have before me your request for an opinion concerning county and independent agricultural societies. You have raised the following questions:

1. May county agricultural societies incorporate under the general nonprofit corporation provisions of R.C. Chapter 1702, or must they incorporate solely pursuant to provisions of R.C. Chapter 1711?
2. May independent agricultural societies incorporate under the general nonprofit corporation provisions of R.C. Chapter 1702, or must they incorporate solely pursuant to provisions of R.C. Chapter 1711?

I assume that, when you use the terms "county agricultural societies" and "independent agricultural societies," you mean societies that serve the purposes outlined in R.C. Chapter 1711 and may be eligible for benefits pursuant to that chapter. I am using the terms in that sense throughout this opinion. See generally notes 2 and 3, *infra*.

R.C. Chapter 1711 governs county agricultural societies. R.C. 1711.01 describes the manner in which such a society is to be organized and established so that it may receive certain county funds:

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. (Emphasis added.)

R.C. Chapter 1711 contains no more specific definition of a county agricultural society than that appearing in R.C. 1711.01. It is, however, evident that when the term "county agricultural society" is used elsewhere in R.C. Chapter 1711 and related sections, it refers to a society that has been organized pursuant to R.C. 1711.01. See, e.g. *Dunn v. Agricultural Society*, 46 Ohio St. 93, 97-98, 18 N.E. 496, 498 (1888) (statutes governing county agricultural societies "in substance provide; that thirty or more persons, residents of the county, may, by organizing themselves into a society for the improvement of agriculture, adopting a constitution and by-laws for their government, and appointing the customary officers, become a body corporate"); 1951 Op. Att'y Gen. No. 597, p. 357.

R.C. 1711.04 states that "[e]very society formed under [section] 1711.01...of the Revised Code shall annually offer and award premiums for the improvement of grains, fruit, vegetables, livestock, articles of domestic industry, [and] public school displays...and may perform any acts best calculated to promote the agricultural interests and household manufacturing interests of the [county]...and of the state." R.C. 1711.05 requires a county agricultural society to publish an abstract of its treasurer's account, make a report of its yearly proceedings, and forward a synopsis of its awards for improvement in agriculture and in household manufactures to the Director of Agriculture as provided in R.C. 901.06. R.C. 901.06 authorizes the Director of Agriculture to adopt rules governing "all agricultural societies which receive any support out of the state or county treasuries" and provides for annual meetings between the Director of Agriculture and "the presidents or other authorized delegates of agricultural societies which conduct fairs in compliance with [R.C. 1711.01-.35] and regulations of the department of agriculture." See also R.C. 901.07.

R.C. 1711.06 states that "[m]embers of a county agricultural society must be residents of the county in which it is organized" and contains other provisions governing membership and membership certificates. R.C. 1711.07 governs the election of the board of directors of such a society, as follows:

The board of directors of a county agricultural society shall consist of at least eight members. An employee of the cooperative extension service and the county school superintendent shall be members ex officio. Their terms of office shall be determined by the rules of the department of agriculture....There shall be an annual election of directors by ballot at a time and a place fixed by the board....Only persons holding membership certificates at the close of the annual county fair, or at least fifteen calendar days before the date of election, as may be fixed by the board, may vote, unless such election is held on the fairground during the fair, in which case all persons holding membership certificates on the date and hour of the election may vote. When the election is to be held during the fair, notice of such election must be prominently mentioned in the premium list, in addition to the notice required in newspapers....

The secretary of such society shall send the name and address of each member of its board to the director of agriculture within ten days after the election.

R.C. 1711.08 provides for the election of officers. R.C. 1711.13 specifies that a county agricultural society is a body corporate and politic, stating, in part:

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.

It has long been established that, by virtue of the language appearing in R.C. 1711.13 and its predecessor provisions, a county agricultural society becomes a corporate body when it is organized pursuant to R.C. 1711.01 and related provisions of R.C. Chapter 1711. The Ohio Supreme Court stated, in *State ex rel. Leaverton v. Kerns*, 104 Ohio St. 550, 553, 136 N.E. 217, 218 (1922):

By virtue of the provisions of Section 9885, General Code [now R.C. 1711.13], 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***."

See also Dunn v. Agricultural Society; 1944 Op. Att'y Gen. No. 6875, p. 238. A county agricultural society may, thus, be organized under the provisions of R.C. Chapter 1711 and be considered a corporation under Ohio law.

The issue posed by your first question is whether a county agricultural society must incorporate solely pursuant to the provisions of R.C. Chapter 1711 or whether it may incorporate under the general nonprofit corporation provisions of R.C. Chapter 1702. Your question is phrased prospectively and, in answering it, I am considering how a county agricultural society may be formed under existing law. I am not considering the status of a county agricultural society that is already in existence. *See generally* R.C. 1711.13 (declaring that county agricultural societies are bodies corporate and politic); *State ex rel. Leaverton v. Kerns*.

As used in R.C. Chapter 1702, the word "corporation" means "a non-profit corporation formed under the laws of this state, or a corporation for profit formed under the laws of this state which by amendment to its articles as provided by law shall have become a non-profit corporation." R.C. 1702.01(A). "Non-profit corporation" means "a corporation which is not formed for the pecuniary gain or profit of, and whose net earnings or any part thereof is not distributable to, its members, trustees, officers, or other private persons; provided, however, that the payment of reasonable compensation for services rendered and the distribution of assets on dissolution...shall not be deemed pecuniary gain or profit or distribution of earnings." R.C. 1702.01(C). I assume that the entity in question will be organized and operated as a nonprofit corporation. This assumption assures compliance with 2 Ohio Admin. Code 901-5-09, which permits the payment of certain compensation to the directors, officers, and authorized representatives of a county or independent agricultural society, but prohibits the distribution of funds or property of the society,¹ as follows:

¹ Your letter references the general nonprofit corporation provisions appearing in R.C. Chapter 1702, rather than the general provisions governing corporations for profit that appear in R.C. Chapter 1701, thus indicating that the entities in question are organized and operated on a nonprofit basis. R.C. Chapter 1711 does not expressly require that county and independent agricultural societies be organized as nonprofit entities. *Cf.* R.C. 1711.01 (authorizing a county agricultural society to adopt a constitution and bylaws); 1951 Op. Att'y Gen. No. 597, p. 357 at 360 (noting that G.C. 9880-9910, governing agricultural societies, were "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 and independent agricultural societies organized pursuant to R.C. Chapter 1711 are, however, generally considered to be nonprofit entities. *See, e.g., State ex rel. Ash v. Gholson*, 103 Ohio App. 521, 523, 146 N.E.2d 333, 335 (Lawrence County 1957) ("[i]t has been determined in this state that agricultural societies organized pursuant to Section 1711.01 *et seq.*, Revised Code, are 'private corporations not for profit organized and existing under the authority of the state of Ohio'"); 1987 Op. Att'y Gen. No. 87-057 at 2-350 ("county agricultural societies are

(F) No society shall pay any funds or deliver any property of the society to, or for the individual benefit of, any member of the board of directors, or any other person as a share, gift, or dividend. The terms "share," "gift," and "dividend" as used in this regulation do not mean awards which are advertised in the annual premium list of a fair held by a society.

Certain sections of R.C. Chapter 1702 address the relationship between the general nonprofit corporation provisions appearing in R.C. Chapter 1702 and special provisions governing particular classes of corporations. R.C. 1702.03 states:

A corporation may be formed for any purpose or purposes 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.* (Emphasis added.)

R.C. 1702.58(B) states more generally:

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 1702.01 to 1702.58, 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.

in essence private corporations not organized for profit"); 1940 Op. Att'y Gen. No. 2454, vol. 1, p. 614; 1933 Op. Att'y Gen. No. 42, vol. 1, p. 29 (syllabus, paragraph 1) ("[a] county agricultural society existing by virtue of [G.C. 9880 *et seq.*] is a private corporation not for profit"); 1919 Op. Att'y Gen. No. 155, vol. 1, p. 265 at 269 ("the society referred to in [G.C. 9880 and 9880-1, now R.C. 1711.01 and 1711.02] is in contemplation of law to be for the benefit of the public for agricultural purposes and not for the private profit of such association nor its members"). *See generally, e.g., State ex rel. Leaverton v. Kerns*, 104 Ohio St. 550, 136 N.E. 217 (1922); *Licking County Agricultural Society v. Board of County Commissioners*, 48 Ohio App. 528, 194 N.E. 606 (Licking County 1934).

It is clear that, in order to be eligible for the public funding available under R.C. Chapter 1711, county and independent agricultural societies must be operated as nonprofit entities. *See* 2 Ohio Admin. Code 901-5-09(F). *See also Bazell v. City of Cincinnati*, 13 Ohio St. 2d 63, 233 N.E.2d 864, *cert. denied sub nom. Fosdick v. Hamilton County*, 391 U.S. 601 (1968); *State ex rel. Leaverton v. Kerns* (syllabus, paragraph 2) ("[t]he aid provided by [G.C. 9880-1, now R.C. 1711.02] 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 [Ohio Const. art. VIII, §§4 and 6]"); *Board of County Commissioners v. Brown*, 1 Ohio N.P. (n.s.) 357 (C.P. Lawrence County 1903); 1984 Op. Att'y Gen. No. 84-026 at 2-79 ("the public character of a county agricultural society's functions and purpose makes such a society a proper recipient of public funds"); 1919 Op. No. 155. A county or independent agricultural society that did not comply with the prohibition of 2 Ohio Admin. Code 901-5-09(F) against distribution of its funds as shares, gifts, or dividends would be ineligible for virtually all of the statutory benefits accorded to such societies. *See, e.g.,* R.C. 1711.01; R.C. 1711.02; R.C. 1711.15; R.C. 1711.17; R.C. 1711.22 ("[n]o board [of county commissioners] shall appropriate money as provided by this section [for county or independent agricultural societies] unless the director of agriculture has certified to the board that the county or independent agricultural society is complying with all laws, rules and regulations

Pursuant to R.C. 1702.03, "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." R.C. Chapter 1711 governs the formation of county agricultural societies and, accordingly, a county agricultural society "shall be formed" pursuant to its provisions.²

Pursuant to R.C. 1702.58(B), "special provisions in the Revised Code for the organization, conduct, or government of designated classes of corporations," such as those governing county agricultural societies, shall govern to the exclusion of the provisions of R.C. 1702.01-.58 "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." I am aware of no indication that the provisions of R.C. Chapter 1711 relating to the organization, conduct, and government of county agricultural societies are intended to be cumulative with the provisions of R.C. Chapter 1702 on the same subjects. I conclude, accordingly, that the special provisions of R.C. Chapter 1711 relating to the organization, conduct, and government of county agricultural societies govern those societies, to the exclusion of provisions of R.C. Chapter 1702 on the same subjects. The formation of a county agricultural society, its membership, its board of directors and officers, and its corporate status are, accordingly, governed by the appropriate provisions of R.C. Chapter 1711. *See, e.g.*, R.C. 1711.01; R.C. 1711.06-.08; R.C. 1711.13. It follows that a nonprofit county agricultural society must be formed under the provisions of R.C. Chapter 1711, rather than under the general nonprofit corporation provisions of R.C. Chapter 1702. It would, however, be misleading to state that such a society is

governing the operation of county or independent agricultural societies"). As a practical matter, it appears, therefore, that county and independent agricultural societies are operated as nonprofit entities.

Certain cases and opinions have suggested that a county or independent agricultural society might be organized on a profit-making basis. *See, e.g., State ex rel. Leaverton v. Kerns*, 104 Ohio St. at 554, 136 N.E. at 217 ("it is difficult to find any statutory bar to [a corporation for profit] being given the aid provided for independent agricultural societies, so long as no profits have in fact been distributed to members and so long as there is no intention of making such distribution"); *State v. Long*, 48 Ohio St. 509, 28 N.E. 1038 (1891) (finding that provision against selling intoxicating liquors within two miles of an agricultural fair applied to a fair held by a private corporation organized for profit); *Dunn v. Agricultural Society*, 46 Ohio St. 93, 101, 18 N.E. 496, 500 (1888) (under statutes governing county agricultural societies, "a corporate fund [may] be acquired [and] it may be distributed among the members, or held for other disposition, at the pleasure of the society, and the corporation may thus become one of pecuniary profit"). I do not, however, perceive the issue of whether a county or independent agricultural society may be organized as a corporation for profit as one that is raised in your request. Accordingly, for purposes of this opinion, I assume that each county or independent agricultural society is organized on a nonprofit basis and that, in compliance with 2 Ohio Admin. Code 901-5-09(F), it is also operated on a nonprofit basis. Thus, to the extent that any provisions of corporate law other than those appearing in R.C. Chapter 1711 might be applicable, the provisions will be those of R.C. Chapter 1702, governing nonprofit corporations, rather than those of R.C. Chapter 1701, governing corporations for profit.

² As discussed above, the term "county agricultural society" is used in this opinion to mean a county agricultural society that serves the purposes outlined in R.C. Chapter 1711 and may be eligible for benefits pursuant to that chapter. Such a corporation is within the class of corporations designated by R.C. Chapter 1711, within the meaning of R.C. 1702.03. It may be possible for a nonprofit corporation that serves other purposes and is not within the class designated by R.C. Chapter 1711 to be formed pursuant to R.C. Chapter 1702, rather than R.C. Chapter 1711, and to use such words as "agriculture" and "society" in its articles of incorporation under R.C. 1702.04.

incorporated solely pursuant to the provisions of R.C. Chapter 1711, since certain provisions of R.C. Chapter 1702 may govern its operation as a corporation. Under R.C. 1702.58(B), when there is no special provision governing a certain aspect of the operation of county agricultural societies, the appropriate provisions of R.C. Chapter 1702 will govern that aspect of the operation of nonprofit county agricultural societies, since those societies are, pursuant to R.C. 1711.13, corporations under Ohio law. Accordingly, a nonprofit county agricultural society formed pursuant to R.C. Chapter 1711 may be subject to various provisions of R.C. Chapter 1702.

In 1944 Op. No. 6875, one of my predecessors considered the manner in which voluntary dissolution of a county agricultural society might occur. 1944 Op. No. 6875 quoted G.C. 8623-132, which provided that general corporation law would not apply where special provisions governed the incorporation, organization, conduct, or government of a class of corporations, unless there was clear indication that the special provisions were cumulative. 1944 Op. No. 6875 went on to state:

It will be noted that this section [G.C. 8623-132] specifies that where special provision is made for the incorporation, organization, conduct or government of any class of corporations, such special provision shall govern to the exclusion of the provisions of the General Corporation Act on the same subject, but it does not provide that special provisions with respect to dissolution shall govern to the exclusion of the provisions contained in the General Corporation Act. It might be that the provisions of the General Corporation Act with respect to the dissolution of [corporations] would govern even if there were special provisions on that subject in the General Code in regard to a particular kind of corporation. However, it is unnecessary to discuss this question because there is no special provision in the General Code in regard to the dissolution of a county agricultural society and the inference seems rather clear from the language of Section 8623-132, General Code, that the provisions of the General Corporation Act apply to the dissolution of county agricultural societies.

...[Y]our attention is directed to Section 8623-114, General Code, which provides for the dissolution of a non-profit corporation but makes the provisions with respect to the dissolution of corporations for profit controlling in so far as applicable.

1944 Op. No. 6875 at 242-43. 1944 Op. No. 6875 thus stands for the proposition that, where special provisions governing a designated class of corporations do not address a particular matter, general corporation provisions governing that matter come into effect.

A related conclusion was reached in 1957 Op. Att'y Gen. No. 516, p. 141, which states, in the fourth paragraph of the syllabus:

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.

1957 Op. No. 516 referenced the general corporation provisions appearing in R.C. Chapter 1701, rather than the general nonprofit corporation provisions appearing in R.C. Chapter 1702, presumably because the person requesting that opinion inquired about the statutes and case law applying to private corporations for profit. R.C. Chapter 1711 does not expressly prohibit the organization of a county agricultural society as a corporation for profit. *See generally State ex rel. Leaverton v. Kerns; note 1, supra.* If, however, a county agricultural society were operated as a corporation for profit, there would be questions concerning its capacity to comply with rules of the Director of Agriculture, *see* R.C. 901.06; 2 Ohio Admin. Code Chapter 901-5, and questions concerning the constitutionality of contributions of public funds to the society, *see, e.g., State ex rel. Leaverton v. Kerns* (syllabus,

paragraph 2). *See generally Bazell v. City of Cincinnati*, 13 Ohio St. 2d 63, 72, 233 N.E.2d 864, 871, *cert. denied sub nom. Fosdick v. Hamilton County*, 391 U.S. 601 (1968) (a county may constitutionally raise money for or lend its credit to "a public organization such as an agricultural society organized to hold annual agricultural fairs"). It follows that, as a general rule, county agricultural societies are nonprofit corporations, subject to R.C. Chapter 1702 rather than R.C. Chapter 1701. *See* note 1, *supra*. 1957 Op. No. 516 appears, further, to have overlooked the fact that R.C. 1701.98(B) (analogous to R.C. 1702.58(B)) states that special provisions govern only over provisions of general corporation law "on the same subject." The statement contained in 1957 Op. No. 516 concerning the interaction between R.C. Chapter 1711 and provisions of general corporation law is, accordingly, imprecise, and I overrule that opinion to the extent that it is inconsistent with the analysis contained herein.

In response to your first question, I conclude that, pursuant to R.C. 1702.03, a nonprofit county agricultural society must be formed under the provisions of R.C. Chapter 1711, rather than under the general nonprofit corporation provisions of R.C. Chapter 1702. Pursuant to R.C. 1702.58(B), special provisions of R.C. Chapter 1711 relating to the organization, conduct, or government of county agricultural societies govern to the exclusion of provisions of R.C. Chapter 1702 on the same subject; however, when there is no special provision governing a certain aspect of the operation of county agricultural societies, then the appropriate provisions of R.C. Chapter 1702 govern that aspect of the operation of nonprofit county agricultural societies.

Your second question asks whether independent agricultural societies may incorporate under the general nonprofit corporation provisions of R.C. Chapter 1702, or whether they must incorporate solely pursuant to provisions of R.C. Chapter 1711. Like your first question, your second question is phrased prospectively. Accordingly, I am considering the manner in which independent agricultural societies may be formed under existing law, and I am not addressing the status of independent agricultural societies that are currently in existence. *See generally* R.C. 1711.13; *State ex rel. Leaverton v. Kerns*. As with your first question, I am assuming that your second question involves societies that are organized and operated as nonprofit entities. *See* note 1, *supra*.

R.C. Chapter 1711 does not contain a direct statutory definition of "independent agricultural society." Instead, as with "county agricultural society," it uses the term in provisions that indicate how the society must be formed in order to be eligible for certain public funds. R.C. 1711.02 states:

When thirty or more persons of the same county, or of not more than three contiguous counties, have been organized into an independent agricultural society which has held an annual exhibit in each of three years previous to January 1, 1919, in a county in which is located a county agricultural society, and when such independent 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 of agriculture, then, upon the presentation to the county auditor of a certificate from the director of agriculture that the laws of this state and the rules of the department have been complied with:

(A) If the members of such independent society are all residents of the same county, the auditor of such county shall draw an order on the county treasurer of such county in favor of the president of the independent society for a sum equal to the amount paid in regular class premiums not exceeding eight hundred dollars, and such treasurer shall pay said order;

(B) If the members of such independent society are not all residents of the same county, the auditor of each county in which one or more of such members reside shall draw an order on each of the respective county treasurers for a share of the sum of eight hundred dollars, calculated in proportion to the populations of the respective counties according to the last federal census before such order, but not exceeding the amount paid in regular class premiums, and such

treasurers shall pay such orders from the respective county funds.
(Emphasis added.)

R.C. 1711.02 thus indicates that an independent agricultural society is to be organized by thirty or more persons of the same county, or of not more than three contiguous counties. It also states that the funding provisions contained therein apply only to an independent agricultural society that held an annual exhibit in each of three years previous to January 1, 1919, in a county with a county agricultural society and that has held an annual exhibition in accordance with R.C. 1711.04-05 and made proper report to the Department of Agriculture.

The language of R.C. 1711.02 suggests that any question concerning incorporation of an independent agricultural society is moot, since such societies as exist must have been created prior to 1919. That suggestion is, however, refuted by R.C. 1711.22, which provides for other public funding for independent agricultural societies that held three annual expositions prior to January 1, 1933. R.C. 1711.22 states, in part:

In a county in which there is no county agricultural society, or in which there is no fair held by such a society, but in which there exists an independent agricultural society that has held an annual exposition in each of three years previous to January 1, 1933, the board shall, on the request of the independent agricultural society, annually appropriate from the general fund not more than two thousand nor less than five hundred dollars for the purpose of encouraging such independent agricultural fairs.

Other provisions of R.C. Chapter 1711 provide for public support of independent agricultural societies without containing any restriction on the years in which such societies must have been in existence. *See, e.g.*, R.C. 1711.17 ("[i]n any counties in which there is a duly organized independent agricultural society, the respective boards of county commissioners may purchase or lease jointly, for a term of not less than twenty years, real estate on which to hold fairs under the management and control of the society, and may erect thereon suitable buildings and otherwise improve the same, 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 independent agricultural society is complying with all laws and rules governing the operation of county agricultural societies"); R.C. 1711.22 ("[i]n any county in which there is located one or more independent agricultural societies, the board [of county commissioners], for the purpose of encouraging such societies, may appropriate...a sum not greater than the amount appropriated for the county society").

Reading R.C. Chapter 1711 as a whole, I conclude that an independent agricultural society may be created at any time through compliance with the provisions for organization set forth in R.C. Chapter 1711. Such a society will, however, be eligible for public funds only if it satisfies the particular provisions under which those funds are awarded. *See generally* 1946 Op. Att'y Gen. No. 702, p. 31; 1940 Op. Att'y Gen. No. 2454, vol. I, p. 614; 1918 Op. Att'y Gen. No. 979, vol. I, p. 203.

In *State ex rel. Leaverton v. Kerns*, the Ohio Supreme Court considered the application of the predecessor provisions of R.C. Chapter 1711 to independent agricultural societies. The court looked particularly at G.C. 9885, predecessor to R.C. 1711.13, which provided that county agricultural societies were bodies corporate and politic. The court stated:

While that section [G.C. 9885, now R.C. 1711.13] by its terms applies to county societies, the section was enacted at a time when independent agricultural societies had not yet been provided for, and when independent societies were later provided for, with practically all of the attributes of county societies, all provisions of that chapter pertaining to county societies would automatically become applicable to independent societies.

104 Ohio St. at 553, 136 N.E. at 218. In light of the *Leaverton* case, it appears that the same analysis applicable to county agricultural societies is applicable to independent agricultural societies. I conclude, accordingly, that, pursuant to R.C. 1702.03, a nonprofit independent agricultural society must be formed under the provisions of R.C. Chapter 1711, rather than under the general nonprofit corporation provisions of R.C. Chapter 1702.³ See generally 2 Ohio Admin. Code 901-5-01 (for purposes of rules of the Department of Agriculture pertaining to county and independent agricultural societies, "[a]gricultural society' or 'society' means a county agricultural society or an independent agricultural society which is organized and is operating under the laws of the state of Ohio"). Pursuant to R.C. 1702.58(B), special provisions of R.C. Chapter 1711 relating to the organization, conduct, or government of independent agricultural societies govern to the exclusion of provisions of R.C. Chapter 1702 on the same subject; however, when there is no special provision governing a certain aspect of the operation of independent agricultural societies, then the appropriate provisions of R.C. Chapter 1702 govern that aspect of the operation of nonprofit independent agricultural societies.

I am aware that in *State ex rel. Leaverton v. Kerns*, the Ohio Supreme Court concluded that an independent agricultural society that had been organized as a corporation for profit was eligible for public funding. In that case, the record disclosed that "the company was so organized through mistake and inadvertence and...when the mistake was discovered it was sought to be corrected, and...no profits have ever been distributed to the members. The rules and regulations prescribed by the state board of agriculture covering independent societies have been complied with." 104 Ohio St. at 551, 136 N.E. at 217. The court expressly found that a careful reading of the constitution and by-laws of the society showed that no provision was made for dividends or distribution of profits. 104 Ohio St. at 553, 136 N.E. at 218. The court found no statutory bar to giving the public aid in question even to a corporation for profit, "so long as no profits have in fact been distributed to members and so long as there is no intention of making such distribution." 104 Ohio St. at 554, 136 N.E. at 218. 2 Ohio Admin. Code 901-5-09 would, similarly, appear to permit the creation of an independent agricultural society as a corporation for profit, provided that no funds or property are actually paid as shares, gifts, or dividends to the directors of the society or any other person. Under the definition appearing in R.C. 1702.01(C), the status of an entity as a nonprofit corporation depends upon whether the earnings are distributable, and not upon whether they are actually distributed. As discussed above, however, I am assuming for purposes of this opinion that the independent agricultural society with which you are concerned is both organized and operated as a nonprofit entity. See note 1, *supra*.

It is, therefore, my opinion, and you are hereby advised, as follows:

1. Pursuant to R.C. 1702.03, nonprofit county agricultural societies and nonprofit independent agricultural societies must be formed under the provisions of R.C. Chapter 1711, rather than under the general nonprofit corporation provisions of R.C. Chapter 1702.
2. Pursuant to R.C. 1702.58(B), special provisions of R.C. Chapter 1711 relating to the organization, conduct, or government of county agricultural societies or independent agricultural societies govern to the exclusion of provisions of R.C. Chapter 1702 on the same subject; however, when there is no special provision

³ As discussed above, the term "independent agricultural society" is used in this opinion to mean an independent agricultural society that serves the purposes outlined in R.C. Chapter 1711 and may be eligible for benefits pursuant to that chapter. Such a corporation is within the class of corporations designated by R.C. Chapter 1711, within the meaning of R.C. 1702.03. It may be possible for a nonprofit corporation that serves other purposes and is not within the class designated by R.C. Chapter 1711 to be formed pursuant to R.C. Chapter 1702, rather than R.C. Chapter 1711, and to use such words as "agriculture" and "society" in its articles of incorporation under R.C. 1702.04.

governing a certain aspect of the operation of county agricultural societies or independent agricultural societies, then the appropriate provisions of R.C. Chapter 1702 govern that aspect of the operation of nonprofit county agricultural societies or nonprofit independent agricultural societies. (1957 Op. Att'y Gen. No. 516, p. 141 overruled to the extent that it is inconsistent with this opinion.)