

OPINION NO. 72-091

Syllabus:

Where an art institute and opera association are incorporated without the purpose of profit, and where the articles of incorporation include purposes which provide for the cultivation and performance of instrumental or choral music or the cultivation and diffusion of knowledge, and where such art institute and opera association have organized their own orchestra, choral, or lecture groups to implement the purposes provided under Section 757.03, Revised Code, such groups are permitted to receive funds from the board of county commissioners under Section 757.05, Revised Code.

To: Lee C. Falke, Montgomery County Pros. Atty., Dayton, Ohio
By: William J. Brown, Attorney General, October 6, 1972

I have before me your request for an opinion, which poses the following question:

Are the Dayton Art Institute and the Dayton Opera Association eligible for support from the board of county commissioners under authority of Chapter 757 of the Ohio Revised Code?

To determine eligibility we must look to Section 757.05, Revised Code, which provides:

"In any city or county in which there is a symphony association, choral society, or educational lecture association which is incorporated, organized and operated in the manner and for the purposes stated in section 757.03 of the Revised Code, such city or county, or both, may pay such symphony association, choral society, or educational lecture association annually, in quarterly installments, in the case of a city, a sum not to exceed one half of one cent on each one hundred dollars of taxable property of said city as valued on the tax duplicate of the city or, in the case of a county, a sum of not to exceed one half of one cent on each one hundred dollars of the taxable property of the county for the year next before the date of each payment. In order to qualify for such payments, such symphony association, choral society, or educational lecture association must, by a proper resolution of its board of trustees or other governing body, accept all applicable provisions of sections 757.03 to 757.08, inclusive, of the Revised Code and file a certified copy of the resolution with the controller of the city or the board of county commissioners prior to the date of any such payment. The first of such payments may be made in the year 1966, after the filing of such certified copy."

In order for any symphony association, choral society, or educational lecture association to qualify under the provisions of this Section, it must first be demonstrated that the organization was incorporated for the purposes described in Section 757.03, Revised Code, in the following language:

"* * * without purpose of profit to any private member or individual, but organized for the purpose of the cultivation and performance of instrumental music, the cultivation and performance of choral music, or the cultivation and diffusion of knowledge, and to maintain a symphony orchestra, choral group, or educational lecture group, * * *."

As to the element of incorporation "without purpose of profit", it is clear from your letter that both the Opera Association and the Art Institute fulfill this initial requirement. They are, in fact, nonprofit corporations under Chapter 1702, Revised Code.

The second requirement provides that the symphony association, choral society, or educational lecture association must be organized for "the purpose of the cultivation and performance of instrumental music, the cultivation and performance of choral music, or the cultivation and diffusion of knowledge, * * *."

In determining whether the Opera Association and the Art Institute meet such esthetic requirements, one may look not only to the purposes of the organizations, as set forth in their articles of incorporation, but also to their actual character. State ex rel., Russell v. Sweeney, 153 Ohio St. 66 (1950).

Looking first to the Art Institute's articles of incorporation, we find the following language:

"Said Corporation is formed for the purpose of promoting and cultivating the fine and applied arts; for the purpose of bringing together and acquiring art collections, housing and exhibiting the same, together with collections and objects of art which may be loaned to it, and for the purpose of providing instruction in the arts and arousing an interest therein, in the community."

While this language does not specifically follow Section 757.03, it is clearly broad enough to come within the meaning of that Section. Further, the program offered by the Art Institute testifies to its multifaceted orientation, providing for not only the exhibition of art, but also (1) performances of instrumental music, both by outside professional groups, and groups organized by the Institute itself; (2) performances of choral music, including both professional and amateur vocalists; and (3) the "diffusion of knowledge" by an expansive program of lectures, academic instruction and group tours conducted by the Institute's staff.

In examining the Art Institute's programs dealing specifically with music, one finds that the Institute presented or provided for the following during fiscal year 1971:

1. Sixteen free Sunday public concerts involving 431 local musicians performing before a total audience of 5,582.
2. Six free public concerts in the Institute's Italian Cloister, involving 43 local musicians with a total audience of 2,046 people.
3. The sponsoring of the "Vanguard Concerts", a subscription series of chamber orchestral concerts.

Further, the Art Institute has developed and maintained intensive educational lecture programs, which include the following for the fiscal year 1971:

1. The conducting of approximately 600 lecture tours for classes of children from the area's schools and for adult groups to some 15,000 persons.
2. The presentation of 26 free narrated film series lectures by a noted scholar to a total audience of 1,300 persons.
3. The conducting of Sunday gallery lectures, special lectures, symposia, etc.
4. The conducting of lectures by the School of the Dayton Art Institute as a part of its accredited educational program.

In my opinion the Art Institute meets the "purpose for incorporation" requirement found in Section 757.03, in that it was incorporated for the purpose of, and has in practice provided for, the "cultivation and performance of instrumental music, * * * the cultivation and performance of choral music."

As stated in Opinion No. 71-044, Opinions of the Attorney General for 1971:

"A municipality may not make an outright, unrestricted gift of funds to a nongovernmental organization, regardless of whether or not such organization may be generally engaged in performing a beneficial, public purpose."

Likewise, the county could not pay funds to the Art Institute as provided under Section 757.05 to be used for any purpose. While the Art Institute's programs are many, the funds provided by Section 757.05 must be limited to its orchestra, choral, and educational lecture groups.

Likewise, the Opera Association meets the proper purpose test, both by the language of its articles of incorporation and by its actual programming. The articles state that the purpose of incorporation is:

"* * * To establish and maintain means and facilities for the promotion, study and encouragement of dramatic art and musical education and culture, and to acquire, lease, mortgage, equip, operate, improve, maintain, and dispose of buildings, real and personal property for the use of students, performers, and others in engaging in operas, plays, concerts and other performances; * * *."

The use of the funds would, of course, be limited to the Opera Association's maintenance of its orchestra, choral or educational lecture groups. But the production of an opera may include not only the organizing of a choral group but also the integrally related orchestra group. A chorus has been defined in Webster's Third New International Dictionary, as:

"An organized company of singers who sing in concert: * * * a body of singers who sing choral parts (as in opera) * * * a group of dancers and usually singers supporting the featured players in a musical comedy or revue * * *."

The Opera Association has several distinct elements - orchestra, chorus, dance - all of which come within the definition of a choral society under Section 757.05.

In specific answer to your question it is my opinion, and you are so advised that, where an art institute and opera association are incorporated without the purpose of profit, and where the articles of incorporation include purposes which provide for the cultivation and performance of instrumental or choral music or the cultivation and diffusion of knowledge, and where such art institute and opera association have organized their own orchestra, choral, or lecture groups to implement the purposes provided under Section

757.03, Revised Code, such groups are permitted to receive funds from the board of county commissioners under Section 757.05, Revised Code.