

OPINION NO. 88-034**Syllabus:**

1. A county agricultural society established under R.C. 1711.01, is a "political subdivision" as that term is defined in R.C. 2744.01(F).

2. A county agricultural society established under R.C. 1711.01 may, pursuant to R.C. 2744.08(A)(2)(a), establish and maintain a self-insurance program relative to its and its employees' potential liability in damages in civil actions for injury, death, or loss to persons or property allegedly caused by an act or omission of the county agricultural society or any of its employees in connection with a governmental or proprietary function, and may contract with any person, political subdivision or regional council of governments for purposes of administering such a self-insurance program.

3. A county agricultural society established under R.C. 1711.01 may, pursuant to R.C. 2744.081(A), enter into written agreements to join with other political subdivisions in establishing and maintaining a joint self-insurance pool to provide for the payment of judgments, settlement of claims, expense, loss, and damage that arises, or is claimed to have arisen, from an act or omission of the political subdivision or any of its employees in connection with a governmental or proprietary function and to indemnify or hold harmless the subdivision's employees against such loss or damage.

To: Steven D. Maurer, Director, Department of Agriculture, Columbus, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, June 15, 1988

I have before me your request for my opinion concerning the insurance of county agricultural societies. In particular you ask:

May county agricultural societies organized under Section 1711.01 *et seq.* of the Revised Code maintain self-insurance pools under the authority of [section] 2744.08 *et seq.* of the Revised Code to provide for the payment of judgments, claims, or losses arising from acts or omissions of the agricultural society and their employees and to indemnify and hold harmless such employees against loss or damages and to provide other property and casualty self-insurance coverages for all risks to which the agricultural society and their employees are subject?

The portion of R.C. 2744.08 with which you are specifically concerned is found in subdivision (A)(2)(a), and provides:

Regardless of whether a political subdivision procures a policy or policies of liability insurance pursuant to division (A)(1) of this section or otherwise, the political subdivision may establish and maintain a self-insurance program relative to its and its employees' potential liability in damages in civil actions for injury, death, or loss to persons or property allegedly caused by an act or omission of the political subdivision or any of its employees in connection with a governmental or proprietary function. The political subdivision may reserve such funds as it deems appropriate in a special fund that may be established pursuant to an ordinance or resolution of the political subdivision and not subject to section 5705.12 of the Revised Code. The political subdivision may allocate the cost of insurance or a self-insurance program, or both, among the funds or accounts in the subdivision's treasury on the basis of relative exposure and loss experience. If it so chooses, the political subdivision may contract with any person, other political subdivision, or regional council of governments for purposes of administration of such a program.

In addition, R.C. 2744.081 provides for the establishment of joint self-insurance pools:

(A) Regardless of whether a political subdivision secures a policy or policies of liability insurance, or establishes and maintains a self-insurance program or enters into an agreement for the joint administration of a self-insurance program, under section 2744.08 of the Revised Code, the political subdivision may, pursuant to a written agreement, join with other political subdivisions in establishing and maintaining a joint self-insurance pool to provide for the payment of judgments, settlement of claims, expense, loss, and damage that arises, or is claimed to have arisen, from an act or omission of the political subdivision or any of its employees in connection with a governmental or proprietary function and to indemnify or hold harmless the subdivision's employees against such loss or damage.

These sections extend the authority to establish and maintain self-insurance programs and joint self-insurance pools to each political subdivision of the state. The resolution of your question therefore turns upon whether a county agricultural society constitutes a political subdivision for purposes of R.C. Chapter 2744.

The phrase "political subdivision" is defined by R.C. 2744.01(F) as meaning:

[A] municipal corporation, township, county, school district, or other body corporate and politic responsible for governmental activities in a geographic area smaller than the state. "Political subdivision" includes a county hospital commission appointed under section 339.14 of the Revised Code, regional planning commission created pursuant to

section 713.21 of the Revised Code, county planning commission created pursuant to section 713.22 of the Revised Code, joint planning council created pursuant to section 713.231 of the Revised Code, interstate regional planning commission created pursuant to section 713.30 of the Revised Code, port authority created pursuant to section 4582.02 or 4582.26 of the Revised Code or in existence on December 16, 1964, and regional councils of political subdivisions established pursuant to Chapter 167. of the Revised Code. (Emphasis added.)

R.C. 2744.01(F) thus provides a list of governmental entities which are expressly included under the heading of "political subdivision." If the entity is not specifically listed in R.C. 2744.01(F), then in order to qualify as a "political subdivision" the entity must be: (1) a "body corporate and politic"; (2) "responsible for [a] governmental activity"; (3) "in a geographic area smaller than that of the state."

The nature and powers of a county agricultural society are provided for in R.C. 1711.13:

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. (Emphasis added.)

As provided in the language emphasized above, a county agricultural society is deemed to be a body corporate and politic. *See also State ex rel. Leaverton v. Kerns*, 104 Ohio St. 550, 136 N.E. 217 (1922). Furthermore, a county agricultural society may exist only in a single county, and only one society may exist in each county. *See* 1940 Op. Att'y Gen. No. 2454, p. 614. Thus, county agricultural societies clearly meet the first and third criteria of a "political subdivision" set out in R.C. 2744.01(F).

The second requirement of R.C. 2744.01(F), namely that the entity must be responsible for a governmental activity, requires a more detailed analysis.¹ Certainly, county agricultural societies possess some characteristics that suggest that their activities are not governmental. For example, pursuant to R.C. 1711.081 the positions of members of the board of directors, officers, and employees of a county agricultural society are not public offices, and persons holding such positions are eligible to hold public office. *See* 1934 Op. Att'y Gen. No. 2530, p. 495; *but cf.* 1974 Op. Att'y Gen. No. 74-039 (a county commissioner may not at the same time serve as a director of the county agricultural society). However, the primary purpose of county agricultural societies has repeatedly been identified as education.

¹ While the term "governmental activity" is not defined by R.C. 2744.01, the section does define the term "governmental function" in division (C)(1). The General Assembly clearly did not intend for such terms to be synonymous, however, because the definition provided for by R.C. 2744.01(C)(1) requires that the reader already know whether an entity is a "political subdivision." R.C. 2744.01(C)(1) provides in pertinent part:

"Governmental function" means a function of a *political subdivision* that is specified in division (C)(2) of this section or that satisfies any of the following:

....

(c) A function that promotes or preserves the public peace, health, safety, or welfare, that involves activities that are not customarily engaged in by non-governmental persons, and that is not specified in division (G)(2) of this section as a proprietary function. (Emphasis added.)

For example, in *State ex rel. Leaverton v. Kerns*, the Ohio Supreme Court held that:

The sections of the constitution above referred to [Ohio Const. art. VIII, sec. 4, 6] forbidding financial aid, or the loan of the credit of the state, relate to private business enterprises, and, while they would forbid furnishing financial aid to any agricultural business, an agricultural fair is upon an entirely different basis, *being a public institution designed for public instruction, the advancement of learning and the dissemination of useful knowledge.*

104 Ohio St. at 554-55, 136 N.E. at 218 (emphasis added). *See also* R.C. 1711.10 ("[i]f it is shown...that [the annual exhibit of a county agricultural society]...was not of sufficient *educational value* to justify the expenditure of funds as provided for by section 1711.01 of the Revised Code, the certificate for such financial aid may be withheld by the director of agriculture") (emphasis added); 2 Ohio Admin. Code 901-5-07(E); *Board of County Commissioners v. Brown*, 1 Ohio N.P. (n.s.) 357, 358 (C.P. Lawrence County 1903) ("I...take the legislative intention [of R.S. 3697, now R.C. 1711.01] to be, and the effect of the statute to be, the offering of a premium to the formation and carrying on of agricultural societies to the end that agriculture may be fostered and promoted"); 1985 Op. Att'y Gen. No. 85-061; 1984 Op. Att'y Gen. No. 84-053; 1951 Op. Att'y Gen. No. 597 at 362 (an agricultural fair is not a private business enterprise but its purpose is instead "the advancement of learning and the [dissemination] of useful knowledge"); 1930 Op. Att'y Gen. No. 2531, p. 1645 at 1645 ("[t]he purpose of...enactments [for the organization and operation of county agricultural societies] was to foster and encourage the pursuit of agriculture and to extend and promote agricultural education"). The promotion of educational goals traditionally has been regarded as an appropriate governmental activity. *See, e.g., Tilton v. Richardson*, 403 U.S. 672 (1972); *Hadley v. Junior College District*, 397 U.S. 50 (1970); *Green v. Thomas*, 37 Ohio App. 489, 175 N.E. 226 (Ct. App. Franklin County 1930); *Meyer v. Cleveland*, 35 Ohio App. 20, 171 N.E. 606 (Ct. App. Cuyahoga County 1930). I am thus constrained to conclude that the activities of a county agricultural society are governmental activities for purposes of R.C. 2744.01(F),² and that a county agricultural society is therefore a "political subdivision" as that term is defined by R.C. 2744.01(F).

Accordingly, it is my conclusion and you are hereby advised that:

1. A county agricultural society established under R.C. 1711.01, is a "political subdivision" as that term is defined in R.C. 1744.01(F).
2. A county agricultural society established under R.C. 1711.01 may, pursuant to R.C. 2744.08(A)(2)(a), establish and maintain a self-insurance program relative to its and its employees' potential liability in damages in civil actions for injury, death, or loss to persons or property allegedly caused by an act or omission of the county agricultural society or any of its employees in connection with a governmental or proprietary function, and may contract with any person, political subdivision or regional council of governments for purposes of administering such a self-insurance program.

² My conclusion that the activities engaged in by a county agricultural society constitute "governmental activities" is further supported by the provisions of R.C. Chapter 991. R.C. 991.02-.08 authorize the establishment of an Ohio Expositions Commission for the administration and governance of the Ohio State Fair. The powers and duties of the Ohio Expositions Commission are generally analogous to those of county agricultural societies. Indeed, the provisions of R.C. Chapter 1711 have been directly applied to the Ohio Expositions Commission. *See, e.g.,* 1963 Op. Att'y Gen. No. 113, p. 194 (the Ohio Expositions Commission is authorized to appoint special constables under R.C. 1711.35). Thus, the fact that the activities of the county agricultural society are essentially the same as those engaged in by another governmental entity, the Ohio Expositions Commission, suggests that such activities are properly classified as "governmental activities."

3. A county agricultural society established under R.C. 1711.01 may, pursuant to R.C. 2744.081(A), enter into written agreements to join with other political subdivisions in establishing and maintaining a joint self-insurance pool to provide for the payment of judgments, settlement of claims, expense, loss, and damage that arises, or is claimed to have arisen, from an act or omission of the political subdivision or any of its employees in connection with a governmental or proprietary function and to indemnify or hold harmless the subdivision's employees against such loss or damage.