Note from the Attorney General's Office:

1934 Op. Att'y Gen. No. 34-2530 was overruled in part by 1959 Op. Att'y Gen. No. 59-198.

2529.

APPROVAL, NOTES OF SPRINGFIELD RURAL SCHOOL DISTRICT, MAHONING COUNTY, OHIO—$3,487.00.

COLUMBUS, OHIO, April 19, 1934.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

2530.

COUNTY AGRICULTURAL SOCIETY—DIRECTOR NOT A PUBLIC OFFICER—ELECTION OF COUNTY COMMISSIONERS TO BOARD OF DIRECTORS DOES NOT VACATE FORMER OFFICE.

SYLLABUS:

1. *A director of a county agricultural society is not a public officer but is the agent of a private corporation.*

2. *A county commissioner may become a member of the board of directors of the county agricultural society, and his election thereto does not operate to vacate the office of county commissioner.*

COLUMBUS, OHIO, April 19, 1934.

HON. JOHN W. BOLIN, *Prosecuting Attorney, Athens, Ohio.*

DEAR SIR:—I acknowledge receipt of your communication which reads as follows:

> "May I have your opinion upon the following question:
>
> Two Athens County Commissioners were elected as Directors of the Athens County Agricultural Society and on December 19th, 1933, they resigned from the office as Directors of said Agricultural Society, which resignations were accepted by the Agricultural Society on February 1st, 1934.
>
> Now, a group are demanding that I bring Quo Warranto proceedings against them to remove them from the office of Athens County Commissioners on the grounds that their acceptance of the office as Directors of the Agricultural Society worked a forfeiture of the office of Athens County Commissioners.
>
> I ruled that under authority of *State ex rel. Gettles* vs. *Gillen,* 112 Ohio State, 534, there was no forfeiture of the office of County Commissioner, but the group that wants them removed still insists that I bring this action and asks that I obtain an opinion from you.
>
> I am enclosing with this request:
>
> The Demand for Quo Warranto Proceedings; My Answer refusing to bring Quo Warranto with citations of authorities and the Counterdemand and Request for an opinion from you."

The first question which arises is whether a county commissioner may serve as a member of the board of directors of a county agricultural society. There is no statute which prohibits a county commissioner from being a director of a county agricultural society, but in Opinions of the Attorney General for 1918, Volume II, page 1497, the following was held:

> "The offices of member of a board of county commissioners and member of a county agricultural society are incompatible."

In Opinions of the Attorney General for 1924, page 324, it was held that a county auditor may not be a director of the county agricultural society. In neither of these opinions was any consideration given to the question as to whether or not membership on a board of directors of a county agricultural society constitutes a public office or employment, although the answer to that question is necessary in the solution of the inquiry considered in those opinions. If such a position is not a public office or employment, then there is no legal objection to one person being a county commissioner and a member of such board of directors.

A public office, as distinguished from a private office, is generally defined as an authority conferred by appointment of government invoking a delegation to an individual of some of its sovereign functions, an employment on behalf of the government in any station or public trust. *U. S.* vs. *Hartwell,* 6 Wall. 385; *State, ex rel.,* vs. *Kennon, et al.,* 7 O. S. 546; *Shaw* vs. *Jones, et al.,* 4 N. P. 372. In the case of *State, ex rel.,* vs. *Kerns, Auditor,* 104 O. S. 550, the following was held:

> "2. The aid provided by Section 9880-1, General 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."

Section 9880-1, General Code, refers to the organization of independent agricultural societies, but all of the provisions relating to county societies are held in that case to be applicable to independent societies. The term "public institution" refers to the agricultural fair, which the court held was for the advancement of learning and the dissemination of useful knowledge. On page 554, the court said:

> "* * * The sections of the constitution above referred to 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."

The court did not hold that an agricultural society was a public body in the sense that it was an agency of the government to perform any of its functions. This case does not overrule and is not inconsistent with the earlier

case of *Dunn* vs. *Agricultural Society*, 46 O. S. 93. In fact the Dunn case recognized the public purposes of such a society, saying:

> "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; * * *."

The court summarized the statutes, which are not materially different than the present statutes, so far as this inquiry is concerned, as follows:

> "The Act of February 28, 1846, and the amendments thereto, is so far as they aid this inquiry, 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, with capacity to sue and be sued, 'and perform all such acts as they deem best calculated to promote the agricultural and household manufacturing interests' of the county and state; and, when they shall pay to the treasurer of the society, 'by voluntary subscription, or fees imposed on its members, any sum of money in each year not less than fifty dollars,' they are entitled, upon the certificate of the president, verified by the oath of the treasurer, to the effect that such payment has been made, to draw from the county treasury an equal amount, but not to exceed two hundred dollars. The societies are also made capable 'of holding in fee-simple, such real estate as they have purchased or may hereafter purchase, for sites whereon to hold their fairs," and, to receive and make conveyances and agreements in relation thereto. The county commissioners are authorized, 'if they think it for the best interests of the county and society,' to contribute out of the county treasury, for the purchase or lease of such site, a sum equal to, or greater than that paid by the society for the purchase or lease thereof, but no tax shall be levied for a sum greater than that paid by the society, unless a majority of the electors of the county, voting at some general election, shall vote in favor of such tax. The society is empowered to sell its fair grounds 'in such manner and on such terms as it may deem proper,' and conveyances therefor may be executed by the president; but 'grounds owned partly by the society and partly by the county,' cannot be sold or incumbered, without the consent of the commissioners, and when sold, the conveyance must be executed by the commissioners, as well as the president of the society. The money arising from the sale, is required to be paid into the county treasury, and cannot be paid out, without the consent of the commissioners.
>
> The duties enjoined on such societies are, to 'offer premiums for the improvement of soils, tillage, crops, manures, implements, stock, articles of domestic industry, and such other articles, productions and improvements, as they may deem proper,' and, to so 'regulate the amount of premiums, and the different grades of the same', that 'small as well as large farmers' may 'have an opportunity to compete therefor.' They are required to publish a list of the awards, and an abstract of the treasurer's report, in the newspapers of the county, and report annually their proceedings, with a synopsis of the awards, a description of the

improvements, and the condition of agriculture in the county, to the State Board of Agriculture."

The court then said:

"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. 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 * * * 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 case of *Markley, et al.,* vs. *State,* 12 C. C. (N. S.) 81, held that a county agricultural society is a private corporation, and the case of *Chemical Co.* vs. *Calvert,* 7 N. P. (N. S.) 103, held that the secretary of the State Board of Agriculture is not a public officer but the agent of a private corporation. The same conclusion was reached in the following cases: *Downey* vs. *Indiana State Board of Agriculture,* 129 Ind. 443; *Lane* vs. *Minnesota, State Agricultural Society,* 62 Minn. 175; *Thompson* vs. *Lambert,* 44 Ia. 239.

In the case of *Moxon, et al.,* vs. *State, ex rel.,* 36 O. A. 24, the question arose as to whether the appointment of two members of the city commission of East Cleveland as trustees of the Firemen's Pension Fund or of the Police Relief Fund, in accordance with sections 4600 and 4616, General Code, was violative of the provision of the city charter providing that no member of the commission shall hold any other public office or employment except that of notary public or member of the State Militia. It was held in that case that membership on the board of trustees for police or firemen's pension funds was not an additional public office within the charter prohibition. The court said:

"'Public office' is distinguished, in that incumbent is clothed with independent capacity, equal to act of sovereignty derived from state and exercised under authority of law in interest of public."

I cannot feel that the office of director of a county agricultural society, which is filled not by election of the people or by appointment of any public official but merely by election of those private individuals who happen to be members of the society, is a public office or employment. As pointed out in the case of *Lane* vs. *Minnesota, supra,* the state or county has no voice in the selection or control of its officers. Holding this view, I am unable to concur in the conclusions reached in the opinions heretofore referred to.

Therefore, I am of the opinion that:

1. A director of a county agricultural society is not a public officer but is the agent of a private corporation.

2. A county commissioner may become a member of the board of directors of the county agricultural society, and his election thereto does not operate to vacate the office of county commissioner.

Respectfully,
JOHN W. BRICKER,
Attorney General.

2531.

TUBERCULOSIS—PATIENTS ENTITLED TO HOSPITAL CARE AT EXPENSE OF COUNTY WHEN.

SYLLABUS:

1. *By virtue of Section* 3143, *General Code, tubercular persons who cannot afford hospital expenses are entitled to hospital care at the expense of the county at the hospital facilities provided for by the county commissioners when such persons are residents of the county even though such residents have a legal settlement within a city in the county.*

2. *Section* 3148-1, *General Code, is permissive and former city hospitals for tuberculosis were permitted to continue as hospitals for the treatment of tuberculosis although it was not made mandatory that they continue as such.*

COLUMBUS, OHIO, April 19, 1934.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—I am in receipt of your communication requesting my opinion on the following matters:

"Facts:

1st. Cuyahoga County does not own or maintain a County Tuberculosis Hospital (Section 3140 to 3143 G. C.) nor has the county joined in the establishing and maintaining of a District Tuberculosis Hospital (Section 3148 G. C.).

2nd. The City of Cleveland has erected and maintains a Tuberculosis Sanitarium at Warrensville (in Cuyahoga County), and also cares for tubercular patients at City Hospital.

3rd. Under Section 3143 G. C., the County Commissioners have contracted with the City of Cleveland for the care of tubercular patients on a basis of actual cost.

4th. Section 3148-1 G. C. provides that the Commissioners in certain counties, may purchase or lease equipment and buildings for the operation and maintenance of a county hospital for the treatment of persons suffering from tuberculosis. Said section further provides:

'Any municipality within said county at present maintaining and operating a hospital for the treatment of tuberculosis may continue to