

**OPINION NO. 83-035**

**Syllabus:**

A county treasurer may not serve as a director of the county agricultural society.

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**To: Dale L. Locker, Director, Department of Agriculture, Columbus, Ohio**  
**By: Anthony J. Celebrezze, Jr., Attorney General, July 22, 1983**

I have before me your request for my opinion concerning whether the positions of director of a county agricultural society and county treasurer within the same county are compatible.

I turn first to R.C. 1711.081, which reads: "The positions of members of the board of directors, officers, and employees of a county or independent agricultural society are not public offices, and persons holding such positions are eligible to hold public office." Even prior to the enactment of R.C. 1711.081, directors of a county agricultural society were held not to be public officers. See 1934 Op. Att'y Gen. No. 2530, vol. I, p. 495 (overruled on other grounds by 1959 Op. Att'y Gen. No. 198, p. 103) (a director of a county agricultural society is not a public officer, but an agent of a private corporation). Accord 1959 Op. No. 198; 1954 Op. Att'y Gen. No. 4691, p. 697; 1952 Op. Att'y Gen. No. 1116, p. 60. Because a director of a county agricultural society holds a private position rather than a public office, the common law analysis of compatibility is inapplicable. 1974 Op. Att'y Gen. No. 74-039.<sup>1</sup> See 1981 Op. Att'y Gen. No. 81-078; 1973 Op. Att'y Gen. No. 73-016. See generally 1979 Op. Att'y Gen. No. 79-111. However, it still must be determined whether a county treasurer would be involved in self-dealing or subject to a conflict of interest if he served as a director of a county agricultural society. See Op. No. 81-078; 1970 Op. Att'y Gen. No. 70-168 (overruled on other grounds by 1981 Op. Att'y Gen. No. 81-100). See also Op. No. 74-039 (concluding that a county commissioner may not serve as a director of a county agricultural society because of a conflict of interest as prohibited by R.C. 305.27); Op. No. 73-016; 1971 Op. Att'y Gen. No. 71-050; 1965 Op. Att'y Gen. No. 65-150; 1959 Op. No. 198; 1938 Op. Att'y Gen. No. 3440, vol. III, p. 2320. As was stated in Op. No. 70-168: "Any public officer owes an undivided duty to the public. It is contrary to public policy for a public officer to be in a position which would subject him to conflicting duties or expose him to the temptation of acting in any manner other than the best interest of the public." *Id.* at 2-336. See State ex rel. Taylor v. Pinney, 13 Ohio Dec. 210, 212 (C.P. Franklin County 1902) ("public officials, who are the agents of the public,

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<sup>1</sup> In 1979 Op. Att'y Gen. No. 79-111, Op. No. 74-039 and 1959 Op. No. 198 were criticized and disapproved in part on the basis that they stated that the common law rule of incompatibility applied only when two public offices were involved. Op. No. 79-111 concluded that the common law rule of incompatibility applied to the simultaneous holding of a public office and a public employment, as well as to the holding of two public offices.

I believe Op. No. 79-111 misconstrued the emphasis of these opinions, which did not deal with two public positions, but rather with a public office and a private position. The opinions are correct to the extent they conclude that the common law test of incompatibility does not apply to the simultaneous holding of a public position and a private position.

will not be permitted to put themselves in a position antagonistic to the public interests which are represented and which it is their duty to protect"); 1933 Op. Att'y Gen. No. 179, vol. I, p. 214 at 215 (it is a common law principle that, "a public officer should be absolutely free from any influence which would in any way affect the discharge of the obligations which he owes to the public"). If a county treasurer would be subject to a conflict of interest if he served as a director of the county agricultural society, then he could not simultaneously hold both positions.

In 1954 Op. No. 4691, the question whether a county auditor could also serve as a director of a county agricultural society was considered. The opinion focused on R.C. 1711.22, which states in part:

When a county or a county agricultural society owns or holds under a lease real estate used as a fairground, and such society has the control and management of such lands and buildings, the board of county commissioners shall, on the request of such society, annually appropriate from the general fund not more than two thousand dollars nor less than fifteen hundred dollars for the purpose of encouraging agricultural fairs. (Emphasis added.)

It was pointed out in 1954 Op. No. 4691 that the amount requested by the agricultural society pursuant to R.C. 1711.22 constituted an item of the county budget, which could be adjusted within the statutory<sup>2</sup> limitations by the budget commission, of which the county auditor is a member. See 1924 Op. Att'y Gen. No. 1547, vol. I, p. 324.

The county treasurer is also a member of the county budget commission. R.C. 5705.27. The budget commission has the authority to adjust the county's estimates of its financial need, and to determine the total appropriations which may be made by a county. R.C. 5705.32. As discussed above, a county agricultural society is entitled to an appropriation from the county general fund pursuant to R.C. 1711.22, which may be adjusted by the budget commission within the limits set in R.C. 1711.22. R.C. 1711.15 sets forth other instances in which a county may appropriate funds for the benefit of the county agricultural society. In addition, R.C. 1711.24 provides that the board of county commissioners must insure the buildings on the grounds of a county agricultural society. Thus, it is readily apparent that a county treasurer who, as a member of the county budget commission, is responsible for objectively reviewing and adjusting the county's proposed appropriations, would be subject to a conflict of interest if he served as a director of the county agricultural society. See Op. No. 74-039 (a director's reelection depends on his success in promoting the interests of the society, which prevents his complete objectivity as a county officer). See generally 1982 Op. Att'y Gen. No. 82-042 (a deputy county treasurer may not serve as a mayor of a municipality within the same county); 1957 Op. Att'y Gen. No. 24, p. 1 (a county treasurer may not serve as a member of a board of elections within the same county).

In conclusion, it is my opinion, and you are advised, that a county treasurer may not serve as a director of the county agricultural society.

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Although this conflict of interest between a county auditor and a director of a county agricultural society was recognized in 1954 Op. No. 4691, the opinion concluded that one person may hold both positions, since the common law doctrine of compatibility is inapplicable to a director of a county agricultural society. As discussed above, I believe that, although a compatibility analysis is inapplicable, the question of conflict of interest must be confronted in determining whether a county treasurer may also serve as a director of an agricultural society.