

ing and disposing of annuities, under Section 9339, General Code, and related sections. The last paragraph of the third article reads as follows:

"The foregoing clauses shall be construed both as objects and powers, and it is hereby expressly provided that the enumeration herein of specific objects and powers shall not be held to limit or restrict in any way the general powers of the corporation, to do any act permitted by the General Corporation Laws and the Insurance Laws of Ohio, *or any amendments thereto, and such further acts as may be necessary, convenient or expedient to accomplish its stated purposes.*"

Although a corporation, whether formed under the general corporation act or the insurance law, may lawfully include in its purpose clause the power to do any act necessary to carry out its express lawful powers not prohibited by law, the italicized portion of the above quoted provision of the purpose clause of said corporation imposes no such limitation and for that reason must be considered illegal. 10 Ohio Jur. 814, Sections 605, et seq. This defect is curable by adding at the end of said provision of the purpose clause "not prohibited by law," or some similar phrase.

Among the signatures of the incorporators appears the name of Georgie M. Garrity. In the typed acknowledgment before the Notary Public appended to the said Articles of Incorporation the name of said signer appears as Georgia M. Garrity. Also, among the signatures of the incorporators appears the signature, as nearly as I can discern the same, of H. S. Buttermory. In the aforesaid acknowledgment the name of said signer appears as H. S. Buttermore. The inconsistencies between the signatures and the names as appearing in the acknowledgment should be corrected.

You will note in the acknowledgment by the signers of the Articles or Incorporation, who are apparently members of both sexes, there is used the phraseology as follows: "who each severally acknowledged the signing of the foregoing articles of incorporation to be his free act and deed \* \* \*". In order to remove the patent ambiguity therein existing, it would seem that some such phrase as "to be the free act and deed of each of them", or some other expression of like import, should be substituted.

I am returning herewith said Articles of Incorporation for revision and correction in the respects above outlined.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

2672.

OFFICES COMPATIBLE—MEMBER OF VILLAGE COUNCIL AND SECRETARY OF THE COUNTY AGRICULTURAL SOCIETY.

**SYLLABUS:**

*A member of a village council may hold the office of secretary of the county agricultural society during his term as member of council.*

COLUMBUS, OHIO, December 13, 1930.

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

GENTLEMEN:—Your recent communication reads:

"Section 4218 G. C. reads:

'Each member of council shall have resided in the village one year next preceding his election, and shall be an elector thereof. No member of the council shall hold any other public office or employment, except that of notary public or member of the state militia, or be interested in any contract with the village. Any member who ceases to possess any of the qualifications herein required or removes from the village shall forfeit his office.'

Question. May a member of a village council hold the position of Secretary of the County Agricultural Society during his term as member of council?"

Inasmuch as you have already quoted Section 4218, General Code, in its entirety, it is unnecessary to recopy it here. Suffice it to say that said section provides that no village councilman may hold any other public office or employment, except notary public or member of the state militia. It was held in Opinions of the Attorney General for 1928, Vol. II, page 1119, in the second paragraph of the syllabus as follows:

"Under the provisions of Section 4218, General Code, no member of the council of a village may legally hold any other public office or employment, except that of notary public or member of the state militia. The inhibition contained in the provisions of this section is not limited to holding another office in, or employment by, such village, but such inhibition extends to all other public offices and employments."

Said opinion cited the case of *State ex rel. vs. Gard*, 8 O. C. C. (n. s.) 599; 75 O. S. 606, which held that the inhibition contained in Section 4218, General Code, was not limited to an office in, or employment by, such municipality, but that such inhibition extended to all public offices and employments.

Thus it is apparent that the sole question presented in your communication is whether the secretary of the county agricultural society may be said to be holding a public office or employment when serving in that capacity.

The election of a secretary for a county agricultural society is authorized by Section 9884-3, General Code, one of the group of sections (9880, et seq.) controlling agricultural societies. In order to determine whether such secretarial office is a public office or public employment, it is necessary to determine the nature of a county agricultural society. There have been several opinions of this office and court decisions which tend to show that a county agricultural society organized under Sections 9880, et seq., General Code, is a private corporation. *Dunn vs. Agricultural Society*, 46 O. S. 99; *Markely vs. State*, 12 C. C. (n. s.) 83; *Chemical Company vs. Calvert*, 7 N. P. (n. s.) 107; Annual Report of Attorney General, 1913, Vol. II, page 1253; Opinions of Attorney General, 1922, Vol. I, page 40 and Opinions of Attorney General, 1928, Vol. II, page 1326. In the *Dunn* case, *supra*, it was expressly held that a county agricultural society was not a public agency of the state invested with power to assist the state in the conduct of local administration and with no power to decline the functions devolved upon it but was only a voluntary association of individuals formed for their own advantage, convenience and pleasure. In my Opinion No. 2531, rendered November 14, 1930, I reviewed the authorities on the nature of a county agricultural society and cited all the above authorities. It should be stated, however, that it was said in the case of *State ex rel. vs. Kearns*, 104 O. S. 550, at page 554, that an agricultural society is a public institution designed for public instruction, the advancement of learning and the dissemination of useful knowledge.

In that case, however, the court had no occasion to consider the status of the officers or employes of such a society, or to determine that they are public officers or employes within a section such as this, which, in one sense at least, is penal in

character. It was there held that such a society is public in the sense that it is a proper recipient of public funds, since it is not operated for profit and its ultimate purpose is a commendable public service. It does not follow, however, from this statement of the court that the officers or employes of such a society are public officers or employes. They are chosen by neither the public nor any representative of the public who has, himself, been chosen by the people. The functions of his office are those which are prescribed by the society which he serves and not by law. Tested by all the ordinary rules, the office does not appear to be public in character.

In Vol. I, O. Jur., published in 1928, it is stated at page 885, Section 17 of the general heading "Agriculture", that:

"County agricultural associations are not public corporations, although their purpose may be public, in that their establishment is conducive to the public welfare. But in this latter sense, all private corporations are for a public purpose, for the public benefit. Agricultural societies are formed of the free choice of the constituent members; it is only when they organize that they become a body corporate. There is one Ohio case, however, which seems to have regarded agricultural societies as public corporations, but this, of course, is contrary to the weight of authority as represented by the cases cited to the foregoing proposition."

It is true that county agricultural societies receive financial aid from the county under provisions of Sections 9880 and 9894, General Code. It is also true that they are subject to regulation by the state board of agriculture. However, they are essentially private corporations in that they may control their internal affairs in so far as they do not violate the statutes or rules of the state board of agriculture. Such societies can not be said to be a branch of the government. In my Opinion No. 761, published in Opinions of the Attorney General for 1929, Vol. II, page 1163, I held that a curator at Campus Martius in the employ of the Ohio Archaeological and Historical Society could be a member of the General Assembly. It was stated at page 1165:

"It is true that it (Ohio Archaeological and Historical Society) has a very close association with the executive department of the state government. However, it is a private corporation which the state has seen fit to aid and employ for certain purposes, and, strictly speaking, it cannot be said to be an executive or administrative branch of the government."

From the foregoing discussion, it clearly appears that the secretary of a county agricultural society is not holding public employment but rather is an officer of a private corporation.

Therefore, in specific answer to your question, I am of the opinion that a member of a village council may hold the office of secretary of the county agricultural society during his term as member of council.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*