

Note from the Attorney General's Office:

1954 Op. Att'y Gen. No. 54-4691 was clarified by 1983
Op. Att'y Gen. No. 83-035.

4691

COMPATIBLE OFFICE — DIRECTOR, COUNTY AGRICULTURAL SOCIETY—NOT A PUBLIC OFFICE—COUNTY AUDITOR MAY HOLD POSITION ON BOARD OF SOCIETY.

SYLLABUS:

The doctrine of incompatibility is not applicable where one of the positions held or sought to be held is that of director of a county agricultural society since such office is not a public office within the meaning of the doctrine.

Columbus, Ohio, December 31, 1954

Hon. Fred F. Fox, Prosecuting Attorney
Noble County, Caldwell, Ohio

Dear Sir:

I have before me your request for my opinion which reads as follows:

“On November 13, 1954, an election was had for the purpose of electing five members of the County Agriculture Society as per Revised Code Nos. 1711.07 et seq. One of the members so elected is also county auditor which according to 1924 Attorney General's Opinion on Page 324 makes these offices incompatible. The question is now presented whether there is a vacancy on the Board of Directors of the County Agricultural Society or whether the person receiving the next highest number of votes is elected.

“The question of this ineligibility was allegedly raised during the election to some of the Directors of the Agriculture Society.”

It was held in Opinion No. 1547, Opinions of the Attorney General for 1924, page 324, to which you refer in your letter, that the offices of county auditor and director of a county agricultural society were incompatible on the ground that a county auditor, as a member of the county budget commission, may be called upon to act on his own request for an appropriation, which request may be made as a normal incident to his duties as a director of the board. Former Section 9894, General Code, in effect at the time of that opinion, provided in substance that upon the request of a county agricultural society, properly qualified within the requirements of this section, a tax must be levied annually for an amount not to exceed two thousand dollars, or not less than fifteen hundred dollars, which sum must be paid to the society. This section was thereafter repealed, 111 Ohio Laws, 238, and reenacted in 112 Ohio Laws, 85, and amended in 116 Ohio Laws, 47. The analogous statute is presently found in Section 1711.22, Revised Code.

The present statute provides that, within the same above limits, money shall be annually appropriated for the use of the society from the general fund. It will be seen that under either statute public funds are appropriated to the use of an agricultural society upon request, whenever

such society is properly qualified within the provisions of the statute. A society so qualified cannot be deprived of these benefits by the budget commission. *Jenkins v. Jackson County Agricultural Society*, 40 Ohio App., 312.

In either case, however, the requested amount is necessarily an item of the county budget and may be adjusted, within the statutory limitations, by the budget commission. This is true whether its form is that of a tax to be levied, or is an appropriation from the amount allocated to the general fund. For this reason the rationale of the 1924 opinion may be said to have equal merit under the present statute.

However, in that opinion the writer failed to consider whether the office of director of a county agricultural society could properly be classified as a public office. As was pointed out in my Opinion No. 1116, Opinions of the Attorney General for 1951, page 60, the doctrine of incompatibility relates only to public officers and has no application where one of two positions is not in fact a public office. This point was first raised in Opinion No. 2530, Opinions of the Attorney General for 1934, page 495, where it was held that a director of a county agricultural society is not a public officer within the meaning of the doctrine of incompatibility, but is the agent of a private corporation. The basis for this conclusion was that the office in question was not filled by election of the people but by election only of those persons comprising the membership of the society. In this conclusion I concurred in Opinion 1116, supra. I held in that opinion that the positions of township clerk and member of the board of directors of an agricultural society were not incompatible since the latter office was not in fact a public office, and that therefore the doctrine of incompatibility was not applicable.

In this situation it does not appear necessary to enter into a further determination of the status of the office to which your inquiry is directed. I conclude that the county auditor, having been elected to the office of director of a county agricultural society, may hold this office simultaneously with that of county auditor.

In answer to your inquiry then, it is my opinion that the doctrine of incompatibility is not applicable where one of the positions held or sought to be held is that of director of a county agricultural society, since such office is not a public office within the meaning of the doctrine.

Respectfully,

C. WILLIAM O'NEILL
Attorney General