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COMPATIBILLITY — MEMBER OF BOARD OF COUNTY COMMISSIONERS AND FAIR MANAGER INCOMPATIBLE — §1711.15, R.C.

SYLLABUS:

A member of a board of county commissioners, which is authorized to appropriate funds to a county agricultural society under Section 1711.15 of the Revised Code, can not act as fair manager of the county agricultural society of the same county. (Opinion No. 198, Opinions of the Attorney General for 1959, approved and followed.)

Columbus, Ohio, August 24, 1959

Hon. Robert H. Terhune, Director of Agriculture
State of Ohio, Columbus, Ohio

Dear Sir :

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

“We are hereby requesting the written opinion which will in fact constitute a further clarification and enlargement upon the Attorney General Opinion No. 198, issued March 11, 1959 relating to the compatibility of the positions held by a member of a board of county commissioners and a director or officer of a county or independent agricultural society.

“The situation with which we are immediately concerned is one where a member of a board of county commissioners by reason for your Opinion No. 198 resigned as secretary, an elective office, and was immediately rehired by the board of directors of such society as a fair manager performing in effect the same functions, the same duties and retaining in a large measure, the same powers which he had previously as secretary of the society.

“Calling your attention to Attorney General Opinion No. 1603 for the year 1918, page 1497, it was stated, ‘I am of the opinion that in no case should a member of the board of county commissioners of a county be at the same time a member of a county agricultural society.’ As you know, Opinion No. 2530, *supra*, cited and quoted from Opinion No. 1603, *supra*, but did not overrule the 1918 Opinion.

“It was further stated in Opinion No. 51, Opinions of the Attorney General for 1959, that ‘The plain purpose of all these statutes is to keep the administration of these public agencies free from corruption and for becoming the means for self enrichment by officers who have been elected to hold these positions of trust,’ and as we understand it, it is the holding of a position of public trust and confidence in circumstances wherein it is possible that the position be violated, that the rule of compatibility seeks to profit.

“Section 1711.15 of the Revised Code reduces such an opportunity. Further, Section 305.27 of the Revised Code provides that ‘no county commissioner shall be concerned directly or indirectly in any contract for work to be done or material to be furnished for the county.’ Further, Section 2919.08 of the Revised Code provides that ‘no person holding an office of trust or profit, by election or appointment, or as agent, servant, or employee of such officer or of a board of such officers, shall be interested in

a contract for the purchase of property, supplies, or fire insurance for the use of the county, township, municipal corporation, board of education, or a public institution with which he is connected. In the instance which has arisen and by reason by which we are asking your written opinion, the employee of the county agricultural society stands also as a member of the board of county commissioners and is directly responsible for improvement and all additions to the property on the grounds of the county agricultural society and further exerts complete managerial authority upon all persons thereon employed.

“Would you please be kind enough to peruse the situation and render us your opinion in the matter of compatibility at your earliest convenience.”

Your inquiry raises the problem of the application of Opinion No. 198, Opinions of the Attorney General for 1959 to the position of fair manager of an agricultural society. I feel, therefore, that any opinion to you should encompass reference to the duty public officers owe to the citizenry.

A sound legal and moral stand on this point can be found in 32 Ohio Jurisprudence, at page 871, in the following language :

“A public officer is a public agent, a trustee, —though not in any legal sense a trustee of an express trust—acting in a fiduciary as well as an official capacity, *and he is generally held amenable to the rule which forbids an agent or trustee to place himself in such an attitude toward his principal or cestui que trust as to have his interest conflict with his duty.* The trust attached to a public office is one which is to be exercised in behalf of all citizens who may need the intervention of the officer, and it extends to all matters within the range of the duties pertaining to the office.”

(Emphasis added)

Ohio is not in the minority in this concept. In this regard, it is well stated by the New Jersey Supreme Court :

“Public officers are under an inescapable obligation to serve the public with the highest fidelity, and they are required to display such intelligence and skill as they are capable of to be diligent and conscientious, to exercise their discretion not arbitrarily but reasonably, and above all to display good faith, honesty and integrity, and they must be impervious to corrupting influences and they must transact their business frankly and openly in the light of public scrutiny so that the public may know and be able to judge them and their work fairly. These obligations are not mere theoretical concepts or idealistic abstractions of no practical force and effect; they are obligations imposed by the common law on

public officers and assumed by them as a matter of law upon their entering public office. The enforcement of these obligations, which exists for the benefit of the people who are its sovereign.” (State v. Weleck, 1952, 10 NJ 355, 91 A2d 751, 757-758)

A fair manager’s success is based in good measure on the financial status of the fair’s program. One source of revenue which serves to bolster the overall successful fair is the money received from the county by way of specific appropriation. Your attention is called to Section 1711.15, Revised Code, reading in pertinent part as follows:

“* * * * In any county in which there is a duly organized county agricultural society, the board of county commissioners may purchase or lease, for a term of not less than twenty years, real estate on which to hold fairs under the management and control of the county agricultural society and may erect thereon suitable buildings and otherwise improve it.

“In counties in which there is a county agricultural society which has purchased, or leased, for a term of not less than twenty years, real estate as a site on which to hold fairs or in which the title to such site is vested in fee in the county, the board may erect or repair buildings or otherwise improve such site and pay the rental thereof, or contribute to or pay any other form of indebtedness of said society, if the director of agriculture has certified to the board that the county agriculture society is complying with all laws, rules and regulations governing the operation of county agricultural societies. *The board may appropriate from the general fund such an amount as it deems necessary for any of said purposes.* If the amount appropriated to be expended in the purchase of such real estate or in the erection of buildings or other improvements or payments of rent or other forms of indebtedness of said society exceeds twenty thousand dollars in any one year, such an expenditure shall not be made unless the question of a levy of the tax therefor is submitted to the qualified electors of the county at a general election, a notice of which, specifying the amount to be levied, has been given at least thirty days previous to such election, in one or more newspapers published and of general circulation in the county. * * *”
(Emphasis added)

It follows logically that a fair manager and the agricultural society with which he is associated must strive for as large an appropriation as possible. It also follows that the county commissioners must consider such request from county agricultural societies from a point of view of the entire county budget. In such a situation, it would be inevitable that a county commissioner would definitely place himself in a position of

conflicting interests if he were also the county fair manager whose tenure as fair manager depended in whole or part upon appropriation from the board of county commissioners of which he was also a member.

Accordingly, it is my opinion and you are advised that a member of a board of county commissioners, which is authorized to appropriate funds to a county agricultural society under Section 1711.15 of the Revised Code, can not act as fair manager of the county agricultural society of the same county. (Opinion No. 198, Opinions of the Attorney General for 1959, approved and followed.)

Respectfully,
MARK MCELROY
Attorney General