

**OPINION NO. 84-053**

**Syllabus:**

A deputy clerk for a board of county commissioners may serve as treasurer of the county agricultural society.

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**To: Frederick D. Pepple, Auglaize County Prosecuting Attorney, Wapakoneta, Ohio**

**By: Anthony J. Celebrezze, Jr., Attorney General, October 18, 1984**

I am in receipt of your request for my opinion on the question of whether the positions of deputy clerk of a board of county commissioners and treasurer of a county agricultural society are compatible.

R.C. Chapter 1711 establishes and governs county agricultural societies. R.C. 305.13 provides for the appointment of a clerk for the board of county commissioners and for necessary assistants to the clerk. There are no constitutional or statutory provisions expressly prohibiting one person from simultaneously holding the two positions in question.

I turn first to R.C. 1711.081, which provides: "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." Because the position of treasurer of a county agricultural society is a private position rather than a public office, the traditional compatibility analysis is inapplicable. See 1983 Op. Att'y Gen. No. 83-035; 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 (setting forth the seven-step compatibility analysis). It still must be determined, however, whether a deputy clerk of a board of county commissioners would be subject to an impermissible conflict of interest if he served as treasurer of a county agricultural society. See Op. No. 83-035; Op. No. 81-078; 1974 Op. Att'y Gen. No. 74-039. See also State ex rel. Taylor v. Pinney, 13 Ohio Dec. 210 (C.P. Franklin County 1902). If the duties of deputy clerk of the board of county commissioners and the treasurer of the county agricultural society would generate a conflict of interest, then both positions may not be held simultaneously by the same individual.

The potential for a conflict of interest is one of the elements to be weighed in the analysis of compatibility of public positions. In that context, Op. No. 79-111 states at 2-372:

The factors to be considered with respect to questions of potential conflicts are the degree of remoteness of a potential conflict, the ability or inability of an individual to remove himself from the conflict, whether the individual exercises decision-making authority in both positions, whether the potential conflict involves the primary functions of each position, and whether the potential conflict may involve budgetary controls.

These same factors are determinative of whether a conflict of interest exists herein, even in the absence of a compatibility issue. See generally Op. No. 83-035. In order to ascertain whether there is an impermissible conflict of interest between these two positions, it is necessary to closely examine the nature of each position.

County agricultural societies are organized pursuant to R.C. 1711.01. The purposes of such a society are numerous, and include: furtherance of junior club work, R.C. 1711.03; promotion of agricultural interests and household manufacturing interests, R.C. 1711.04; and, the holding of an annual exhibition or fair, R.C. 1711.04 and 1711.09. Courts have described county agricultural societies variously as voluntary associations or corporations, public institutions and public organizations. See Bazell v. City of Cincinnati, 13 Ohio St. 2d 63, 233 N.E.2d 864 (1968), cert. denied sub nom. Fosdick v. Hamilton County, 391 U.S. 601 (1968); State ex rel. Leaverton v. Kerns, 104 Ohio St. 550, 136 N.E. 217 (1922) (syllabus, paragraph 2); Dunn v. Agricultural Society, 46 Ohio St. 93, 18 N.E. 496 (1888). See also R.C. 1711.13; 1984 Op. Att'y Gen. No. 84-026. R.C. 1711.06 provides for the membership of a county agricultural society, and R.C. 1711.07 provides for the board of directors of the society. Pursuant to R.C. 1711.08, the treasurer of the county agricultural society is elected by the board of directors of the society and serves a one year term. The treasurer need not be a member of the board of directors.

With respect to the position of deputy clerk of the board of county commissioners, R.C. 305.13 confers upon the board of county commissioners the authority to employ a clerk of the board and such assistants to the clerk as the board deems necessary. Under R.C. 305.10, the clerk is empowered to record the proceedings of the board of county commissioners, and R.C. 305.11 charges the clerk with the certification of the records of the proceedings.

A county agricultural society and the county in which it is located do have dealings with each other. As Op. No. 84-026 succinctly states at 2-79:

a county agricultural society derives its funds principally from the county in which it is located. For example, pursuant to R.C. 1711.01, such a society may receive funds from the county if it holds an annual exhibition and properly reports to the Department of Agriculture. A county may appropriate money to a society in order to encourage junior club work, or may reimburse a society for funds expended in carrying on junior club work. R.C. 1711.03. A county may appropriate moneys from its general fund to purchase or improve real estate, or contribute to or pay any other indebtedness of a county agricultural society; upon approval of fifty-five percent of the voters, the county may levy a tax for such expenditure. R.C. 1711.15; 1711.21. A county may also, in certain circumstances, issue bonds, the proceeds of which may be used to pay off the indebtedness of a county agricultural society; the county must then levy a tax to pay the bonds as they mature. R.C. 1711.18 through 1711.20. See also R.C. 1711.22, 1711.28, 1711.29, 1711.34.

See Op. No. 83-035. In addition, the board of county commissioners must consent to various transactions of the society. See R.C. 1711.13; R.C. 1711.16; R.C. 1711.25; R.C. 1711.33. The board of county commissioners must insure the buildings on the grounds of an agricultural society, R.C. 1711.24, and the board may sell or exchange the premises of a society if title to such premises is in the county, R.C. 1711.26. When county funds have been used for the society's real estate or improvements thereon, title thereto vests in the county upon dissolution of the society, R.C. 1711.23.

In seeking to determine whether there is a conflict of interest within the framework of your question, the analysis is made somewhat less difficult by the fact that the position of deputy clerk of the board of county commissioners is largely a ministerial position. Clearly, neither the clerk nor his assistants possess the ability to formulate policy decisions, influence budgetary questions or execute contracts. A deputy clerk for the board of county commissioners is vested with little power or discretion which could serve as the basis for a conflict of interest by one holding both that position and the position of treasurer of a county agricultural society. Just as there is little opportunity for a conflict of interest, so too the circumstance of self-dealing is extremely remote and improbable.

Returning to Op. No. 79-111 and the factors to be considered with regard to questions of potential conflict, I find that a deputy clerk of a board of county commissioners may also serve as the treasurer of a county agricultural society. The likelihood of an actual conflict between the two positions appears to be remote, the individual would have the ability to remove himself from any potential conflict, a deputy clerk exercises very little decision-making authority, the primary functions of each position do not appear to conflict, and the involvement of budgetary controls is remote and capable of being avoided.

In Op. No. 83-035 I concluded that there was a conflict of interest between the positions of director of a county agricultural society and a county treasurer. The conclusion therein turned upon the fact that the county agricultural society derives much of its budget from county funds. R.C. 1711.15; R.C. 1711.22. A conflict of interest would arise when the county treasurer would be required, as a member of the county budget commission, to view objectively and adjust the county budget, yet would also have an interest, as the director of the county agricultural society, in seeing that the agricultural society received its full budgetary proposal. Inasmuch as a deputy clerk does not possess the budgetary authority and discretion which a county treasurer possesses, there is no similar conflict of interest between the two positions at issue herein.

I note that there are various statutory provisions governing the ethical conduct of public officers and employees of which a deputy clerk who serves as a treasurer of a county agricultural society should be aware. These sections, primarily concern: representation by a public official or former public official of others in matters in which he personally participated as a public official, R.C. 102.03(A); disclosure of confidential information, the knowledge of which arose as a

result of one's tenure in public office, R.C. 102.03(B); the use of one's public position for personal gain, R.C. 102.03(D); and, compensation, by other than one's public employer for duties performed pursuant to one's public employment, R.C. 102.04. Because of the relationship between a county and a county agricultural society, there could arise a situation where a deputy clerk of a board of county commissioners who served as the treasurer of the county agricultural society could act in violation of these provisions. For example, it is possible that during the course of his clerical duties, a deputy clerk, serving as treasurer of a county agricultural society may become aware of confidential information that would be beneficial to the agricultural society. Improper disclosure of this information would be a violation of R.C. 102.03(B). In addition, a public official is prohibited from using his authority to secure authorization of any public contract, R.C. 2921.42(A)(1), and from having an interest in any contract with his political subdivision, R.C. 2921.42(A)(4). Cf. Op. No. 74-039 (concluding that a county commissioner may not serve as a director of a county agricultural society since, pursuant to R.C. 305.27, a commissioner may not have an interest in any contract with the county). A person holding the positions of deputy clerk for a board of county commissioners and treasurer of the agricultural society should be advised to avoid even the appearance of impropriety and should remove himself from any potential conflicts. In the event that specific questions arise pursuant to R.C. Chapter 102 or R.C. 2921.42, the Ohio Ethics Commission, which is charged pursuant to R.C. 102.08 with rendering advisory opinions interpreting R.C. Chapter 102 and R.C. 2921.42, should be consulted.

Therefore, it is my opinion and you are advised that, a deputy clerk of a board of county commissioners may serve as treasurer of the county agricultural society.