

OPINION NO. 2013-023**Syllabus:**

2013-023

1. A county agricultural society that is prohibited from using moneys provided by the state or a county for a particular purpose may use moneys it receives from other sources for that purpose, provided (1) the society's constitution and bylaws permit the expenditure; (2) the moneys to be expended are not required to be used for other purposes; and (3) the expenditure is reasonable and lawful.
2. A county agricultural society may use moneys provided by a source other than the state or a county to acquire alcoholic beverages and a liquor permit to sell the beverages at an event that is open to the public and conducted on the society's or county's fairgrounds and retain the revenue derived from the sales, provided (1) the society's constitution and bylaws permit the expenditure; (2) the moneys to be expended are not required to be used for other purposes; and (3) the expenditure is reasonable.
3. A county agricultural society may use moneys provided by the state or a county to acquire alcoholic beverages and a liquor permit to sell the beverages at an event that is open to the public and conducted on the society's or county's fairgrounds and retain the revenue derived from the sales, provided (1) the society's constitution and bylaws permit the expenditure; (2) the moneys to be expended are not required to be used for other purposes; and (3) the expenditure is reasonable.
4. A county agricultural society may (1) authorize the holder of a valid liquor permit to have an event that is open to the public and conducted on the society's or county's fairgrounds and (2) receive fees from the permit holder, provided the society's constitution and bylaws permit the society to perform these acts and when it is reasonable for the society to perform these acts.

To: Dave Yost, Auditor of State, Columbus, Ohio

By: Michael DeWine, Ohio Attorney General, July 16, 2013

You have requested an opinion about the expenditure and collection of moneys by a county agricultural society formed under R.C. Chapter 1711. Specifically, you ask:

1. May a county agricultural society that is prohibited from using moneys provided by the state or a county for a particular purpose use moneys it receives from other sources for that purpose?

2. May a county agricultural society use moneys provided by a source other than the state or a county to acquire alcoholic beverages and a liquor permit to sell the beverages at an event that is open to the public and conducted on the society's or county's fairgrounds and retain the revenue derived from the sales?
3. May a county agricultural society use moneys provided by the state or a county to acquire alcoholic beverages and a liquor permit to sell the beverages at an event that is open to the public and conducted on the society's or county's fairgrounds and retain the revenue derived from the sales?
4. May a county agricultural society (1) authorize the holder of a valid liquor permit to have an event that is open to the public and conducted on the society's or county's fairgrounds and (2) receive fees from the permit holder?

County Agricultural Societies

R.C. Chapter 1711 provides for the establishment and organization of a county agricultural society. Pursuant to R.C. 1711.01, a county agricultural society is a group of thirty or more residents from the same county who organize themselves into a private entity by adopting a constitution and bylaws. *See* R.C. 1711.06; 1996 Op. Att'y Gen. No. 96-037 at 2-146 n.3; *see also* 3A Ohio Admin. Code 901-5-08(D) (each county agricultural "society shall file with the department of agriculture a copy of its constitution, and by-laws"). *See generally* 1988 Op. Att'y Gen. No. 88-034 at 2-153 ("a county agricultural society may exist only in a single county, and only one society may exist in each county"). Once organized, a county agricultural society is a body corporate and politic, R.C. 1711.13, and operated by a board of directors as a private corporation or association even though it may be deemed a public entity or political subdivision for some purposes.¹ *See Greene Cnty. Agric. Soc'y v. Liming*, 89 Ohio St. 3d 551, 733 N.E.2d 1141 (2000); *Dunn v. Agric. Soc'y*, 46 Ohio St. 93, 18 N.E. 496 (1888); *Randolph Twp. Tr. v. Portage Cnty. Agric. Soc'y*, Case No. 91-P-2384, 1992 Ohio App. LEXIS 3465 (Portage County June 30, 1992); *Licking Cnty. Agric. Soc'y v. Bd. of Cnty. Comm'rs of Licking Cnty.*, 48 Ohio App. 528, 194 N.E. 606 (Licking County 1934); *A. G. Markley v. State*, 12 Ohio C.C. (n.s.) 81, 21 Ohio Cir. Dec. 225 (Brown County 1909); 1996 Op. Att'y Gen. No. 96-037 at 2-146 n.3; 1992 Op. Att'y Gen. No. 92-078; 1988 Op. Att'y Gen. No. 88-034; 1988 Op. Att'y Gen. No. 88-026; 1984 Op. Att'y Gen. No. 84-

¹ A county agricultural society is governed by a board of directors as provided for in R.C. 1711.07. *See* R.C. 1711.07 (election of the board of directors of a county agricultural society); *see also* R.C. 901.06(C) (the Director of Agriculture shall adopt regulations that provide for "[a] uniform method for the election of the directors and officers of all [county] agricultural societies which receive any support out of the state or county treasuries, except the date for holding such election"); 3A Ohio Admin. Code 901-5-04 (procedures for electing persons to the board of directors of a county agricultural society).

035; 1984 Op. Att’y Gen. No. 84-026; 1951 Op. Att’y Gen. No. 597, p. 357; 1946 Op. Att’y Gen. No. 1109, p. 567; 1933 Op. Att’y Gen. No. 42, vol. I, p. 29; 1922 Op. Att’y Gen. No. 2827, vol. I, p. 40; *see also* 1992 Ohio Ethics Comm’n, Advisory Op. No. 92-007, slip op. at 2.

A county agricultural society may conduct the county fair or other agricultural exhibitions, control and manage the county fairgrounds, promote agricultural and household manufacturing interests, and perform certain limited public functions to advance improvements in agriculture and support agricultural education. *See* R.C. 1711.04; R.C. 1711.10; R.C. 1711.31; *Greene Cnty. Agric. Soc’y v. Liming*, 89 Ohio St. 3d at 555-56; *State ex rel. Leaverton v. Kerns*, 104 Ohio St. 550, 554-55, 136 N.E. 217 (1922); *Lawrence Cnty Comm’rs v. Brown*, 1 Ohio N.P. (n.s.) 357, 358, 14 Ohio Dec. 241 (C.P. Lawrence County 1903); 1996 Op. Att’y Gen. No. 96-037 at 2-146 n.3; 1988 Op. Att’y Gen. No. 88-034 at 2-153 and 2-154; 1985 Op. Att’y Gen. No. 85-061 at 2-227; 1951 Op. Att’y Gen. No. 597, p. 357, at 362; 1930 Op. Att’y Gen. No. 2531, vol. III, p. 1645, at 1645. To perform its duties, a county agricultural society may receive financial assistance from governmental entities. *See* R.C. 1711.01; R.C. 1711.03; R.C. 1711.15; R.C. 1711.18; R.C. 1711.22; R.C. 1711.24; R.C. 1711.28; R.C. 1711.34; R.C. 3769.082.

Authority of a County Agricultural Society to Expend Moneys Not Provided by the State or a County

Your first question asks whether a county agricultural society that is prohibited from using moneys provided by the state or a county for a particular purpose may use moneys it receives from other sources for that purpose.² The state and county in which a county agricultural society is established may provide moneys to the society for particular purposes. *See, e.g.*, R.C. 1711.15 (a board of county commissioners “may appropriate from the county’s general fund or permanent improvement fund . . . any amount that it considers necessary” to “erect or repair buildings or otherwise improve the site [on which fairs are held] and pay the rental of it, or contribute to or pay any other form of indebtedness of the [county agricultural] society”); R.C. 1711.22 (a board of county commissioners may appropriate from the general fund moneys “for the purpose of encouraging agricultural fairs”); R.C. 3769.082(A)(1) (the Director of Agriculture shall annually disburse moneys from the Ohio Fairs Fund to a county agricultural society that conducts an annual fair for general operations); R.C. 3769.082(A)(3) (the Director of Agriculture shall annually disburse moneys from the Ohio Fairs Fund to a county agricultural society

² In addition to using state and county moneys to finance its operations, a county agricultural society may also use moneys donated to the society or collected by the society in the performance of its duties. *See* R.C. 1711.06; R.C. 1711.09; R.C. 1711.31; 3A Ohio Admin. Code 901-5-03; 1957 Op. Att’y Gen. No. 516, p. 141, at 147 (overruled, in part, on other grounds by 1988 Op. Att’y Gen. No. 88-026); 1938 Op. Att’y Gen. No. 2887, vol. II, p. 1645. For the purpose of this opinion, it is assumed that, when donated moneys are to be used by a county agricultural society for a particular purpose, the donor has not prohibited the society from using the moneys for that purpose.

conducting horse races during its annual fair for purses, race track maintenance, and expenses necessary for the conduct of horse races or colt stakes). *See generally* 1984 Op. Att’y Gen. No. 84-026 at 2-79 (“the public character of a county agricultural society’s functions and purpose makes such a society a proper recipient of public funds”); 1956 Op. Att’y Gen. No. 6546, p. 353 (syllabus, paragraph 1) (“[c]ounty commissioners may appropriate funds to a county agricultural society for the purpose of financing the erection of a grandstand upon the county fairgrounds owned by the county, in accordance with [R.C. 1711.15-.16]”).

When moneys of a county agricultural society are required to be used for a particular purpose, the moneys must be used for only that purpose. *See generally* 1984 Op. Att’y Gen. No. 84-026 at 2-79 (“[a] review of the various sources of county agricultural society funds shows that the recipient society generally may expend such funds only for a particular purpose. There is no authority for permitting any moneys to be expended for a purpose other than the appropriate statutes may prescribe” (citations omitted)); 1965 Op. Att’y Gen. No. 65-76 (syllabus) (“[f]unds appropriated by a board of county commissioners pursuant to [R.C. 1711.15] for the payment of the indebtedness of an agricultural society cannot, by law, be expended for the payment of the accumulated monthly salary of its secretary, which item is a current operating expense rather than a pre-existing indebtedness”); 1962 Op. Att’y Gen. No. 2744, p. 1 (moneys disbursed to a county agricultural society under R.C. 3769.082 for use as purse money may only be used for that specific purpose); 1956 Op. Att’y Gen. No. 6546, p. 353, at 357 (money appropriated by a board of county commissioners to a county agricultural society must “be spent for the purpose for which the appropriation was made”); 1939 Op. Att’y Gen. No. 1247, vol. II, p. 1843 (syllabus) (“[t]he funds appropriated by the county commissioners under the authority of [G.C. 9887 (now R.C. 1711.15)] may only be used for the purpose of paying pre-existing indebtedness of a county agricultural society and may not be used by the society as a general operating fund”).

Conversely, if no statute prescribes the particular purposes for which a county agricultural society may use certain moneys, the society may use the moneys as permitted by the society’s constitution and bylaws. As explained in 1984 Op. Att’y Gen. No. 84-026 at 2-80:

It is, however, possible that a county agricultural society may derive funds from sources other than those specifically set forth in the statutes. For example, the society may be the beneficiary of a gift, or members may be assessed of [sic] a membership fee. *The statutes pertaining to county agricultural societies prescribe no specific limitations upon the expenditure of such funds.* Nevertheless, expenditures of such funds, derived from private rather than public sources, must be made in accordance with the constitutions and bylaws which the society has adopted pursuant to R.C. 1711.01. (Citation omitted and emphasis added.)

See generally *Dunn v. Agric. Soc’y*, 46 Ohio St. at 99 (once formed, a county agricultural society is a body corporate that acts under its charter and bylaws); 1951 Op. Att’y Gen. No. 597, p. 357, at 360 (a county agricultural society may use its moneys

to pay the tax under the Federal Insurance Contribution Act insofar as the society is a private corporation that may expend its moneys for any lawful purpose without “specific enabling legislation or by necessary implication of legislative enactment”).

Pursuant to the basic principles governing the expenditure of moneys by a county agricultural society, a society may use moneys not required to be used for a particular purpose for any purpose permitted by the society’s constitution and bylaws. This includes using moneys provided by a source other than the state or a county for a purpose for which moneys provided by the state or a county may not be used.

However, the authority of a county agricultural society in this regard is not unlimited. A county agricultural society must expend moneys that are not required to be used for a particular purpose in a reasonable manner.³ See 1985 Op. Att’y Gen. No. 85-061 at 2-227 (“[t]he extent of authority vested in a county agricultural society to manage and control property under R.C. 1711.31 is not specified by statute. In the absence of statutory provision directing how the agricultural society is to manage and control the fairground property, the society may do so in any reasonable manner” (citation omitted)); 1922 Op. Att’y Gen. No. 2827, vol. I, p. 40, at 41 (the amount of moneys that a county agricultural society may expend in a particular instance is “entirely within the discretion of the board of directors so long as they are acting in good faith”). To do this, a county agricultural society may not use such moneys in contravention of a statute or constitutional provision. See *Licking Cnty. Agric. Soc’y v. Bd. of Cnty. Comm’rs of Licking Cnty.*, 48 Ohio App. at 531 (unless restricted by law, a county agricultural society has “the implied authority that corporations generally have to convey property owned by them”); 1957 Op.

³ Whether an expenditure of moneys by a county agricultural society for a particular purpose is reasonable is a factual question that must be resolved on a case-by-case basis by the society’s board of directors. See *Dunn v. Agric. Soc’y*, 46 Ohio St. 93, 100, 18 N.E. 496 (1888) (a county agricultural “society is absolutely free, to determine whether it will erect any buildings, or seats, for the accommodation of its patrons, and, if any, what kind, and of what material. It is subject to no control . . . ; and the whole management and conduct of the fair, is committed to it, and its officers, with the power, to determine what shall be done, how it shall be done, and by whom it shall be done”); 1991 Op. Att’y Gen. No. 91-030 at 2-171 n.3 (“[t]he determination that removal of a structure from or the construction and placement of a structure upon the lands occupied by the society is a necessary improvement is a factual one which is within the reasonable discretion of the county agricultural society”); 1985 Op. Att’y Gen. No. 85-061 at 2-228 (“[a] determination as to whether the proposed restrictions [on the use of the fairground race track] are reasonable is, of course, a matter to be determined by the society’s directors in light of the particular circumstances involved”); 1922 Op. Att’y Gen. No. 2827, vol. I, p. 40, at 41 (the board of directors of a county agricultural society has the discretion to determine the amount of money that may be expended for an improvement on a street that constitutes the principal approach to the society’s grounds).

Att’y Gen. No. 516, p. 141, at 150 (overruled, in part, on other grounds by 1988 Op. Att’y Gen. No. 88-026) (as a private corporation, a county agricultural society “can engage generally in any business ventures permitted to private corporations and not specifically prohibited to this class of corporations”); *see, e.g.*, R.C. 1711.09 (restricting a county agricultural society’s use of moneys derived from the sale of intoxicating liquor); R.C. 1711.31 (restricting a county agricultural society’s use of moneys realized by the society in holding county fairs).

Also, the moneys must be used by a county agricultural society to conduct the county fair or other agricultural exhibitions, maintain or improve the society’s or county’s fairgrounds, promote agricultural and household manufacturing interests, advance improvements in agriculture, support agricultural education, or perform other acts to enable the society to conduct business and execute its public functions. *See* R.C. 1711.04 (a county agricultural society “may perform any acts best calculated to promote the agricultural interests and household manufacturing interests of the counties concerned and of the state”); *Dunn v. Agric. Soc’y*, 46 Ohio St. at 97 (a county agricultural society is an aggregate of “natural persons associated together by their free consent, for the better accomplishment of their purposes”); 1985 Op. Att’y Gen. No. 85-061 at 2-227 (“[c]ounty agricultural societies are established pursuant to R.C. 1711.01, and have broad powers to ‘perform any acts best calculated to promote the agricultural interests and household manufacturing interests of the counties concerned and of the state,’ R.C. 1711.04”); 1951 Op. Att’y Gen. No. 597, p. 357, at 359-62 (a county agricultural society is a private corporation that possess inherent power to use the usual and ordinary means to advance agricultural learning); 1922 Op. Att’y Gen. No. 2827, vol. I, p. 40 (syllabus, paragraph 1) (“[c]ounty agricultural societies organized under the provisions of [G.C. 9880 (now R.C. 1711.01)] are private corporations, whose officers and directors in the management of the societies’ affairs, are governed by the same rules of conduct as those applied to similar officers of private corporations generally”). Accordingly, a county agricultural society that is prohibited from using moneys provided by the state or a county for a particular purpose may use moneys it receives from other sources for that purpose, provided (1) the society’s constitution and bylaws permit the expenditure; (2) the moneys to be expended are not required to be used for other purposes; and (3) the expenditure is reasonable and lawful. *See* 1984 Op. Att’y Gen. No. 84-026 (syllabus) (“[a] county agricultural society may contribute money to another county agricultural society to the extent that such money is not derived from a public source and required to be used for a particular purpose and to the extent that the constitution and bylaws of the contributing society permit such an expenditure”).

Expenditure of Moneys Provided by a Source Other than the State or a County to Acquire a Liquor Permit

Your second question asks whether a county agricultural society may use moneys provided by a source other than the state or a county to acquire alcoholic beverages and a liquor permit to sell the beverages at an event that is open to the public and conducted on the society’s or county’s fairgrounds and retain the reve-

nue derived from the sales.⁴ R.C. 4301.10(A)(2) authorizes the Division of Liquor Control to issue liquor permits to sell alcoholic beverages in accordance with R.C. Chapters 4301 and 4303 at certain locations and times. *See generally* R.C. Chapter 4301 (setting forth laws to regulate the manufacture, distribution, and sale of alcoholic beverages); R.C. Chapter 4303 (creating various liquor permits to regulate the manufacture, distribution, transportation, and sale of alcoholic beverages). Under R.C. Chapter 4303, liquor permits may be issued to various entities, including, but not limited to, corporations, associations, and charitable organizations. *See, e.g.*, R.C. 4303.02-.05 (authorizing firms and corporations to acquire liquor permits to manufacture alcoholic beverages); R.C. 4303.06-.10 (authorizing firms and corporations to acquire liquor permits to distribute alcoholic beverages); R.C. 4303.11-.121 (authorizing owners and operators of retail stores to acquire liquor permits to sell alcoholic beverages); R.C. 4303.13-.209 (authorizing various entities to acquire liquor permits to sell alcoholic beverages). Nothing in the language of R.C. Chapter 4303 or the provisions of R.C. Chapter 4301 regulating the sale of alcoholic beverages in Ohio prohibits a county agricultural society from acquiring a liquor permit to sell alcoholic beverages at an event that is open to the public and conducted on the society's or county's fairgrounds when the society meets the criteria for a permit.

The statutes governing the operation of a county agricultural society indicate that a society may acquire alcoholic beverages and a liquor permit to sell the beverages at an event that is open to the public and conducted on the society's or county's fairgrounds.⁵ A county agricultural society formed under R.C. Chapter 1711 is a body corporate and politic that has all the usual powers of a natural person or private corporation. R.C. 1711.13; *Licking Cnty. Agric. Soc'y v. Bd. of Cnty. Comm'rs of Licking Cnty.*, 48 Ohio App. at 530-31; 1957 Op. Att'y Gen. No. 516, p. 141, at 147; 1951 Op. Att'y Gen. No. 597, p. 357, at 359-62; 1946 Op. Att'y Gen. No. 1109, p. 567, at 570; 1944 Op. Att'y Gen. No. 7250, p. 689, at 693; 1922 Op. Att'y

⁴ As used in this opinion, the term "alcoholic beverages" means "intoxicating liquor" and "beer" as those terms are defined in R.C. 4301.01. *See generally* R.C. 4301.01(A)(1) (as used in the Revised Code, "intoxicating liquor" includes "all liquids and compounds, other than beer, containing one-half of one per cent or more of alcohol by volume which are fit to use for beverage purposes, from whatever source and by whatever process produced, by whatever name called, and whether they are medicated, proprietary, or patented. 'Intoxicating liquor' [includes] wine even if it contains less than four per cent of alcohol by volume, mixed beverages even if they contain less than four per cent of alcohol by volume, cider, alcohol, and all solids and confections which contain any alcohol"); R.C. 4301.01(B)(2) (as used in R.C. Chapter 4301, "beer" means "all beverages brewed or fermented wholly or in part from malt products and containing one-half of one per cent or more, but not more than twelve per cent, of alcohol by volume").

⁵ For the purpose of this opinion, it is assumed that the deed to the society's or county's fairgrounds does not contain a restriction that prohibits the sale of alcoholic beverages on the fairgrounds and that the Division of Liquor Control is authorized to issue the liquor permit.

Gen. No. 2827, vol. I, p. 40, at 41-42; *see Dunn v. Agric. Soc'y*, 46 Ohio St. at 99; 1913 Op. Att'y Gen. No. 313, vol. II, p. 1253. This includes the power to receive, hold, and expend money. *See* R.C. 1711.01; R.C. 1711.03; R.C. 1711.06; R.C. 1711.09; R.C. 1711.15; R.C. 1711.18; R.C. 1711.22; R.C. 1711.24; R.C. 1711.28; R.C. 1711.31; R.C. 1711.34; R.C. 3769.082; 3A Ohio Admin. Code 901-5-03. Moreover, when exercising its power to expend its moneys, the society does not need statutory authority to do so. *See Dunn v. Agric. Soc'y*, 46 Ohio St. at 99; 1984 Op. Att'y Gen. No. 84-026; 1951 Op. Att'y Gen. No. 597, p. 357, at 359-62.

This means that a county agricultural society does not need explicit statutory authority to expend its moneys to acquire alcoholic beverages and a liquor permit to sell the beverages. Instead, as indicated above, if the constitution and bylaws of a county agricultural society authorize the society to use its moneys to acquire alcoholic beverages and a liquor permit to sell the beverages, the society may do so, provided the moneys to be expended are not required to be used for other purposes and the expenditure is reasonable and lawful. *See* 1984 Op. Att'y Gen. No. 84-026; 1951 Op. Att'y Gen. No. 597, p. 357.

No statute or Ohio constitutional provision prohibits a county agricultural society from acquiring alcoholic beverages and a liquor permit to sell the beverages at an event that is open to the public and conducted on the society's or county's fairgrounds.⁶ R.C. 1711.09 does, however, place limits on the authority of a county agricultural society to sell alcoholic beverages:

Except as otherwise provided in this section, county agricultural societies . . . shall not permit during any fair, or for one week before or three days after any fair, any dealing in spirituous liquors

Any sales of intoxicating liquor transacted on the fairground shall be subject to [R.C. Chapters 4301, 4303, and 4399].

Any agricultural society that permits the sale of intoxicating liquor on its fairground shall apply any proceeds gained by the society from the permit holder and from activities coincident to the sale of intoxicating liquor first to pay the cost of insurance on all buildings on the fairground, and then for any other purpose authorized by law.

⁶ In 1973, the General Assembly amended R.C. 1711.09 to authorize "the sale of intoxicating liquor on fairgrounds when fairs are not in session." 1973 Ohio Laws, Part I, 1915 (Am. H.B. 660, eff. Oct. 31, 1973) (title). *See generally* 1942 Op. Att'y Gen. No. 5508, p. 711, at 716 ("[i]t must be remembered that it has been the object of the Legislature to keep the fairs of agricultural societies on a high moral plane and it, therefore, forbade a county agricultural society to sell or grant to any person or to permit in any manner the privilege of selling, dealing, or bartering in spirituous, vinous, or malt liquors . . . in or about any building or anywhere on its fairgrounds" (citing G.C. 9884-4 (now R.C. 1711.09))). R.C. 1711.09 was amended further in 1985 to "remove the prohibition against dealing in malt and vinous liquors on . . . a county fairground during any fair, or for one week before or three days thereafter." 1983-1984 Ohio Laws, Part II, 4626 (Am. H.B. 711, eff. Apr. 10, 1985, with certain sections effective on July 1, 1985) (title).

As no statute or Ohio constitutional provision prohibits a county agricultural society from using its moneys to acquire alcoholic beverages and a liquor permit to sell the beverages at an event that is open to the public and conducted on the society's or county's fairgrounds, it is lawful for the society to use its moneys for these purposes, provided the society abides by the restrictions set forth in R.C. 1711.09.⁷ See 1984 Op. Att'y Gen. No. 84-026; 1951 Op. Att'y Gen. No. 597, p. 357. See generally 1950 Op. Att'y Gen. No. 2138, p. 547 (insofar as no provision of law prohibits a county agricultural society from using its property for automobile racing, the society is not prohibited from doing so); 1934 Op. Att'y Gen. No. 2488, vol. I, p. 449 (a county agricultural society has the authority to conduct horse racing on property owned, controlled, or used by it since no provision in the laws governing the establishment and operation of such a society prohibits it).

Accordingly, a county agricultural society may use moneys provided by a source other than the state or a county to acquire alcoholic beverages and a liquor permit to sell the beverages at an event that is open to the public and conducted on the society's or county's fairgrounds, provided (1) the society's constitution and bylaws permit the expenditure; (2) the moneys to be expended are not required to be used for other purposes; and (3) the expenditure is reasonable.⁸

R.C. 1711.09 requires a county agricultural society that sells alcoholic beverages on its fairgrounds to "apply any proceeds gained by the society from the permit holder and from activities coincident to the sale of intoxicating liquor first to pay the cost of insurance on all buildings on the fairground, and then for any other purpose authorized by law." R.C. 1711.31 also provides:

⁷ R.C. 1711.09 provides for the disposition of proceeds from the sales of alcoholic beverages "gained by [a county agricultural] society *from the permit holder*." (Emphasis added.) R.C. 1711.09 thus could be construed as requiring an entity other than a county agricultural society to acquire a liquor permit to sell alcoholic beverages at an event that is conducted on the society's or county's fairgrounds.

We reject this interpretation of R.C. 1711.09 for two reasons. First, we have previously explained in this opinion the authority of a county agricultural society to acquire a liquor permit is an attribute of its status as a private entity that is a body corporate and politic and the constitution and bylaws of the society. Second, the purpose of R.C. 1711.09 is not to prohibit a county agricultural society from acquiring a liquor permit, but instead, to authorize the sale of alcoholic beverages on fairgrounds, see note 6, *supra*, and provide for the disposition of the revenues from the sales. For these reasons, R.C. 1711.09 may not reasonably be interpreted to prohibit a county agricultural society from acquiring a liquor permit to sell alcoholic beverages at an event that is conducted on the society's or county's fairgrounds.

⁸ Whether the expenditure of moneys by a county agricultural society to acquire alcoholic beverages and a liquor permit to sell the beverages at an event that is open to the public and conducted on the society's or county's fairgrounds is reasonable is a factual question that must be resolved on a case-by case basis by the society's board of directors, rather than the Attorney General. See note 3, *supra*.

Moneys realized by [a county agricultural] society in holding fairs and from renting or leasing all or part of the grounds and buildings for the conduct of fairs or otherwise, over and above the necessary expenses thereof, shall be paid into the treasury of the society and used as a fund for keeping such grounds and buildings in good repair and for making other improvements deemed necessary by the society's directors. (Emphasis added.)

R.C. 1711.09 and R.C. 1711.31 authorize a county agricultural society to retain and use revenue derived from sales of alcoholic beverages at an event that is open to the public and conducted on the society's or county's fairgrounds. *See generally* 1957 Op. Att'y Gen. No. 516, p. 141 (syllabus, paragraph 6) (“[a] county agricultural society can lawfully participate in the promotion of a hockey team, and the rentals received by the society from a hockey team or similar sporting or entertainment enterprises which use the real property owned by or under the control and management of the society are not public funds”); 1938 Op. Att'y Gen. No. 2887, vol. II, p. 1645, at 1649 (G.C. 9906 (now R.C. 1711.31) “provides that moneys realized from the use of property under the control of a county agricultural society may be used, first, in currently meeting necessary expenses and, secondly, if there remains a surplus, it is paid into the county treasury of the society. In either event, the funds derived from the use of the property accrue to the society”). Therefore, in response to your second question, a county agricultural society may use moneys provided by a source other than the state or a county to acquire alcoholic beverages and a liquor permit to sell the beverages at an event that is open to the public and conducted on the society's or county's fairgrounds and retain the revenue derived from the sales, provided (1) the society's constitution and bylaws permit the expenditure; (2) the moneys to be expended are not required to be used for other purposes; and (3) the expenditure is reasonable.

Expenditure of Moneys Provided by the State or a County to Acquire a Liquor Permit

Your third question asks whether a county agricultural society may use moneys provided by the state or a county to acquire alcoholic beverages and a liquor permit to sell the beverages at an event that is open to the public and conducted on the society's or county's fairgrounds and retain the revenue derived from the sales. The difference between this question and the previous question is the source of moneys to be used to make the expenditure. Nonetheless, the analysis used to answer the previous question may be used to resolve your third question.

Under our analysis of the previous question, a county agricultural society may use moneys that *belong to the society* to acquire alcoholic beverages and a liquor permit to sell the beverages and retain the revenue derived from the sales when (1) the society's constitution and bylaws permit the expenditure; (2) the moneys to be expended are not required to be used for other purposes; and (3) the expenditure is reasonable. This means that a county agricultural society may use moneys provided by the state or a county to acquire alcoholic beverages and a liquor permit to sell the beverages and retain the revenue derived from the sales if such moneys

belong to the society, provided the three conditions set out in the previous sentence have been satisfied.

As demonstrated above, a county agricultural society is a private entity that is a body corporate and politic organized and operated by a group of county residents under a constitution and bylaws. *See* R.C. 1711.01; R.C. 1711.07-.08; R.C. 1711.13. *See generally* R.C. 1711.081 (“[t]he positions of members of the board of directors, officers, and employees of a county . . . agricultural society are not public offices”). It is not created by statute as a part of state or county government nor may it be dissolved by the state or county even though it performs certain public functions and receives public funding. *See Dunn v. Agric. Soc’y*, 46 Ohio St. at 99-100; 1933 Op. Att’y Gen. No. 42, vol. I, p. 29 (syllabus, paragraph 2). Additionally, although a county agricultural society is subject to some regulatory control by the county and state, it remains a separate and distinct entity from the state and county that is capable of receiving, holding, and expending money in its corporate capacity.⁹ *See Greene Cnty. Agric. Soc’y v. Liming*, 89 Ohio St. 3d 551 (a county agricultural society is a political subdivision for purposes of R.C. Chapter 2744); *Dunn v. Agric. Soc’y*, 46 Ohio St. at 99 (county agricultural corporations “are not mere territorial or political divisions of the state . . . or made public agencies of the state”); *Randolph Twp. Tr. v. Portage Cnty. Agric. Soc’y*, 1992 Ohio App. LEXIS 3465, at *8 (“for certain purposes a county agricultural society is considered to be a political subdivision”); 1988 Op. Att’y Gen. No. 88-034 (syllabus, paragraph 1) (a county agricultural society is a political subdivision for purposes of R.C. Chapter 2744); 1956 Op. Att’y Gen. No. 6546, p. 353, at 357 (a county “agricultural society is a separate entity from the county itself; and when money is paid to the society, the society may accumulate it as it sees fit”); 1946 Op. Att’y Gen. No. 1109, p. 567, at 570 (“the general assembly has always dealt with a county agricultural society as being separate and distinct from the county in which it is located”); 1913 Op. Att’y Gen. No. 313, vol. II, p. 1253, at 1256 (county agricultural societies are not agencies of the state).

Accordingly, moneys provided to a county agricultural society by the state or a county belong to the society and may be used by the society’s board of directors, as provided by law. *See generally* 1956 Op. Att’y Gen. No. 6546, p. 353, at 357 (“when money is paid to the society, the society may accumulate it as it sees fit, as long as the money is eventually spent for the purpose for which the appropriation was made”). For this reason and on the basis of the analysis of the previous question, a county agricultural society may use moneys provided by the state or a county to acquire alcoholic beverages and a liquor permit to sell the beverages at an

⁹ The Department of Agriculture and the individual counties exercise limited control over the operations of county agricultural societies. *See* R.C. 901.06; R.C. 1711.01; R.C. 1711.05; R.C. 1711.10; R.C. 1711.13; R.C. 1711.16; R.C. 1711.25-.26; R.C. 1711.31; R.C. 1711.33; 3A Ohio Admin. Code Chapter 901-5. This authority does not, however, include the power to control how the moneys of a county agricultural society are spent when the society complies with applicable laws.

event that is open to the public and conducted on the society's or county's fairgrounds and retain the revenue derived from the sales, provided (1) the society's constitution and bylaws permit the expenditure; (2) the moneys to be expended are not required to be used for other purposes; and (3) the expenditure is reasonable.

Authority of a County Agricultural Society to Have a Third Party Sell Alcoholic Beverages

Your final question asks whether a county agricultural society may authorize the holder of a valid liquor permit to have an event that is open to the public and conducted on the society's or county's fairgrounds and receive fees from the permit holder. The same reasoning used to answer the previous two questions applies to this question.

As a body corporate and politic, a county agricultural association may do an act that a natural person or private corporation may do without statutory authority to do so, provided (1) the society's constitution and bylaws permit the society to perform the act; (2) no statute or Ohio constitutional provision prevents the act; and (3) the act is reasonable. *See* R.C. 1711.13; *Dunn v. Agric. Soc'y*, 46 Ohio St. at 99; *Licking Cnty. Agric. Soc'y v. Bd. of Cnty. Comm'rs of Licking Cnty.*, 48 Ohio App. at 530-31; 1984 Op. Att'y Gen. No. 84-026; 1957 Op. Att'y Gen. No. 516, p. 141, at 147; 1951 Op. Att'y Gen. No. 597, p. 357, at 359-62; 1946 Op. Att'y Gen. No. 1109, p. 567, at 570; 1944 Op. Att'y Gen. No. 7250, p. 689, at 693; 1922 Op. Att'y Gen. No. 2827, vol. I, p. 40, at 41-42; 1913 Op. Att'y Gen. No. 313, vol. II, p. 1253. Hence, if a county agricultural society's constitution and bylaws permit it to authorize the holder of a valid liquor permit to sell alcoholic beverages at an event that is open to the public and conducted on the society's or county's fairgrounds and receive fees from the permit holder, the society may do so, provided no statute or Ohio constitutional provision prevents the society from performing these acts and it is reasonable for the society to perform the acts.

No provision in the Ohio Constitution or Revised Code prohibits a county agricultural society from (1) authorizing the holder of a valid liquor permit to sell alcoholic beverages at an event that is open to the public and conducted on the society's or county's fairgrounds and (2) receiving fees from the permit holder. In fact, R.C. 1711.09 contemplates this practice by declaring that "[a]ny agricultural society that permits the sale of intoxicating liquor on its fairground *shall apply any proceeds gained by the society from the permit holder . . . first to pay the cost of insurance on all buildings on the fairground, and then for any other purpose authorized by law.*" (Emphasis added.)

In light of R.C. 1711.09 and the absence of statutory or constitutional language prohibiting the practice, a county agricultural society may authorize the holder of a valid liquor permit to have an event open to the public and conducted on the society's or county's fairgrounds. The society also may receive and retain fees

from the liquor permit holder for any services provided.¹⁰ See 1984 Op. Att’y Gen. No. 84-026; 1951 Op. Att’y Gen. No. 597, p. 357; see also 1950 Op. Att’y Gen. No. 2138, p. 547; 1934 Op. Att’y Gen. No. 2488, vol. I, p. 449. Therefore, a county agricultural society may (1) authorize the holder of a valid liquor permit to have an event that is open to the public and conducted on the society’s or county’s fairgrounds and (2) receive fees from the permit holder, provided the society’s constitution and bylaws permit the society to perform these acts and when it is reasonable for the society to perform these acts.¹¹

Conclusions

Based on the foregoing, it is my opinion, and you are hereby advised as follows:

1. A county agricultural society that is prohibited from using moneys provided by the state or a county for a particular purpose may use moneys it receives from other sources for that purpose, provided (1) the society’s constitution and bylaws permit the expenditure; (2) the moneys to be expended are not required to be used for other purposes; and (3) the expenditure is reasonable and lawful.
2. A county agricultural society may use moneys provided by a source other than the state or a county to acquire alcoholic beverages and a liquor permit to sell the beverages at an event that is open to the public and conducted on the society’s or county’s fairgrounds and retain the revenue derived from the sales, provided (1) the society’s constitution and bylaws permit the expenditure; (2) the moneys to be expended are not required to be used for other purposes; and (3) the expenditure is reasonable.
3. A county agricultural society may use moneys provided by the state or a county to acquire alcoholic beverages and a liquor permit to sell the beverages at an event that is open to the public and conducted on the society’s or county’s fairgrounds and retain the revenue derived from the sales, provided (1) the society’s constitution and bylaws permit the expenditure; (2) the moneys to be expended are not required to be used for other purposes; and (3) the expenditure is reasonable.

¹⁰ A county agricultural society and a holder of a liquor permit that sells alcoholic beverages at an event that is open to the public and conducted on the society’s or county’s fairgrounds must comply with the limitations on the sales of alcoholic beverages on fairgrounds set forth in R.C. 1711.09 and R.C. Chapters 4301 and 4303.

¹¹ The question whether it is reasonable for a county agricultural society to authorize the holder of a valid liquor permit to sell alcoholic beverages at an event that is open to the public and conducted on the society’s or county’s fairgrounds and receive fees from the permit holder is one that must be answered by the society’s board of directors, rather than the Attorney General. See note 3, *supra*.