

OPINION NO. 73-079**Syllabus:**

Where a civic ballet association is incorporated without the purpose of profit, and where the articles of incorporation include purposes which provide for the cultivation and diffusion of knowledge, and where such civic ballet has organized lecture projects to implement the purposes provided under R.C. 757.03, and where such groups also meet the requirements of R.C. 757.03 through 757.08, inclusive, such group is permitted to receive funds from the board of county commissioners under R.C. 757.05.

To: Lee C. Falke, Montgomery County Pros. Atty., Dayton, Ohio
By: William J. Brown, Attorney General, August 8, 1973

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

The Board of County Commissioners of Montgomery County, Ohio, has received a request from the Dayton Civic Ballet for funds, which a board of county commissioners may make available to symphony associations, choral societies, or educational lecture associations pursuant to Sections 757.03 to 757.08, O.R.C., as amended in October, 1971.

Your opinion is respectfully requested as to whether or not the Dayton Civic Ballet does qualify for such a grant pursuant to these sections of the Code.

Your attention is invited to your Opinion No. 72-091, concerning the eligibility of the Dayton Art Institute and the Dayton Opera Association for such grant.

I am enclosing a copy of a letter from the President of the Dayton Civic Ballet, a copy of the annual report for the Dayton Civic Ballet for 1971, and a copy of the Articles of Incorporation of the Dayton Civic Ballet.

The eligibility of an applicant for such funds depends upon R.C. 757.05 which provides:

In any city or county in which there is a symphony association, choral society, or educational lecture association which is incorporated, organized and operated in the manner and for the purposes stated in section 757.03 of the Revised Code, such city or county, or both, may pay such symphony association, choral society, or educational lecture association annually, in quarterly installments, in the case of a city, a sum not to exceed one half of one cent on each one hundred dollars of taxable property of said city as valued on the tax duplicate of the city, or, in the case of a county, a sum of not to exceed one half of one cent on each one hundred dollars of the taxable property of the county for the year next before the date of each payment. In order to qualify for such payments, such symphony association, choral society, or educational lecture association must, by a proper resolution of its board of trustees or other governing body, accept all applicable provisions of sections 757.03 to 757.09, inclusive, of the Revised Code and file a certified copy of the resolution with the controller of the city or the board of county commissioners prior to the date of any such payment. The first of such payments may be made in the year 1966, after the filing of such certified copy.

To comply with the requirements of R.C. 757.05, the organization under consideration must first be shown to fall within one of the three categories which are eligible for county funds, e.g., a symphony association, a choral society, or an educational lecture association. In determining whether the Dayton Civic Ballet falls within any of these categories, we may look not only at the group's incorporated designation, e.g., a "civic ballet", but also to its actual character. See State ex rel. Russell v. Sweeney, 153 Ohio St. 66 (1959); Opinion No. 72-091, Opinions of the Attorney General for 1972. While the Dayton Civic Ballet may not fall within the functional definitions of a symphony association or choral society, there is considerable evidence that it functions partly as an educational lecture association. For example, during the 1973 season the Ballet's lecture-recitals include:

- Sept. 25 Sections of modern dance demonstration, ballet and pas de deux from "Flower Festival."
- Nov. 1-2 Stuart Patterson, Burkhardt and Linden City Recreation Centers of "Once Upon a Ballet" and last two movements of "Dance Overture."
- Nov. 13 Modern demonstration and Celebrations.
- Dec. 18 Celebrations and Concertino.
- Mar. 12 Pas de deux from "The Sovereign Pays Court and Periphrastic."
- Apr. 5 Pas de deux from "Naundy Thursday Service and Periphrastic."
- May 2 Flower Festival pas de deux.

Such lecture-recitals are normally performed in schools, recreation centers, and at local civic club meetings.

It should be noted that while the Ballet's lecture recitals may not follow a lecture format familiar to most, e.g., speaker at lectern, these performances are an accepted method of instruction in the performing arts. The method used by the Dayton Civic Ballet in demonstrating and performing the dance arts also fits within the accepted definitions of a "lecture." Webster's Third New International Dictionary defines lecture in part as: " * * * a discourse given before an audience especially for instruction; an instructive example." Therefore, it is my opinion that with regards to the Dayton Civic Ballet's "lecture-recital" projects it is acting as an educational lecture group within the meaning of R.C. 757.05.

However, while a group may fall within one or more of the categories provided in R.C. 757.05, the requirements of R.C. 757.03 must also be met. I stated in my Opinion No. 72-091 that

In order for any symphony association, choral society, or educational lecture association to qualify under the provisions of this section, it must first be demonstrated that the organization was incorporated for the purposes described in Section 757.03, Revised Code, in the following language:

* * * without purpose of profit to any private member or individual, but organized for the purpose of the cultivation and performance of instrumental music, the cultivation and diffusion of knowledge, and to maintain a symphony orchestra, choral group, or educational lecture group, * * *.

While R.C. 757.03 deals with payments to a symphony association, choral society, or educational lecture association by a board of education, the same purpose requirements were also adopted in R.C. 757.05, supra, which allows such payments by a city or a county.

It is clear that the Dayton Civic Ballet complies with the first proviso of R.C. 757.03 since it was incorporated without purpose of profit.

A second proviso of R.C. 757.03 requires that a symphony association, choral society, or educational lecture association be organized for the purpose of the cultivation and performance of instrumental music, the cultivation and performance of choral music or the cultivation and diffusion of knowledge." (Emphasis added.) In this regard the Dayton Civic Ballet's Articles of Incorporation in part state:

THIRD. The purpose or purposes for which said corporation is formed are:

1. To promote and foster community interests and understanding in the Ballet Dance and related arts.
2. To provide performing and choreographic experience for performing members.
3. To promote, educate and stimulate interest and appreciation of the Dance and related arts.
4. To offer its services to worthy community projects.
5. To sponsor and maintain a Scholarship Loan Fund for performing members.
6. To give a minimum of one Dance Concert a year.
7. And the doing of all things necessary and incidental thereto. (Emphasis added.)

Further requirements involving city and county certification and other conditions for payment are set forth in R.C. 757.06 and 757.08. R.C. 757.06 reads as follows:

No symphony association, choral society, or educational lecture association may receive any of the payments provided for in section 757.05 of the Revised Code until such symphony association, choral society, or educational lecture association, by a proper resolution adopted by its board of trustees or other governing body, has tendered to the mayor, or to the legislative authority of the city if there is no mayor, or to the board of county commissioners, the following:

(A) The right to nominate as trustees or as members of any other governing body of such symphony association, choral society, or educational lecture society, three members to be appointed by the mayor, or by the legislative authority of the city if there is no mayor, or by the board of county commissioners, one of which nominees may, in the discretion

of such mayor or legislative authority, or board of county commissioners, be the mayor, or a member of the legislative authority, or the board of county commissioners, all three of whom so nominated shall thereupon be elected as trustees or as members of any other governing body:

(D) The right to nominate for membership on the executive committee of such symphony association, choral society, or educational lecture association, one of the three trustees of such symphony association, choral society, or educational lecture association, representing the city or county as such trustees pursuant to division (A) of this section, which nominee may, in the discretion of such mayor or the legislative authority of the city if there is no mayor, or the board of county commissioners, be the mayor, or a member of the legislative authority, or the board of county commissioners, which nominee shall thereupon be elected a member of such executive committee:

(C) The right to require the orchestra maintained by such symphony association, the choir maintained by such choral society, or the lecturers maintained by such educational lecture association to provide such feasible popular performances at low cost, as in the joint judgment of the board of trustees of such symphony association, choral society, or educational lecture association, and the mayor or the legislative authority of the city if there is no mayor, or the board of county commissioners, will serve the largest interests of the citizens of the city or county.

A copy of the resolution, certified by the president and secretary of the symphony association, choral society, or educational lecture association, shall be filed in the office of the city controller of the city or the board of county commissioners of the county, as a condition precedent to the receipt by such association or society of any such payments.

R.C. 757.08 reads:

So long as any symphony association, choral society, or educational lecture association does all the things it agreed to do as considerations for the benefits to be received by it under sections 757.03 to 757.08, inclusive, of the Revised Code, or is able, willing, and ready to perform

the same, the boards of education of the city and county and the city and county may continue to make the several payments as provided in such sections.

If the Dayton Civic Ballet meets these additional conditions, as set forth in R.C. 757.06 and 757.08, it will become eligible to receive county funds under R.C. 757.05 in its capacity as an educational lecture association.

As stated in Opinion No. 71-044, Opinions of the Attorney General for 1971:

A municipality may not make an outright unrestricted gift of funds to a nongovernmental organization, regardless of whether or not such organization may be generally engaged in performing a beneficial, public purpose.

In applying this doctrine to county funds involving the Dayton Art Institute, I stated in Opinion No. 72-091, Opinions of the Attorney General for 1972, that

Likewise, the county could not pay funds to the Art Institute as provided under Section 757.05 to be used for any purpose. While the Art Institute's programs are many, the funds provided by Section 757.05 must be limited to its orchestra, choral, and educational lecture groups.

Similarly, the county could not pay funds to the Dayton Civic Ballet for any purpose. As was discussed earlier, under its present program the Dayton Civic Ballet will receive county funds in its capacity as an educational lecture association.

In specific answer to your question it is my opinion, and you are so advised that where a civic ballet association is incorporated without the purpose of profit, and where the articles of incorporation include purposes which provide for the cultivation and diffusion of knowledge, and where such civic ballet has organized lecture projects to implement the purposes provided under R.C. 757.03, and where such groups also meet the requirements of R.C. 757.03 through 757.08, inclusive, such group is permitted to receive funds from the board of county commissioners under R.C. 757.05.