

3015.

PROSECUTING ATTORNEY—ACTING AS ATTORNEY FOR COUNTY AGRICULTURAL SOCIETY DOES NOT COME WITHIN SCOPE OF OFFICIAL DUTIES.

*SYLLABUS:*

*The county prosecuting attorney is not the official attorney for a county agricultural society.*

COLUMBUS, OHIO, March 3, 1931.

HON. WILLIAM MARVIN VANCE, *Prosecuting Attorney, Urbana, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your communication which reads as follows:

“Is a prosecuting attorney the official attorney for a County Agricultural Society (Fair Board), organized in conformity to the statutes, or is such representation outside his official duties?”

The pertinent part of Section 2917, General Code, referring to the duties of the prosecuting attorney, reads as follows:

“The prosecuting attorney shall be the legal adviser of the county commissioners and all other county officers and county boards and any of them may require of him written opinions or instructions in matters connected with their official duties. He shall prosecute and defend all suits and actions which any such officer or board may direct or to which it is a party, and no county officer may employ other counsel or attorney at the expense of the county except as provided in section twenty-four hundred and twelve. \* \* \*”

In order to arrive at a conclusion concerning the status of a county agricultural society, it is necessary to consider the various statutes pertaining to such societies.

Laws pertaining to the organization and management of county agricultural societies are found in Sections 9880 to 9910, inclusive, of the General Code.

The leading case on the status of county agricultural societies in Ohio is *Dunn vs. Agricultural Society*, 46 O. S., 93, in which the court, at page 99, after reviewing the statute then in force (which were substantially the same as at present), stated:

“\* \* \* it is apparent, that corporations formed under them, are not mere territorial or political divisions of the state; nor are they invested with any political or governmental functions, or made public agencies of the state, to assist in the conduct of its government. Nor can it be said, that they are created by the state, of its own sovereign will, without the consent of the persons who constitute them, nor that such persons are the mere passive recipients of their corporate powers and duties, with no power to decline them, or refuse their execution. On the contrary, it is evident that societies organized under the statutes, are the result of the voluntary association of the persons composing them, for purposes of their own. It is true, their purposes may be public, in the sense that their establishment may conduce to the public welfare, by

promoting the agricultural and household manufacturing interests of the county; but, in the sense, that they are designed for the accomplishment of some public good, all private corporations are for a public purpose, for the public benefit, is both the consideration and justification for the special privileges and franchises conferred on them. These agricultural societies are formed of the free choice of the constituent members, and by their active procurement; for, it is only when they organize themselves into a society, adopt the necessary constitution, and elect the proper officers, that they become a body corporate. The state neither compels their incorporation, nor controls their conduct afterward. They may act under the organization, or at any time dissolve, or abandon it."

In a recent opinion of this office, No. 2672, dated December 13, 1930, it was held that the office of secretary of a county agricultural society is not a public office or employment. It was pointed out that such officer or employe is chosen by neither the public nor any representative of the public who has himself been chosen by the people, and that the functions of the office or employment are those prescribed by the society and not by law.

In Opinion No. 2531, rendered by this office under date of November 13, 1930, in determining the control of a county agricultural society, it was stated:

"In so far, however, as they are not regulated either by statute or by the rules of the State Board of Agriculture, they have a right to control their internal affairs as may seem best, which may be done to some extent by the adoption of by-laws.

I find nothing in the statute to prevent a county agricultural society from creating such positions as it may see fit, or of paying such salaries as may seem proper, nor are there any rules of the State Board of agriculture governing the salaries that may be paid to the president, secretary or other officials, and while the law does not favor sinecures, It seems that inasmuch as no attempt at regulation of the subject is made by law or rule of the State Board of Agriculture, the matter of salaries to be paid to officials and employes of county agricultural societies is left entirely to the society itself."

In view of the foregoing, I believe that the county prosecuting attorney is not constituted by law the legal adviser of or attorney for a county agricultural society. It should be borne in mind, however, that the county commissioners may be required to litigate against a county agricultural society, or vice versa, and in such instances it would be incompatible for a prosecuting attorney to represent, and receive compensation from, the county agricultural society where the county's interests are conflicting with those of the society.

There is no doubt that by the terms of section 2917, General Code, when legal services are required by the county commissioners, the prosecuting attorney of the county must furnish such service.

In specific answer to your request, I am of the opinion that the county prosecuting attorney is not the official attorney for a county agricultural society.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*