

OPINION NO. 81-018**Syllabus:**

The authority of a county to make appropriations to an independent agricultural society pursuant to R.C. 1711.17 is not conditioned upon county ownership of the real estate on which the independent agricultural society holds its fairs, nor is it limited to indebtedness related to such real estate.

To: Michael G. Spahr, Washington County Pros. Atty., Marietta, Ohio
By: William J. Brown, Attorney General, April 7, 1981

I have before me your predecessor's request for an opinion, which reads in pertinent part as follows:

Can a county, in which there are both a county agricultural society and a single county independent agricultural society, appropriate general fund money for the benefit of the single county independent agricultural society pursuant to R.C. 1711.17, for any type of indebtedness even though no land, property, or improvements thereon are owned in any manner or form by the county commissioners; or stated alternatively, are county contributions under R.C. 1711.17 limited to those forms of indebtedness directly related to land, property or improvements thereto, which are owned or leased by the county?

Specifically, your predecessor stated that he interpreted R.C. 1711.17 as conditioning contributions to independent agricultural societies upon county ownership of the land, property or improvements where fairs are held.

I will begin by noting that county agricultural societies are described in R.C. 1711.01 and that independent agricultural societies are described in R.C. 1711.02. Both county and independent agricultural societies are organized for the purpose of holding agricultural fairs. State ex rel. Leaverton v. Kearns, 104 Ohio St. 550, 136 N.E. 217 (1922); 1942 Op. Att'y Gen. No. 5508, p. 711. Counties may appropriate moneys to support independent agricultural societies pursuant to R.C. 1711.02, 1711.03 and 1711.22 as well as R.C. 1711.17.

R.C. 1711.17 authorizes a board of county commissioners to expend funds for the support of independent agricultural societies and provides in pertinent part:

In any counties in which there is a duly organized independent agricultural society, the respective boards of county commissioners may purchase or lease jointly, for a term of not less than twenty years, real estate on which to hold fairs under the management and control of the society, and may erect thereon suitable buildings and otherwise improve the same, 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 independent agricultural society is complying with all laws and rules governing the operation of county agricultural societies. The boards may appropriate from their respective general funds such an amount as they deem necessary for any of said purposes. . . . (Emphasis added.)

The remaining portion of R.C. 1711.17 limits the amount that may be appropriated in any one year without voter approval to fifty thousand dollars.

Whether a county may contribute to any form of indebtedness of an independent agricultural society or only to those forms of indebtedness directly related to land depends upon an analysis of the use of the conjunction "or" which precedes "contribute to or pay" in R.C. 1711.17. There appear to be two possible readings for the "or contribute. . . society" clause of R.C. 1711.17. One interpretation would be to say that it stands independently and permits contributions to the society for any purpose. From another possible reading, one might conclude that the county may erect buildings, may improve them, may pay rent for them, and may also make a contribution to such indebtedness in any other form.

Generally, the word "or" is used as a disjunctive indicating that the various parts of the sentence are to be taken separately. See, e.g., Ohio Fuel Supply Co. v. Paxton, 1 F.2d 662 (S.D. Ohio 1924), aff'd, 11 F.2d 740 (6th Cir. 1926). If this meaning of the word "or" were applied in the instant case, the clause "or contribute to or pay any other form of indebtedness of said society" would not be limited by the clauses that precede it and would, then, stand independent of those clauses. Under this construction of R.C. 1711.17, county commissioners would have the authority to appropriate moneys to pay any indebtedness of the society whether or not such indebtedness were directly related to land.

The General Assembly, however, has stated by express enactment in R.C. 1.02(F) that "or" may be read as "and" if the "sense requires it." Because the "sense" of the sentence in the instant case is not readily apparent, it will be necessary to further explore the intention of the General Assembly in enacting R.C. 1711.17 in order to arrive at the intended meaning of this statute.

As an aid to determining legislative intent, it is appropriate to apply generally accepted principles of statutory construction. One such principle provides that it is presumed that the General Assembly intended the same meaning where it has used similar language in the same act. Henry v. Trustees, 48 Ohio St. 671, 30 N.E. 1122 (1871). Language similar to that under consideration is found in R.C. 1711.15, a companion statute to R.C. 1711.17 which applies to county agricultural societies. In 1940 Op. Att'y Gen. No. 1871, vol. I, p. 175, my predecessor was called

upon to interpret the predecessor of R.C. 1711.15, G.C. 9887, which contained language virtually identical to the language of R.C. 1711.17 under consideration. R.C. 1711.15 and G.C. 9887, both clearly apply only to those situations in which a county does, in fact, own or lease land. My predecessor opined that once that prerequisite was met the county could contribute to any form of indebtedness of the society. At that time, G.C. 9887 provided in pertinent part:

In counties wherein there is a county agricultural society which has purchased, or leased, real estate for a term of not less than twenty years, a site whereon to hold fairs or where the title to such site is vested in fee in the county, the county commissioners, if they think it is for the best interest of the county, and society, 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. The commissioners are authorized to appropriate from the general fund such an amount as they deem necessary for any of said purposes. . . . (Emphasis added.)

My predecessor was asked the following question:

I would greatly appreciate your opinion as to whether or not the line above mentioned in said section of the Code [the emphasized part of G.C. 9887 quoted above] gives the Commissioners authority to appropriate money to the Agricultural Societies for an indebtedness existing incurred from the losses in operation of the 1939 Fair and fairs for prior years or if the said wording merely gives the County Commissioners authority to appropriate money for indebtedness incurred by the purchase of real estate or construction and repair of buildings on real estate owned by the Societies.

My predecessor concluded that the phrase "or contribute to or pay any other form of indebtedness" was independent of and was not limited by the clauses that preceded it and that, therefore, the county commissioners could contribute to or pay any indebtedness of the society.

The General Assembly apparently concurred in this interpretation of the language in G.C. 9887 as it has amended G.C. 9887 (R.C. 1711.15) many times since 1940, but has never in any way affected the holding of 1940 Op. No. 1871.

Hence, when the General Assembly amended R.C. 1711.17, 1953 Ohio Laws 536 (Am. H.B. 548, eff. Oct. 21, 1953), to include the language "or contribute to or pay any form of indebtedness of said society," I must presume that the General Assembly was aware of the construction that had been placed upon identical language in R.C. 1711.15 by 1940 Op. No. 1871 and that the General Assembly, in choosing that language, was indicating that the language in R.C. 1711.17 was to be similarly construed. Thus, it appears that the General Assembly did not intend to limit appropriations of county commissioners pursuant to R.C. 1711.17 to indebtedness of independent agricultural societies that relates to the real estate upon which the societies hold their fairs, or to improvements thereon.

Having concluded that a county may contribute to any form of indebtedness of an independent agricultural society, whether or not such indebtedness is directly related to land, I find also that a county's authority to make appropriations for any of the debts of independent agricultural societies pursuant to R.C. 1711.17 is not limited to situations in which either the county agricultural society or the county itself owns or leases the real estate upon which the society's fairs are conducted. In reaching this conclusion, I am guided by a comparison between R.C. 1711.17 and R.C. 1711.15. R.C. 1711.15 contains language which expressly limits the county's authority to make appropriations to situations in which the county or county

agricultural society owns or leases the land on which the fairs are held. It provides in part as follows:

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. . . . (Emphasis added.)

Such express conditional language is absent in R.C. 1711.17. Because the form and language of R.C. 1711.15 and R.C. 1711.17 are so similar except for the express condition in R.C. 1711.15 just noted, I am convinced that the absence of such express conditional language in R.C. 1711.17 was intentional. Hence, I conclude that the General Assembly did not intend pursuant to R.C. 1711.17 to limit the authority of counties to appropriate moneys to independent agricultural societies to those situations where the county owns or leases the real estate upon which the society's fairs are held.

In so concluding, I am not unmindful that one view of the legislative history of R.C. 1711.17 lends some support for the opposite conclusion. As originally enacted in 1949, G.C. 9887-2, the predecessor to R.C. 1711.17, read in pertinent part as follows:

In any counties where there is a duly organized independent agricultural society, the respective boards of county commissioners are authorized to purchase or lease jointly, for a term of not less than twenty years, real estate whereon to hold fairs under the management and control of the independent agricultural society, and may erect thereon suitable buildings and otherwise improve the same. The commissioners are authorized to appropriate from their respective general funds such an amount as they deem necessary for any of said purposes. Provided, however, that if the total amount appropriated to be expended in the joint 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 shall exceed twenty thousand dollars. . . . (Emphasis added.)

1949 Ohio Laws 745 (Am. H.B. 191, eff. July 26, 1949). Hence, it appears that as originally enacted, this provision authorized counties to appropriate moneys for the purchase or lease of real estate on which fairs would be held and erect thereon suitable buildings or otherwise improve such real estate. The phrase "payments of. . . other forms of indebtedness of said society" was apparently limited to any "form" of indebtedness that related to the purchase or lease of real estate upon which fairs were to be held or to indebtedness related to the erection of buildings on such real estate or other improvement of same.

In 1953 R.C. 1711.17 was amended by 1953 Ohio Laws 536 (Am. H.B. 548, eff. Oct. 21, 1953) to read as follows:

In any counties in which there is a duly organized independent agricultural society, the respective boards of county commissioners may purchase or lease jointly, for a term of not less than twenty years, real estate on which to hold fairs under the management and control of the society, and may erect thereon suitable buildings and otherwise improve the same, 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 independent agricultural society is complying with all laws, rules, and regulations governing the operation of county agricultural societies. The boards

may appropriate from their respective general funds such an amount as they deem necessary for any of said purposes. Provided that if the total amount appropriated to be expended in the joint 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. . . . (Emphasis added.)

The emphasized portion indicates the new language added by Am. H.B. 548. It is arguable that the new "or contribute to or pay any other form of indebtedness of said society" clause was simply intended to track the original "payments of. . . other forms of indebtedness" clause. However, if that were the case, the new language would serve no real purpose as the meaning of the statute would not be changed. It is ordinarily presumed that when the General Assembly amends a statute by adding several phrases to it, the intent is to change the meaning of the statute. State ex rel. Clampitt v. Brown, 105 Ohio St. 139, 133 N.E.2d 369 (1956).

Therefore, for the reasons discussed above, I am persuaded that the General Assembly did intend to change the meaning of R.C. 1711.17 by amending it to include the language "or contribute to or pay any other form of indebtedness of said society." I find especially significant the virtual identity of R.C. 1711.15 and R.C. 1711.17 save for the express limitation on the "or contribute to. . ." language in R.C. 1711.15 noted above. The absence of a similar express limitation in R.C. 1711.17 is a clear signal that the General Assembly did not intend to limit appropriations to independent agricultural societies as it had to county agricultural societies.

In addition, a similar scheme for county aid to county agricultural societies and county aid to independent agricultural societies is found in R.C. 1711.22. In pertinent part R.C. 1711.22 provides as follows:

When a county or a county agricultural society owns or holds under a lease real estate used as a fairground, and such society has the control and management of such lands and buildings, the board of county commissioners shall, on the request of such society, annually appropriate from the general fund not more than two thousand dollars nor less than fifteen hundred dollars for the purpose of encouraging agricultural fairs.

In any county in which there is located one or more independent agricultural societies, the board, for the purpose of encouraging such societies, may appropriate, in addition to the sum appropriated for the county agricultural society, a sum not greater than the amount appropriated for the county society.

In a county in which there is no county agricultural society, or in which there is no fair held by such a society, but in which there exists an independent agricultural society that has held an annual exposition in each of three years previous to January 1, 1933, the board shall, on the request of the independent agricultural society, annually appropriate from the general fund not more than two thousand nor less than five hundred dollars for the purpose of encouraging such independent agricultural fairs.

R.C. 1711.22 limits county appropriations to county agricultural societies to situations in which either the county or the county agricultural society owns or leases real estate used as the fairground by the society. There is, however, no such pre-condition to county appropriations to independent agricultural societies. Hence, my interpretation of R.C. 1711.17 that county ownership of the land on which the independent agricultural society holds its fairs is not a prerequisite to county aid is consistent with the scheme established by the General Assembly in R.C. 1711.22. See generally 1942 Op. Att'y Gen. No. 5508, p. 71.

In conclusion, then, it is my opinion, and you are advised, that the authority of a county to make appropriations to an independent agricultural society pursuant

to R.C. 1711.17 is not conditioned upon county ownership of the real estate on which the independent agricultural society holds its fairs, nor is it limited to indebtedness related to such real estate.