

Note from the Attorney General's Office:

1959 Op. Att'y Gen. No. 59-198 was disapproved in part by 1979 Op. Att'y Gen. No. 79-111.

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COMPATIBILITY—COUNTY COMMISSIONER AND DIRECTOR, OFFICER OF COUNTY OR INDEPENDENT AGRICULTURAL SOCIETY—INCOMPATIBLE—2530 OAG 1934, p. 495, OVERRULED IN PART.

SYLLABUS:

A member of the board of county commissioners may not at the same time hold the position of director or officer of a county or independent agricultural society. Opion No. 2530, Opinions of the Attorney General for 1934, p. 495, overruled in part.

Columbus, Ohio, March 11, 1959

Hon. Robert H. Terhune, Director of Agriculture
Columbus, Ohio

Dear Sir:

I have your request for my opinion presenting the question of the compatibility of the positions of member of a board of county commissioners and a director or officer of a county or independent agricultural society. In this relation you have directed my attention to former opinions of this office, being Opinion No. 2530, Opinions of the Attorney General for 1934, page 495, and Opinion No. 4691, Opinions of the Attorney General for 1954, p. 697.

As stated in Opinion No. 1116, Opinions of the Attorney General for 1951, page 60, the common-law doctrine of incompatibility relates only to *public* offices and is not applicable where one of two positions is not in fact a public office. Opinion No. 2530, *supra*, held that a director of a county agricultural society is not a public office within the meaning of the doctrine of compatibility but is the agent of a private corporation.

Opinion No. 1603, Opinions of the Attorney General for 1918, page 1497, held: “* * * I am of the opinion that in no case should a member of the board of county commissioners of a county be at the same time a member of the county agricultural society.” Opinion No. 2530, *supra*, cited and quoted from Opinion No. 1603, *supra*, but did not overrule the 1918 ruling.

In 1922, the Supreme Court held in the case of *State, ex rel. Leaverton et al., v. Kerns, Auditor*, 104 Ohio St., 550, reading the syllabus:

“1. Section 9880-1, General Code, which provides for furnishing aid to independent agricultural societies, makes no requirement as to the form and manner of incorporating such societies. If organized by the required number of qualified persons, and exhibitions are held, and the laws of Ohio and the rules of the state board of agriculture have been complied with and properly certified by the state board as required by that section, the right of the independent society to such aid is complete.

“2. The aid provided by Section 9880-1, General Code, is not for the purpose of furnishing financial assistance to a private enterprise, nor for lending the credit of the state thereto, but,

on the contrary, is in aid of a public institution designed for public instruction, the advancement of learning and the cause of agriculture, and is not in violation of Sections 4 and 6, Article VIII of the Ohio Constitution."

Although Opinion No. 2530, *supra*, quoted from the above case, a basis of distinction was found based upon the exact facts of the case. I find no sound reason for such a distinction when considered in conjunction with the provisions of Sections 305.27, 2919.08 and 2919.09, Revised Code. As I stated in Opinion No. 51, Opinions of the Attorney General for 1959, January 27, 1959:

"* * * The plain purpose of all of these statutes is to keep the administration of these public agencies free from corruption and from becoming the means for self enrichment by officers who have been elected to these positions of trust."

It is the holding of a position of public trust and confidence in circumstances wherein it is possible that the public trust may be violated that the rule of compatibility seeks to prohibit. An examination of the provisions of Chapter 1711., Revised Code, relating to the authority of a board of county commissioners with respect to county or independent agricultural societies can but lead to the conclusion that the positions in question are incompatible.

Section 1711.15, Revised Code, provides in part:

"In any county in which there is a duly organized county agricultural society, the board of county commissioners may purchase or lease, for a term of not less than twenty years, real estate on which to hold fairs under the management and control of the county agricultural society and may erect thereon suitable buildings and otherwise improve it.

"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, if the director of agriculture has certified to the board that the county agriculture society is complying with all laws, rules, and regulations governing the operation of county agricultural societies. *The board may appropriate from the general fund such an amount as it deems necessary for any of said purposes.* If the amount appropriated to be expended in the 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 in any one year, such expenditure shall not be made unless the question of a levy of the tax therefor is submitted to the qualified electors of the county at a general election, a notice of which, specifying the amount to be levied, has been given at least thirty days previous to such election, in one or more newspapers published and of general circulation in the county * * *” (Emphasis added)

Section 305.27, Revised Code, provides in pertinent part:

“No county commissioner shall be concerned, directly or indirectly, in any contract for work to be done or material to be furnished for the county. * * *”

Section 2919.08, Revised Code, provides:

“No person, holding an office of trust or profit by election or appointment, or as agent, servant, or employee of such officer or of a board of such officers, shall be interested in a contract for the purchase of property, supplies, or fire insurance for the use of the county, township, municipal corporation, board of education, or a public institution with which he is connected.

“Whoever violates this section shall be imprisoned not less than one nor more than ten years.”

Section 1711.17, Revised Code, provides:

“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, in any one year (,) such expenditure shall not be made unless the question of a levy of the tax therefor is submitted to the qualified electors of the counties at some general election, * * *.” (Emphasis added)

In numerous sections of this chapter the consent of the board of county commissioners is required as a condition precedent to the authority of the society to take certain affirmative actions with respect to the lands and buildings constituting the fairgrounds. It is immediately apparent that an officer or director of the society could not properly act in the manner required of a member of the board of county commissioners and such officer or director. The interests of each position are in conflict. The state has a right and a duty to require the utmost loyalty and good faith from the persons holding positions of trust and confidence. Chapter 2919., and Section 305.27, Revised Code, are evidences of such a policy which I deem applicable in the instant situation.

On the basis of the foregoing it is my opinion and you are accordingly advised that a member of the board of county commissioners may not at the same time hold the position of director or officer of a county or independent agricultural society. Opinion No. 2530, Opinions of the Attorney General for 1934, page 495, overruled in part.

Respectfully,
MARK McELROY
Attorney General