



OHIO ETHICS COMMISSION

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Advisory Opinion Number 92-007
April 10, 1992

Syllabus by the Commission:

A member of the board of directors of a county agricultural society organized under Chapter 1711. of the Revised Code is subject to neither Section 2921.42 nor Chapter 102. of the Revised Code; therefore, a member of the board of directors of a county agricultural society organized under Chapter 1711. of the Revised Code is not prohibited by Division (A)(4) of Section 2921.42 of the Revised Code from also holding compensated employment with the agricultural society.

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You have asked whether the Ohio Ethics Law and related statutes prohibit an employee of a county agricultural society organized under R.C. Chapter 1711. from being appointed to fill a vacancy on the agricultural society's board of directors.

In the instant situation, the agricultural society is a county agricultural society formed pursuant to R.C. 1711.01 and has adopted a constitution. In this instance, the society's board of directors is comprised of twelve members who are elected, by the members of the agricultural society, for a term of three years; four members are elected every year. See generally R.C. 1711.01, 1711.07. The board members are compensated eight dollars per meeting and reimbursed for their necessary expenses. You have stated that the society's board of directors desires to appoint an employee of the society to a vacant position on the board. The employee works for the society for four months each year as head of the society's maintenance department.

The Ethics Commission is empowered to administer, interpret, and help enforce Chapter 102. and Sections 2921.42 and 2921.43 of the Revised Code. R.C. 102.02, 102.06, and 102.08. These statutes impose prohibitions upon the conduct of officers, employees, and agents of the state and its political subdivisions. Specifically, R.C. 2921.42 (A)(4), which prohibits a public official from having an interest in the profits or benefits of a public contract entered into by the political subdivision or governmental agency with which he is connected, prohibits an elected or appointed officer of a political subdivision or governmental agency from also holding compensated employment with the political subdivision or governmental agency while he serves in office. See Ohio Ethics Commission Advisory Opinion No. 91-002.

The threshold issue is whether a member of the board of directors of a county agricultural society organized under R.C. Chapter 1711. is subject to R.C. 2921.42 or other prohibitions of the Ohio Ethics Law and related statutes. As stated above, the prohibitions of R.C. Chapter 102. and Sections 2921.42 and 2921.43 generally apply to officers, employees, and agents of the state

and its political subdivisions, and, in some instances, to other public servants. Statutory definitions provided in R.C. Chapters 102. and 2921. establish, more specifically, which individuals are subject to these statutes. See R.C. 102.01 (B) and (C), and 2921.01. See also Advisory Opinion No. 92-001. Before turning to those statutory definitions, it is, however, first useful to examine the nature of a county agricultural society.

A county agricultural society is a voluntary association established and organized pursuant to the statutory provisions of R.C. Chapter 1711. See R.C. 1711.01. See generally Ohio Op. Att'y Gen. No. 88-026. The Ohio Supreme Court has held that an agricultural society formed pursuant to R.C. Chapter 1711. is a private corporation, not organized in order to result in a profit for its members; its purpose is to promote the agricultural and household manufacturing interests of the county. State ex rel. Leaverton v. Kerns, 104 Ohio St. 550 (1922); Dunn v. Agricultural Society, 46 Ohio St. 93 (1888). See also Licking County Agricultural Society v. Board of County Commissioners of Licking County, 48 Ohio App. 528 (Licking County 1934); Ohio Op. Att'y Gen. No. 88-034; Ohio Op. Att'y Gen. No. 87-057; and Ohio Op. Att'y Gen. No. 65-163. A county agricultural society operates only within the county in which it is organized. See Ohio Op. Att'y Gen. No. 88-034. See also R.C. 1711.06 (members of a county agricultural society must be residents of the county in which it is organized).

It has been recognized that, despite the fact that an agricultural society is established by the voluntary association of its members and is organized as a private corporation, it performs certain limited public functions. See Bazell v. City of Cincinnati, 13 Ohio St. 2d 63 (1968), cert. denied sub nom. Fosdick v. Hamilton County, 391 U.S. 601 (1968). Specific statutory authority empowers an agricultural society to execute these limited public functions. See Ohio Op. Att'y Gen. No. 87-057 (an agricultural society has statutory authority to have the courts appoint special constables). See also Ohio Op. Att'y Gen. No. 88-034 (a county agricultural society is a "political subdivision" as that term is defined in R.C. 2744.01 (F) for purposes of self-insurance programs and joint self-insurance pools established pursuant to R.C. 2744.08 and 2744.081). Also, an agricultural society formed pursuant to the statutory provisions of R.C. Chapter 1711. is eligible to receive public funds and support if certain statutory requirements are met. See R.C. 1711.01 and 1711.03 (distribution of funds from the county auditor); 1711.15 -.22 and 1711.27 -.30 (county aid and support); Ohio Op. Att'y Gen. No. 88-026; and Ohio Op. Att'y Gen. No. 84-026. See also R.C. 3769.082 (distribution of moneys from the Ohio fairs fund). An agricultural society's operation is governed by rules established by the director of the department of agriculture. See R.C. 1711.01, 901.06 (C), and Ohio Admin. Code Chapter 901-5. However, the fact that an agricultural society is empowered to perform certain public functions, is eligible to receive public funds and support, and is subject to state regulation does not change the character of an agricultural society from that of a private corporation. See generally Dunn v. Agricultural Society; Ohio Op. Att'y Gen. No. 88-026; Ohio Op. Att'y Gen. No. 87-057; and Ohio Op. Att'y Gen. No. 84-026.

It is now necessary to turn to the statutory definitions found in R.C. Chapters 102. and 2921. which establish who is subject to the prohibitions imposed by these statutes.

The prohibitions of R.C. 2921.42 apply to any "public official" which is defined for purposes of R.C. Chapter 2921. in R.C. 2921.01 (A) as:

[A]ny elected or appointed officer, or employee, or agent of the state or any political subdivision thereof, whether in a temporary or permanent capacity, and including without limitation legislators, judges, and law enforcement officers.

The board of directors of a county agricultural society consists of at least eight members who are elected by the members of the agricultural society; they serve for a term of office determined by the rules of the Department of Agriculture. See R.C. 1711.07, 901.06 (C), and Ohio Admin. Code Chapter 901-5. An employee of the cooperative extension service and the county school superintendent serve as ex officio members. Id. A vacancy on the board is filled by the board until the agricultural society's next annual election. Id. R.C. 1711.081 provides in pertinent part:

The positions of members of the board of directors, officers, and employees of a county or independent agricultural society are not public offices, and persons holding such positions are eligible to hold any public office except for the office of county commissioner. (Emphasis added.)

The Ethics Commission has consistently adhered to the well-established rule of statutory interpretation that it is to be assumed that the legislature has used the language contained in a statute advisedly and intelligently and expressed its intent by the use of the words found in the statute. See Advisory Opinions No. 74-001 and 89-003. It is obvious from the language of R.C. 1711.081 that the legislature has expressed, in clear and unambiguous terms, its intent that membership on the board of directors, service as an officer, or employment with a county agricultural society does not constitute holding a "public office." See Ohio Op. Att'y Gen. No. 84-053. Under Ohio law, a person who holds an "office" is an "officer." In the case of Muskingum County Democratic Executive Committee v. Burrier, 31 Ohio Op. 570, 572 (C.P. Muskingum County 1945) the Court held:

The terms "officer" and "office" are paronymous, and in their original and proper sense, are to be regarded as strictly correlative.

See also Advisory Opinions No. 85-005 and 92-001. Therefore, since R.C. 1711.081 provides that membership on the society's board of directors is not a "public office," a member of an agricultural society's board of directors is not an "officer . . . of the state or any political subdivision thereof" for purposes of R.C. 2921.01 (A).

However, R.C. 2921.01 (A) also includes "agents" and "employees" of the state or political subdivisions, as well as officers, within the definition of "public official" for purposes of R.C. 2921.42. The issue becomes whether a board member of an agricultural society is an "agent" or "employee" for purposes of R.C. 2921.01 (A).

The question whether a board member is an "agent" will be addressed first. The Ethics Commission held in Advisory Opinion No. 92-002 that a person is an "agent" and thus, a "public official" as defined in R.C. 2921.01 (A) when: (1) the person has the power to act on behalf of and bind the state or a political subdivision by his actions; (2) the state or political subdivision has the right to control the actions of the person; and (3) the person's actions are directed toward

the attainment of an objective sought by the state or a political subdivision. In order for an agency relationship to exist for purposes of R.C. 2921.01 (A), all three elements must be met.

The relationship between an agricultural society and the county in which it is located, as well as the relationship between an agricultural society and the state, must be examined in order to determine whether a society is an agent of either the county or the state. The county relationship will be addressed first. As explained above, an agricultural society formed pursuant to R.C. Chapter 1711. is empowered to perform certain public functions and is eligible to receive public funds and support from the county in which it is located. A county agricultural society may receive funds from the county auditor upon presentation of a certificate from the director of the department of agriculture indicating the society is in compliance with the laws of the state and rules enacted by the department, and has delivered required reports to the director. See R.C. 1711.01, 1711.05, 1711.10, and 901.06. See also R.C. 1711.03.

A county agricultural society also receives funds and support from the board of county commissioners of the county in which it is located. A board of county commissioners may purchase or lease real estate to serve as a fairground for a county agricultural society and to appropriate moneys to generally improve the site. See R.C. 1711.15. If the amount appropriated exceeds fifty thousand dollars in any one year, the board of county commissioners must submit the question of an agricultural tax levy to the electors of the county. Id. When a county or a county agricultural society owns or leases real estate used as a fairground, the board of county commissioners shall, upon request from the society, annually appropriate money to the society for the purpose of encouraging agricultural fairs. See R.C. 1711.22. Also, a board of county commissioners insures the county agricultural society's buildings. See R.C. 1711.24. Furthermore, R.C. Chapter 1711. contains provisions for the issuance of county bonds to pay the debts of an agricultural society. See R.C. 1711.18 - 21. See also R.C. 1711.27 - .30 (payment or issuance of bonds to acquire a new site).

An agricultural society and the board of county commissioners of the county in which it is located are required to closely cooperate and have dealings with each other, especially with respect to the county's financial support of the society. See Ohio Op. Att'y Gen. No. 84-053 and Ohio Op. Att'y Gen. No. 84-026. The board of directors of an agricultural society may act only with the consent of the board of county commissioners on certain matters where county funds have been provided to an agricultural society. See R.C. 1711.13 (mortgaging of fairgrounds); R.C. 1711.16 (erection and repair of buildings and site improvement); R.C. 1711.25 (sale, lease, purchase, and exchange of site); R.C. 1711.33 (encumbering of fairgrounds partly owned by the county). It is apparent that the promotion of agricultural education is an objective sought by the counties in their support of agricultural societies. Despite the interaction between an agricultural society and the county in which it operates, including county financial support, and the limited public functions an agricultural society may perform as discussed above, a careful reading of R.C. Chapter 1711. discloses nothing which suggests that the board of directors of an agricultural society has the power to act on behalf of, and bind, the county in which it is located, or that the board of county commissioners has the power to control the agricultural society, except in order to protect county funds. Therefore, the directors of a county agricultural society are not agents of the county in which the society is located.

It is also necessary to examine the relationship between an agricultural society and the state in order to determine whether an agricultural society is an agent of the state. As explained above, an agricultural society's operation is governed by rules established by the director of the department of agriculture. See R.C. 1711.01, 901.06 (C), and Ohio Admin. Code Chapter 901-5. These rules provide for a uniform election of directors and officers of agricultural societies and rules under which societies shall be conducted. See R.C. 901.06 (C)(2). See also Ohio Admin. Code Chapter 901-5. In order to receive state and county funds, an agricultural society is required to adhere to the rules established by the director of agriculture. See R.C. 901.06 (C)(2)(a) and 1711.01. See also Ohio Admin. Code 901-5-11 (the director of agriculture approves a society's fair dates).

Agricultural societies are required to meet annually with the director of agriculture and deliver an annual report to the director. See R.C. 901.06. The director must certify to the auditor of the county in which the society is located that the reports have been made. See R.C. 1711.05. The director of the department of agriculture is required to determine, based upon information from the report and other sources, whether an agricultural society has complied with the laws of the state and rules of the department of agriculture, and is eligible to receive funds from the auditor of the county in which the society is located. See R.C. 1711.10. A county auditor is required to provide funds to the society upon presentation of a certificate from the director of the department of agriculture which certifies that the society is in compliance with the laws of the state and rules enacted by the department of agriculture. See 1711.01. See also R.C. 1711.17. The director of agriculture may withhold the certificate for financial aid from the county auditor if the agricultural society has not complied with the laws of the state or department of agriculture rules. See R.C. 1711.10.

A county agricultural society also receives state funds. The director of agriculture is authorized to distribute state moneys from the Ohio fairs fund to county agricultural societies. See R.C. 3769.082 and Ohio Admin. Code Chapter 901-13. Each county agricultural society is allocated twelve per cent of the total moneys in the Ohio fairs funds annually for general operations. See R.C. 3769.082 (A)(1). A county agricultural society which conducts horse races is eligible to receive an additional allocation provided that certain conditions are met. See R.C. 3769.082 (A)(3) and (C). A county agricultural society which misuses moneys received from the Ohio fairs fund is not eligible to receive a distribution for two years from the date of the misuse. See R.C. 3769.082 (G). The director of agriculture has the authority to adopt necessary rules governing the distribution of moneys from the Ohio fairs fund. See R.C. 3769.082 (F); Ohio Admin. Code Chapter 901-13.

Therefore, it is apparent that the department of agriculture, as described above, exercises control over agricultural societies. It is also apparent that the promotion of agricultural education is an objective sought by the state in providing for the establishment of agricultural societies and for public funding and support. See Ohio Op. Att'y Gen. No. 88-034. However, these facts standing alone do not create an agency relationship. In order for an agency relationship to exist in this instance, the board of directors of a county agricultural society must have the authority to act on behalf of and bind the state. However, there is nothing to suggest that the board of directors of an agricultural society has the power to act on behalf of, and bind, the state.

Accordingly, a member of an agricultural society's board of directors is neither an "agent" of the state nor, as explained above, the county in which it is located.

The final issue remaining under R.C. 2921.01 (A) is, therefore, whether a member of the board of directors of an agricultural society is an "employee" of the state or a political subdivision for purposes of R.C. 2921.01 (A).

As explained above, an agricultural society is a voluntary association and members of its board of directors, except ex officio members, are elected by the society's members for a term of office established by the department of agriculture. An agricultural society may include in its constitution a provision which permits members of the board of directors, other than ex officio members, to receive compensation for their services and reimbursement for expenses not to exceed amounts established by rules established by the Department of Agriculture. See Ohio Admin. Code 901-5-09. In the instant situation, directors are elected to a term of four years and receive compensation for attending meetings and reimbursement for their expenses. Although directors may receive a fee for serving on the board, a board member does not sell his services under an employment relationship to either the state or the county in which the society operates. Consequently, a member of an agricultural society's board of directors is not an "employee" of the state or a political subdivision. See Advisory Opinion No. 92-001.

In summary, a member of the board of directors of an agricultural society does not fall within the definition of "public official" set forth in R.C. 2921.01 (A), since he is not an officer, agent, or employee of the state or any political subdivision. This conclusion is consistent with the well-established recognition discussed above that an agricultural society is a voluntary association and private corporation. See generally Advisory Opinions No. 75-013 and 75-019. (See discussion of R.C. Chapter 102. below.)

While a member of the board of directors of an agricultural society is not subject to the prohibition of R.C. 2921.42, a separate issue remains whether the member is subject to R.C. Chapter 102. which applies to "public officials and employees," as defined in R.C. 102.01 (B) and (C). R.C. 102.01 (B) defines the term "public official or employee" for purposes of R.C. Chapter 102. as "any person who is elected or appointed to an office or is an employee of any public agency." R.C. 102.01 (C) defines the term "public agency" as:

[T]he general assembly, all courts, any department, division, institution, board, commission, authority, bureau or other instrumentality of the state, a county, city, village, township, and the five state retirement systems, or any other governmental entity.
(Emphasis added.)

As discussed above, a member of the board of directors of an agricultural society is not an officer, agent, or employee of the state or a county. The issue becomes whether a member of the board of directors of an agricultural society is an officer or employee of a "governmental entity."

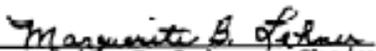
As explained above, a county agricultural society is a voluntary association and the fact that it is empowered to perform certain public functions, is eligible to receive public funds and

support, and is subject to state regulation does not change its character from that of a private corporation. Since an agricultural society is created by the voluntary association of the persons composing it, it is not a "governmental entity" and thus not a "public agency" as that term is defined in R.C. 102.01 (C). Therefore, a member of the board of directors of an agricultural society is not subject to the prohibitions of R.C. Chapter 102. since he is not elected or appointed to an office or employed by a "public agency." See also R.C. 1711.081 (the position of director of an agricultural society is not a public office). This determination is in accord with the Ethics Commission's holdings in previous advisory opinions that a person who serves a non-profit corporation as a member of its board of trustees or as an employee is not subject to Chapter 102. of the Revised Code despite the fact that the non-profit corporation may perform activities and functions that are of a public nature. See Advisory Opinions No. 75-013 and 75-019.

R.C. 2921.43 also falls within the jurisdiction of the Ethics Commission and this statute applies to "public servants." The term "public servant" is defined in R.C. 2921.01 (B) and is broader than the term "public official," as used in R.C. 2921.42. However, the prohibitions of R.C. 2921.43 are inapplicable to the question you have raised, and the issue whether a director of a county agricultural society is a "public servant" who is subject to R.C. 2921.43 need not be addressed at this time. See also Ohio Admin. Code 901-5-09.

It is recommended that you consult the agricultural society's legal advisor for a determination as to whether R.C. Chapter 1711., Department of Agriculture rules, or provisions in the society's constitution are applicable to your question. See Ohio Admin. Code 901-5-09 (E).

Therefore, it is the opinion of the Ohio Ethics Commission, and you are so advised, that a member of the board of directors of a county agricultural society organized under Chapter 1711. of the Revised Code is subject to neither Section 2921.42 nor Chapter 102. of the Revised Code; therefore, a member of the board of directors of a county agricultural society organized under Chapter 1711. of the Revised Code is not prohibited by Division (A)(4) of Section 2921.42 of the Revised Code from also holding compensated employment with the agricultural society.


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