



Dave Yost
Ohio Auditor of State

Bulletin 2012-009

Auditor of State Bulletin

Date Issued: October 23, 2012

TO: County and Independent Agricultural Societies

FROM: Dave Yost, Ohio Auditor of State

SUBJECT: Sale of Intoxicating Beverages

The purpose of this Bulletin is to clarify whether county and independent agricultural societies established pursuant to Ohio Rev. Code Section 1711.01, *et seq.*, may authorize the sale of intoxicating beverages at events conducted by a society and receive revenue from the sales and whether a society may use public funds to purchase intoxicating beverages for resale.

ANSWER:

A county or independent agricultural society board, subject to Ohio Rev. Code Section 1711.09 and Chapters 4301, 4303, and 4399 of the Ohio Revised Code, may authorize the sale of intoxicating beverages by a permit holder at a society event and receive proceeds from these sales if the properly adopted constitution and bylaws of the society permit. Public funds may not be used to purchase intoxicating beverages for resale by a county or independent agricultural society.

DISCUSSION:

Guidance for the use or expenditure of funds by county and independent agricultural societies is found in Ohio law, Auditor of State Bulletins, Opinions of the Attorney General and the Constitution and Bylaws of the individual agricultural society. For example, Ohio law limits the use of public money received by a society for "holding county fairs and from renting or leasing all or part of the grounds and buildings for the conduct of fairs or otherwise."¹ The major vehicle for furthering the purpose of an agricultural society is a fair event. Agricultural societies have expressed a desire to sell intoxicating beverages at these events and have asked whether this is permissible and who may engage in these transactions?

Ohio Law does not prohibit the sale of intoxicating beverages at events conducted by agricultural societies. R.C. Section 1711.09 provides guidance regarding the sale of alcoholic beverages. It states, for example, that the sale of intoxicating liquor on the fairground is subject to Chapters 4301, 4303, and 4399 of the Ohio Revised Code. R.C. 1711.09 directs that agricultural societies shall not permit during any fair, or for one week before or three days

¹ Ohio Rev. Code Section 1711.31 provides that income to the society in holding county fairs and from renting or leasing all or part of the grounds and buildings for the conduct of fairs, over and above the necessary expenses thereof, "shall be paid into the treasury of the society and used as a fund for keeping such grounds and buildings in good order and repair and for making other improvements deemed necessary by the society's directors."

after any fair, any dealing in spirituous liquors, a category of intoxicating beverages containing more than twenty one percent alcohol by volume. ² It also addresses how proceeds received by an agricultural society should be spent. ³ Based upon these statutes, we conclude a county or independent agricultural society board, subject to Ohio Rev. Code Section 1711.09 and Chapters 4301, 4303, and 4399 of the Ohio Revised Code, may authorize the sale of intoxicating beverages under the restrictions provided by law.

Having established alcoholic beverages may be sold at an agricultural society event, the question remains whether a society itself may engage in these transactions? Significantly, R.C. 1711.09 directs how proceeds of alcoholic beverage sales are spent if an agricultural society contracts with a *permit holder* to sell alcoholic beverages. It states that any proceeds gained by the society from the *permit holder* and from activities coincident to the sale of intoxicating liquor are to be used; “first to pay the cost of insurance on all buildings on the fairground, and then for any other purpose authorized by law.”

A permit holder purchases alcoholic beverages from a distributor authorized to sell or distribute alcoholic beverages to retail permit holders in this state. As stated by the Ohio Supreme Court, a distributor is a person engaged in the business of selling intoxicating liquors (alcoholic beverages) to retail dealers for the purpose of resale.⁴ The issuance of liquor permits is controlled by the Ohio Liquor Control Commission. The Commission is the only public body permitted to control the sale and distribution of alcoholic beverages. It does so, in part, by issuing Permits for distribution and/or sale. The Commission is not authorized by law to issue a Permit to a public entity for the distribution or sale of alcoholic beverages.

It is well established that words and phrases shall be read in context and construed according to the rules of grammar and common usage. The rule is to apply a common and ordinary meaning to statutory language and draw reasonable inferences there from. A reading of the statutes discussed here leads us to conclude an agricultural society may not be a permit holder and otherwise engage in transactions involving alcoholic beverages. However, an agricultural

² Intoxicating beverages containing less than twenty one percent alcohol by volume fall into the categories of intoxicating liquor, liquor, wine and beer. R.C. Section 4301.01 defines “Beer” as beverages brewed or fermented wholly or in part from malt products and containing one-half of one per cent or more, but not more than twelve per cent, of alcohol by volume. By definition “Intoxicating liquor” and “liquor” include all liquids and compounds, other than beer, containing one-half of one per cent or more of alcohol by volume which are fit to use for beverage purposes, from whatever source and by whatever process produced, by whatever name called, and whether they are medicated, proprietary, or patented. “Intoxicating liquor” and “liquor” include wine even if it contains less than four per cent of alcohol by volume, mixed beverages even if they contain less than four per cent of alcohol by volume, cider, alcohol, and all solids and confections which contain any alcohol.

³ Ohio Rev. Code Section 1711.09 (Forbidden Activities): Except as otherwise provided in this section, county agricultural societies, independent agricultural societies, and the Ohio expositions commission shall not permit during any fair, or for one week before or three days after any fair, any dealing in spirituous liquors.

Any sales of intoxicating liquor transacted on the fairground shall be subject to Chapters 4301, 4303, and 4399 of the Ohio Revised Code.

R.C. Section 4301.01 (5) “Spirituous liquor” includes all intoxicating liquors containing more than twenty-one per cent of alcohol by volume.

⁴ *State ex rel. Peebles Sons Co. v. State Board of Pharmacy*, (1934) 127 Ohio St. 513.

society may authorize the sale of alcoholic beverages and receive proceeds of these sales from a Permit holder as provided by law.

It is well established the use of public funds of an agricultural society to purchase intoxicating beverages does not constitute a proper public purpose and is not permissible. In Auditor of State Bulletin 2003-05, in a discussion of public fund expenditures for a proper public purpose, the Auditor stated "the use of public funds to purchase alcohol will be considered arbitrary and incorrect and will be cited by the Auditor of State's Office." This standard continues to apply to agricultural societies.

An agricultural society Board should note that the Auditor will issue a citation where a society's constitution and bylaws do not authorize the sale of alcoholic beverages by a permit holder. Legislative authority (Board) is presumed to be the proper (actual) authority to establish policies. (See, e.g., Atty. Gen. Op. No. 2003-029 and AOS Bulletin 2004-002). The effective date of the policy and any amendments to the policy should be clearly indicated. Any such policy will be considered prospective in its application. Again, the absence of permission to engage in this activity will lead to a finding by the Auditor of State.

CONCLUSION:

A county or independent agricultural society board, subject to Ohio Rev. Code Section 1711.09 and Chapters 4301, 4303, and 4399 of the Ohio Revised Code, may authorize the sale of intoxicating beverages containing less than twenty-one percent of alcohol by volume by a permit holder on the fairground if the properly adopted constitution and bylaws of the society permit.

If you have any questions regarding this matter, please contact the Legal Division of the Auditor of State.

Dave Yost
Auditor of State