

OPINION 29

OFFICIAL OPINION NO. 29

June 15, 1956

Mr. George F. Hinkle
Commissioner of Labor
225 State House
Indianapolis, Indiana

Dear Mr. Hinkle:

This is in reply to your letter in which you request an Official Opinion on the following:

"The 1877 Legislature passed an act authorizing allowances in aid of Agricultural Associations which was amended by Chapter 108 of the Acts of 1953 (Burns' Indiana Statutes, Sec. 15-314-5), which amendment authorizes the Board of County Commissioners 'to levy an annual tax of not to exceed ten cents on each one hundred dollars (\$100.00) of assessed valuation for the purpose of constructing, operating or maintaining any building owned and operated by such Agricultural Association.

Question: On the basis of the above-quoted statement and the rest of the provisions of that act, who has the authority to let contracts for the construction of new buildings, the Agricultural Association or the Board of County Commissioners?

Question: In the event it is your determination that the Agricultural Association has this power, are they compelled to comply with the provisions of 'An act prescribing the minimum wages which shall be paid to persons who are employed by contractors * * * who have been awarded contracts for the performance of Public Works?' (Chapter 319 of the Acts of 1935. Burns' 1951 Replacement, Volume 10, Part 1, Section 53-301)."

In the case of Lake County Agricultural Society v. Verplank (1919), 71 Ind. App. 186, 124 N. E. 494, the Court was considering the authority of an Agricultural Society. It was held that the Society had the implied power to contract for anything that would further the purpose of its organization. I am, therefore, of the opinion that the Agricultural Association is

authorized to let contracts for the construction of new buildings in the furtherance of its corporate purposes. However, I have made an extensive investigation of the manner in which the various County Agricultural Associations and 4-H Clubs are operated and find that there are many different factual situations existing in the various counties of the State under the various agricultural acts which have been passed from time to time. In some instances the Agricultural Association holds title to the real estate while in other instances it is leased from the county which holds the title. In some cases the assets of the Association consist mostly of contributions made by the general public, activity funds, *et cetera*, while in other instances the assets consist mainly of allowances from public funds. Therefore, a factual situation might exist in which the County Commissioners would be authorized to let a contract such as the one about which you inquire, depending upon the particular facts.

The Acts of 1935, Ch. 319, Sec. 4, as found in Burns' Indiana Statutes (1951 Repl.), Section 53-304 provides as follows:

“The term ‘state of Indiana’ shall be construed to include any officer, board, commission or other agency authorized by law to award contracts for the performance of public work on behalf of the state, excepting as herein otherwise provided.

“The term ‘municipal corporation’ shall be construed to include any *county*, city, town, or school corporation, as well as any officer, board, commission or other agency authorized by law to award contracts for the performance of public work on behalf of any such municipal corporation.

“The term ‘public work’ shall be construed to include any public building, highway, street, alley, bridge, sewer, drain, improvement or any other work of any nature or character whatsoever which is paid for out of public funds, excepting as herein otherwise provided.” (Our emphasis)

If a contract of this nature were let by the County Commissioners then the Board of County Commissioners should comply with the provisions of said Act since said Board of Com-

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missioners is clearly within the definition of the term "municipal corporation" as used above. However, Agricultural Societies and 4-H Clubs are private corporations and have always been so treated by the Courts and the Legislature of this State, see Warren County Agricultural Joint Stock Co., *et al.* v. Barr (1876), 55 Ind. 30. I do not believe a private corporation such as an Agricultural Association, even though its corporate purposes be public in nature, was intended to be within the definition of a municipal corporation as used in the above-cited statute and for that reason if the Agricultural Society or 4-H Club lets the contract, the Acts of 1935, Ch. 319, *supra*, need not be complied with.

OFFICIAL OPINION NO. 30

June 18, 1956

Mr. R. R. Wickersham
State Examiner
State Board of Accounts
304 State House
Indianapolis 4, Indiana

Dear Mr. Wickersham:

Your letter of June 5, 1956, has been received and reads as follows:

"In a county a petition for the establishment of a county hospital under the provisions of Chapter 144, Acts 1917, as amended, and for the issuance of bonds was filed with the board of county commissioners. An election was held as provided under that act and the majority of voters voted in favor of establishing such county hospital.

"Two questions have been presented to us, and we would appreciate your official opinion regarding same.

"1. Since the majority of the voters have voted favorably on the question of establishing a county hospital, is the Board of County Commissioners bound by such vote, and is it manda-