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Since your question must be answered in the negative under this statute, it is unnecessary to consider any further questions.

On the basis of the above authority, it is my opinion that Mr. Foltz is not entitled to the salary payable in 1962 to a member of the General Assembly.

OFFICIAL OPINION NO. 10

May 27, 1966

INDIANA SESQUICENTENNIAL COMMISSION — Expenditure of Public Funds for County Historical Society Sesquicentennial Celebration—Predominance of Historical Theme—Expenditure of Monies Privately Contributed to Society.

Opinion Requested by Mr. Carl A. Zenor, Indiana Sesquicentennial Commission.

This office has received your recent letter requesting an Opinion as to whether Hancock County may make county funds available to help defray the cost of that county's sesquicentennial celebration. We have been advised that an appropriation to the County Historical Society has been proposed and that the specific question is whether the society may use the appropriation to finance the celebration.

A rule applicable to all appropriations is that the public funds can be expended only for public purposes. 1953 O.A.G. No. 12, pp. 44, 45. Exactly what constitutes a public purpose cannot be defined with precision. *State ex rel. Jackson v. Middleton*, 215 Ind. 219, 230, 19 N.E. 2d 470, 475 (1939). In *State ex rel. McClure v. Hagerman*, 155 Ohio St. 320, 98 N.E. 2d 835 (1951), the Ohio Supreme Court considered that ques-

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tion, and on page 838 of 98 N.E. 2d quoted with approval this passage from 37 AM.JUR. *Municipal Corporations* § 120 (1941) :

“What is a public use is not capable of absolute definition. A public use changes with changing conditions of society, new appliances in the sciences, and other changes brought about by an increase in population and by new modes of transportation and communication. The courts as a rule have attempted no judicial definition of a public as distinguished from a private purpose, but have left each case to be determined by its own peculiar circumstances. Generally, a public purpose has for its objective the promotion of the public health, safety, morals, general welfare, security, prosperity, and contentment of all the inhabitants or residents within the municipal corporation, the sovereign powers of which are used to promote such public purpose. The phrase “municipal purpose” used in the broader sense is generally accepted as meaning public or governmental purpose as distinguished from private. The modern trend of decision is to expand and liberally construe the term “public use” in considering state and municipal activities sought to be brought within its meaning. The test of public use is not based upon the function or capacity in which or by which the use is furnished. The right of the public to receive and enjoy the benefit of the use determines whether the use is public or private.’”

In *State ex rel. Jackson v. Middleton, supra*, 215 Ind. at 230, 19 N.E. 2d at 475 the Indiana Supreme Court said :

“. . . Some purposes readily align themselves on one side of the line as being clearly public in their nature, while others as readily fall on the other side as being obviously private, and there is a debatable ground between the two. The courts have never attempted to lay down with minute detail an inexorable rule distinguishing public from private purposes, because it would be impossible to do so. Such determination is primarily one for the legislative branch of the govern-

ment and it can not be held to any narrow or technical rule of action. Courts will not intervene unless there is a plain departure from every public purpose which could reasonably be conceived.”

Some insight as to what the Indiana Legislature considers to be within the purview of the term “public purpose” can be obtained by observing enactments specifically granting counties the power to spend money for specific purposes. Among such Acts we find:

Agricultural fairs or associations and 4-H clubs. Acts 1905, ch. 104, § 1, as last amended by Acts 1947, ch. 25, § 1; Burns IND. STAT. ANN., § 15-317.

Capital improvements, especially the construction of an exhibition center, in counties containing a city of the first class. Acts 1965, ch. 326; Burns IND. STAT. ANN., §§ 26-2801—2815.

Symphony associations. Acts 1943, ch. 154, as amended; Burns IND. STAT. ANN., §§ 25-4201—4206.

County or City World War I and World War II Memorials. Acts 1921, ch. 245; Acts 1923, ch. 110, Acts of 1919, ch. 115; Acts 1945, ch. 112; all found in Burns IND. STAT. ANN., §§ 59-401—522.

Also pertinent would be the several Acts embodied in Burns IND. STAT. ANN., §§ 48-7708—7808 pertaining to expenditures by certain cities, towns, and townships for art associations, bands, and orchestras.

The popular celebration of the Sesquicentennial of Indiana’s Statehood would come well within the range of purposes considered “public” by the above cited Acts. Therefore, money spent in sponsoring such a celebration would appear to be money spent for a public purpose. And, in any event, it would appear to be within the discretion of the county council as “the legislative branch of the government” in this instance, so to determine.

Both the authority of the County Council to appropriate funds to the County Historical Society and the purposes for which that Society may expend such funds are set out in Acts

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1929, ch. 42, § 10, as last amended by Acts 1963, ch. 89, § 1, as found in Burns IND. STAT. ANN., § 26-1310, which provides:

“For the purpose of paying the curator’s salary; printing catalogues of the objects of historical interest, constituting the collection of the society; printing such papers of historical interest as the society may direct; purchasing and installing such equipment as may be deemed [necessary] to preserve, care for and exhibit the collections of the society; and paying for heat, light, janitor service, rentals, repairs, upkeep, improvements and such other facilities and such help as the society may deem necessary to carry on its work properly, the county council may appropriate whatever sum of money each year that it may deem necessary and expedient not to exceed thirty thousand dollars [\$30,000] and which shall be in addition to the appropriation hereinbefore provided for, and which shall be disbursed for the purposes specified in this section, upon the orders of the board of county commissioners, made upon reports of the historical society.” (Emphasis added.)

An indication of the “work” of the Historical Society contemplated by the above statute can be gleaned from Acts 1929, ch. 42, § 2, the same being Burns IND. STAT. ANN., § 26-1302, which provides:

“The provisions of this act shall be construed to apply to any county in this state in which at the time of the passage of this act, there is a historical society or a local branch of a historical society, or in which such a historical society or a local branch of a historical society may hereafter be established, which, at the time when the petition asking the county council for financial aid is filed, is actively engaged in the collection of data and material for and in the preservation of county and state history and biography, and which holds at least one [1] meeting in each year, at which papers are read or addresses made, in the pres-

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ence of the public, upon matters connected with the history of the county and state.”

Included in the “work” of a Historical Society, on which money appropriated from the county funds may be spent, then, is the collecting, housing, preservation and display of memorabilia connected with the history of the State of Indiana and the county, and the holding of public meetings to exposit and eulogize that history.

The sesquicentennial celebration is an activity marking a major event in Indiana history. Thus, it is an activity intimately associated with the purpose and function of a Historical Society, and one in which such a Society should be able to take an active interest. In fact, the major event in such a celebration would probably be a large public meeting “at which papers are read or addresses made,” and the Historical Society should be the major participant in such a meeting. Of course, many of the individual events during the celebration will be more concerned with entertainment rather than history. A Historical Society probably could not properly use county money to assist a given event unless the historical aspect was clearly predominant.

Therefore, in answer to the question presented, a County Historical Society may use funds appropriated by the County Council to make the society’s physical facilities and the labor of its employees available for proper celebration of historical events, including Indiana’s Sesquicentennial. Of course, the appropriation must be made in the manner and within the limits provided in Burns IND. STAT. ANN., § 26-1310, as set out above.

This opinion is not intended to comment upon or in any manner limit the manner in which a County Historical Society may use money privately contributed to that Society.