



# Dave Yost • Auditor of State

Bulletin 2014-002

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## Auditor of State Bulletin

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**Date Issued:** July 3, 2014

**TO:** County and Independent Agricultural Societies

**FROM:** Dave Yost, Ohio Auditor of State

**SUBJECT:** Sale of Intoxicating Beverages

This Bulletin is an update to Bulletin 2012-009 relating to when 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 when a society may use public funds to purchase intoxicating beverages for resale in light of Ohio Attorney General Opinion 2013-023.

**ANSWER:**

A county or independent agricultural society board, subject to Ohio Rev. Code Section 1711.09 and Chapters 4301 (Liquor Control Law), 4303 (Liquor Permits), and 4399 (Prohibitions; Civil and Criminal Penalties) of the Ohio Revised Code, if it is reasonable to do so and its constitution and bylaws expressly permit it, may:

- (1) authorize the sale of intoxicating beverages by a permit holder at a society event and receive proceeds from these sales;
- (2) authorize a permit holder to have an event that is open to the public and conducted on the society's or county's fairgrounds and receive fees from the permit holder;
- (3) use moneys provided by the state or a county to acquire alcoholic beverages and a liquor permit to sell the beverages at an event that is open to the public and conducted on the society's or county's fairgrounds and retain the revenue derived from the sales provided the money to be expended for the permit and beverages are not required to be used for other purposes. (*OAG Opn. No. 2013-023 followed.*)

**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.”<sup>1</sup> 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 it is permissible to do so 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 sets out the requirements, limitations, and guidance for such sale of alcoholic beverages. That section 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 prohibits agricultural societies from permitting during any fair, or for one week before or three days after any fair, any dealing in spirituous liquors.<sup>2</sup> Spirituous liquor is a category of intoxicating beverages that contains more than twenty one percent alcohol by volume.<sup>3</sup> R.C. 1711.09 also addresses how proceeds received by an agricultural society should be spent.<sup>4</sup> 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. (*See also, OAG Opn. No. 2013-023.*)

The next question is whether an agricultural society may itself engage in these transactions? The issuance of liquor permits is controlled by the Ohio Department of Commerce, Division of Liquor Control. It is the only public body authorized to issue permits for the sale and distribution of alcoholic beverages.

The Ohio Attorney General has recently issued an opinion outlining the authority of an agricultural society to purchase and sell alcoholic beverages. The opinion states:

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<sup>1</sup> 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.”

<sup>2</sup> “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 \* \* \*.”

<sup>3</sup> “Spirituous liquor” includes all intoxicating liquors containing **more than twenty-one per cent** of alcohol by volume.” R.C. 4301(B)(5). R.C. 4301, defines the various categories of alcohol for beverage purposes. “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 \* \* \*.” R.C. 4301(A)(1). “Beer” includes “all 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.” R.C. 4301(B)(2). “Wine” includes “all liquids fit to use for beverage purposes containing **not less than one-half of one per cent** of alcohol by volume **and not more than twenty-one per cent** of alcohol by volume, which is **made from the fermented juices of grapes, fruits, or other agricultural products** \* \* \*.” R.C. 4301(B)(3).

<sup>4</sup> “Any agricultural society that permits the sale of intoxicating liquor on its fairground shall apply any proceeds gained by the society from the permit holder and from activities coincident to the sale of intoxicating liquor first to pay the cost of insurance on all buildings on the fairground, and then for any other purpose authorized by law.”

“A county agricultural society may use moneys provided by the state or a county to acquire alcoholic beverages and a liquor permit to sell the beverages at an event that is open to the public and conducted on the society’s or county’s fairgrounds and retain the revenue derived from the sales, provided (1) the society’s constitution and bylaws permit the expenditure; (2) the moneys to be expended are not required to be used for other purposes; and (3) the expenditure is reasonable.” *Syllabus ¶ 3, OAG Opn. No. 2013-023.*

The same rule applies if the funds used by the agricultural society for this purpose are derived from a source other than state or county funds.


It is important to comply with the limitations the Attorney General has stated: (1) the society’s constitution and bylaws must permit the expenditure; (2) the moneys to be expended are not required to be used for other purposes; and (3) the expenditure is reasonable. Consequently, the Auditor will issue a finding where a society sells alcoholic beverages, regardless of the source of the funds, if the society’s constitution and bylaws do not authorize the sale of alcoholic beverages by a permit holder, if the moneys expended are required to be used for other purposes, or if the expenditure is not reasonable under the circumstances.

If an agriculture society chooses to amend its constitution and bylaws to permit the sale of alcoholic beverages, it must follow the proper procedure for doing so. The effective date of the society’s amendments and any other action taken by the Board to implement the activities relating to the sale of alcoholic beverages must be clearly indicated. Moreover, any such policy change will be considered to be effective on a prospective basis only. The absence of properly adopted authorization 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 either authorize the sale of intoxicating beverages containing less than twenty-one percent of alcohol by volume by a permit holder on the fairground, or may do so itself, if the requirements explained in this bulletin and in OAG Opn. 2013-023 are fully complied with.

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

  
**Dave Yost**  
**Auditor of State**