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MUNICIPAL CORPORATION — ADMISSIONS TAXATION — COUNTY AGRICULTURAL SOCIETY CONDUCTING ACTIVITIES SUBJECT TO ADMISSIONS TAX, ACTIVITY HELD WITHIN SUCH MUNICIPAL CORPORATION, SUCH SOCIETY AMENABLE TO THE TAX—PROVIDED, NO CHARTER LIMITATION IN MUNICIPAL CHARTER.

SYLLABUS:

In the absence of an appropriate charter limitation, a municipal corporation may levy an admissions tax and a county agricultural society conducting activities, with respect to which an admission charge is made, within the territorial limits of such municipal corporation on grounds owned by the county is amenable to such admissions tax.

Columbus, Ohio, February 8, 1958

Hon. Robert O. Stout, Prosecuting Attorney
Marion County, Marion, Ohio

Dear Sir:

Your request for my opinion reads:

"The Marion County Agricultural Society is a duly constituted county agricultural society and occupies grounds and improvements, the legal title to which is in the Marion County Commissioners. Such grounds are situated within the limits of the City of Marion, Ohio.

"Such Society conducts an annual exhibition or agricultural fair, and from time to time, conducts shows, sport events and other exhibitions in its Coliseum, one of the improvements upon said grounds. Upon all such occasions, such Society charges admissions thereto.

"The City of Marion, Ohio, a municipal corporation, has duly enacted an ordinance for the purpose of providing revenue for its General Fund which imposes the following taxes:

(1) A tax of three percent on amounts received for admission to any place, including admission by season ticket or subscription, if such place be in the City.

(2) A tax of three percent on the amount received for admission to any public performance for profit at any cabaret or other similar charge for similar entertainment in case the charge for admission is in the form of a service charge, cover charge, or other similar charge and if such place of entertainment is in the city.

"The question is whether a municipal corporation can lawfull impose and collect a tax upon admissions charged by a duly constituted agricultural society for activities conducted upon grounds situated within the territorial limits of such municipal corporation, but the title to which is in the County Commissioners?"

Municipal corporations in this state derive power to levy taxes from Section 3, Article XVIII, Ohio Constitution. Chief Justice Nichols stated in *State, ex rel. Zielonka, City Solicitor,* v. *Carrel,* 99 Ohio St., 220, at pages 227 and 228:

"Ignoring for the moment the provision found in Section 13, Article XVIII, to the effect that laws may be passed to limit

the power of municipalities to levy taxes for local purposes, etc., we find in Section 3, Article XVIII, as complete a grant of power as the general assembly has received in Section 1, Article II. There can be no doubt that the grant of authority to exercise all powers of local government includes the power of taxation, for without this power local government in cities could not exist for a day. It is a known fact that the necessary expense incident to the maintenance of the government of a modern city transcends all other forms of governmental expense.

"The constitution recognizing the necessity of this grant of power conferred it on municipalities, subjecting them only to the staying hand of the general assembly in respect to its limitation.

"It is not necessary for us now to determine the prohibitive force of the limitation feature of Section 13, Article XVIII—whether it could be invoked to prevent the levying by a city of an excise tax and by laws of an inhibitory character control the subjects of taxation available for municipalities, or whether the limitation contemplated simply the amount of the rate of taxation on property.

"It is enough to say that the general assembly has not expressly limited the authority of municipalities to levy an occupational tax, nor has it impliedly limited such authority by invading the field on its own account."

The *Carrel* case was cited as authority in *Haefner* v. *City of Youngstown,* 147 Ohio St., 58, in which the court stated in paragraph 3 of the syllabus:

"Municipalities have power to levy excise taxes to raise revenue for purely local purposes; but under Section 13, Article XVIII of the Constitution, such power may be limited by express statutory provision or by implication flowing from state legislation which pre-empts the field by levying the same or a similar excise tax."

For additional authority to the same effect see *Angell v. City of Toledo,* 153 Ohio St., 179.

Thus it is well settled that a municipal corporation has the power to impose an excise tax of the nature you have described here if: (1) the state has not pre-empted the field, or (2) the state has not limited the power by appropriate legislation.

The state did impose an admissions tax from 1933, 115 Ohio Laws, 657, *et seq.,* to 1948, 122 Ohio Laws, 459. The state admissions tax was codified in Section 5544-1 to 5544-18, General Code. It is interesting

to note that Section 5544-3, General Code, excepted from the tax admissions charged to agricultural fairs. Since the repeal of the state admissions tax in 1948 I conclude that a municipal corporation, since that time, has not been precluded from enacting an admissions tax by reason of the judicially recognized pre-emption doctrine.

It is now necessary to consider two constitutional provisions which grant the state authority to limit the power of a municipal corporation to levy taxes.

Section 6, Article XIII, Ohio Constitution provides:

> "The general assembly shall provide for the organization of cities, and incorporated villages, by general laws, *and restrict their power of taxation,* assessment, borrowing money, contracting debts and loaning their credit, so as to prevent the abuse of such power." (Emphasis added)

Section 13, Article XVIII, Ohio Constitution reads in part:

> "Laws may be passed to limit the power of municipalities to levy taxes * * *"

In commenting on the above quoted constitutional provisions I can do no better than paraphrase a portion of the language quoted above from the *Carrel* case to the effect that it is not now necessary to determine the prohibitive force of the permissive limitations the state may impose on the power of municipal corporations to levy an excise tax such as is here under consideration. It is sufficient to say that the general assembly has not expressly limited the authority of municipalities to levy excise taxes.

Concluding as I have that a municipal corporation may now exact an excise tax in the form of a levy on admissions, I would terminate this opinion here if it were not for the implication in your request that there might exist some question as to the amenability of a county agricultural society to the provisions of the admissions tax imposed by the city of Marion.

Provision is made for agricultural societies by Chapter 1711., Revised Code. A county agricultural society must be composed of thirty or more members of the same county. Section 1711.01, Revised Code. A county agricultural society may procure land on which to hold an agricultural fair, Section 1711.14, Revised Code, may sue and be sued, Section 1711.13,

Revised Code, and may receive assistance from the board of county commissioners. Section 1711.15, Revised Code.

Agricultural societies were characterized by our Supreme Court in *Dunn* v. *Agricultural Society,* 46 Ohio St., 93, at page 99:

> "From this summary of the statutes, it is apparent, that corporations formed under them, are not mere territorial or political divisions of the state; nor are they invested with any political or governmental functions, or made public agencies of the state, to assist in the conduct of its government. Nor can it be said, that they are created by the state, of its own sovereign will, without the consent of the persons who constitute them, nor that such persons are the mere passive recipients of their corporate powers and duties, with no power to decline them, or refuse their execution. On the contrary, it is evident that societies organized under the statutes, are the result of the voluntary association of the persons composing them, for purposes of their own. It is true, their purposes may be public, in the sense, that their establishment may conduce to the public welfare, by promoting the agricultural and household manufacturing interests of the county; but, in the sense, that they are designed for the accomplishment of some public good, all private corporations are for a public purpose, for the public benefit, is both the consideration and justification for the special privileges and franchises conferred on them. These agricultural societies are formed of the free choice of the constituent members, and by their active procurement; for it is only when they organize themselves into a society, adopt the necessary constitution, and elect the proper officers, that they become a body corporate. The state neither compels their incorporation, nor controls their conduct afterward. They may act under the organization, or at any time dissolve, or abandon it."

The *Dunn* case was cited in Opinion No. 597, Opinions of the Attorney General for 1951, p. 357, where by predecessor stated at page 362:

> "My predecessors in office have consistently held such societies are private corporations."

To the same effect see Opinion No. 516, Opinions of the Attorney General for 1957, p. 141.

Considering the characteristics, powers, and authority of an agricultural society, it is to be doubted if the legislature could grant tax immunity to such an organization. However, it is not now necessary to pass upon the qualifications of an agricultural society for immunity from taxation. For the purpose of completing the answer to your question, it is sufficient

to say the legislature has granted no tax immunity to an agricultural society. In reaching this conclusion I am not unaware that certain buildings and lands of a county are exempt from taxation. Section 5709.09, Revised Code.

One other observation is pertinent. The powers granted a municipal corporation in Section 3, Article XVIII, Ohio Constitution, may be limited by an appropriate provision in a charter adopted by a municipal corporation. I am assuming that no applicable charter limitation is here present.

Therefore, you are advised that, in the absence of an appropriate charter limitation, a municipal corporation may levy an admissions tax and a county agricultural society conducting activities, with respect to which an admission charge is made, within the territorial limits of such municipal corporation on grounds owned by the county is amenable to such admissions tax.

Respectfully,
WILLIAM SAXBE
Attorney General