

respondent is shown to have committed. The primary object of the particular provision on which this prosecution is based is the protection of the public from injury to person or property by drunken operators on our streets and highways, and, if it can fairly be done, the statute must be so construed as to accomplish the purpose for which it was intended. \* \* \*

In my opinion the statutes thereunder consideration and the Ohio Statutes are not so dissimilar as to destroy the force of the reasoning and conclusion of that opinion. Consequently, specifically answering your inquiry, it is my opinion that where A is intoxicated and is found steering his disabled automobile on a public highway, which is being pushed or pulled by B's motor vehicle, the act of A in steering his car constitutes the "operation" of a motor vehicle and is a violation of Section 12628-1, of the General Code.

Respectfully,  
 JOHN W. BRICKER,  
*Attorney General.*

3597.

HORSE RACING ACT—CONSIDERATION BY RACING COMMISSION OF  
 DATES ASSIGNED TO COUNTY AGRICULTURAL SOCIETY.

*SYLLABUS:*

*The State Racing Commission, in assigning dates for a horse racing meeting at which the pari-mutuel or certificate system of wagering is to be allowed, must take into consideration the dates assigned for the same track by the Racing Commission to a county agricultural society to conduct a horse racing meeting at which the pari-mutuel or certificate system of wagering was allowed.*

COLUMBUS, OHIO, December 8, 1934.

*Ohio State Racing Commission, Columbus, Ohio.*

GENTLEMEN:—This will acknowledge your letter requesting my opinion as to whether the dates assigned by the Racing Commission to a county agricultural society to conduct a horse racing meeting at which pari-mutuel betting is permitted, should be taken into consideration by the Commission in awarding dates for other horse racing meetings to be held at the same track, at which meetings the pari-mutuel or certificate form of wagering or betting is to be allowed.

Section 1079-7, General Code, reads:

"No permit shall be issued under this act authorizing horse racing at any place, track or enclosure except on successive week days, excluding Sundays, and except between the hours of 12:00 o'clock noon and 7:00 o'clock in the afternoon, for running horse racing meetings, and between the hours of 12:00 o'clock noon and 12:00 o'clock midnight for light harness horse racing meetings, nor shall any permit be granted for the holding or conducting of a horse racing meeting at any place in this

state prior to the first day of April in any calendar year or after the last day of October in any calendar year, nor for more than an aggregate of forty-four racing dates in any one calendar year for any one race track, place or enclosure, nor so as to permit horse racing on the same date or dates at more than one track in one county or on tracks within thirty miles of each other, nor shall any license be granted to the same person, association, trust or corporation for the holding or conducting of a horse racing meeting except at one race track, place or enclosure in this state. *No permit shall be issued for courses or race tracks having strips of three-fourths of a mile or less for more than thirty-eight racing dates in the aggregate in any one calendar year, to be divided into two sections of not more than nineteen days each, with not less than thirty days transpiring between the close of the first meeting of the year and the commencement of the second meeting.* Distribution of dates shall not apply to fairs or horse shows not required to secure a permit under this act.

The permit granted under the provision of this act shall at all times be conspicuously displayed during said horse racing meeting in the principal office at such race track and at all reasonable times shall be exhibited to any person requesting to see the same." (Italics the writer's.)

Under the provisions of section 1079-7, supra, the State Racing Commission is authorized to issue permits for horse racing meetings at the same track for certain specified periods of time depending on the length of the track at which the meets are to be held. The section further provides that the "distribution of dates shall not apply to fairs or horse shows not required to secure a permit under" the Horse Racing Act (sections 1079-1 to 1079-16, inclusive, General Code).

Enclosures that are used for fair purposes and horse shows and where pari-mutuel betting is not allowed or permitted to take place, are expressly excluded from the provisions of the Horse Racing Act, that is, a permit from the State Racing Commission is not necessary in order to conduct a fair or horse show, provided pari-mutuel betting on the results of a horse race is not allowed. Section 1079-1, General Code, provides:

"From and after the passage of this act, which shall be known as 'The Horse Racing Act', no person, association, corporation or trust shall hold, conduct, assist or aid and abet in holding or conducting any meetings within the State of Ohio, whereat horse racing shall be permitted for any stake, purse or award except and unless such person, association, corporation or trust shall secure a permit to conduct a horse racing meeting and comply with all other provisions of this act.

This act shall apply only to the racing of horses and shall not be construed to prevent in any way the use of any grounds, enclosure or race track, whether or not owned or controlled by a permit holder, for any county or state fair, agricultural or live stock exhibition, horse show or any racing where the pari-mutuel or certificate system of wagering upon the result of such horse racing is not permitted or allowed. *Nothing herein, however, shall be construed to permit the pari-mutuel or certificate method of wagering upon any race unless a permit be secured as provided by this act.*" (Italics the writer's.)

It will be observed that the exemption contained in section 1079-1, General Code, applies only to horse racing meetings at which the pari-mutuel or certificate system or form of wagering upon the results of a horse race is not permitted or allowed, and the section specifically provides that a permit to conduct a horse racing meeting at which the pari-mutuel or certificate system of wagering is allowed, must be secured from the State Racing Commission. There is no provision in the Horse Racing Act which in any wise exempts a county agricultural society conducting a horse racing meeting at which the form of betting legalized by that act is permitted, from complying with the requirements of securing a permit from the State Racing Commission to conduct such a meet. Likewise, there is no provision in the act which authorizes the State Racing Commission in granting dates for a track for which a permit to conduct a horse racing meeting has been issued to a county agricultural society, to disregard the dates given to such society, provided, of course, that at both meets the pari-mutuel form of betting is to be allowed.

It must be borne in mind that it was the primary intention of the legislature by the Horse Racing Act to closely supervise and regulate the racing of horses where the form of betting legalized by that act is allowed, irrespective of the persons, corporations or associations that promote or conduct such meets. This conclusion finds support in many sections of the act. Section 1079-4, General Code, reads in part:

"Any person, association, corporation or trust desiring to hold or conduct a horse racing meeting, wherein the pari-mutuel or certificate system of wagering is allowed, within the state of Ohio shall make application to the state racing commission of this state for a permit so to do."

Section 1079-5, General Code, reads in part:

"At the time of making application for a permit the applicant shall deposit with the state racing commission a cash bond, certified check or bank draft payable to the order of the state racing commission, in an amount equal to one hundred dollars for each day, excluding Sundays, petitioned for in said application. At the close of the last day of the horse racing meeting for which a permit is issued, as provided for in section six (6) of this act, the state racing commission shall refund to such permit holder the sum of one hundred dollars for each racing day the permit holder paid the state racing commission the tax due for said day, as provided for and at the rate stipulated in section 8 of this act; provided, however, if such permit holder has not paid to the state racing commission the compensation and expenses of the representative assigned to his or its track, as provided for in section 9, the commission is authorized and directed to withhold such refund until the same has been paid."

Section 1079-6, General Code, in so far as pertinent, reads:

"Upon the proper filing of an application, accompanied by a permit fee and a cash bond, certified check or bank draft, as hereinabove provided, by any person, association, trust or corporation, not in default of payment of any obligation or debt due to the state of Ohio under the provisions of this act, the state racing commission of Ohio may issue

a permit to such applicant to hold or conduct a horse racing meeting as authorized in this act. Such permit shall specify the person, association, trust or corporation to whom the same is issued, the dates upon which such horse racing meeting is to be held or conducted, the hours of such dates between which such horse racing will be permitted, the location of the place, track or enclosure where such horse racing meeting is to be held or conducted, and shall receipt the payment of the permit fee and deposit of the cash bond, certified check or bank draft, by the applicant. Every such permit shall contain a condition that all horse races or racing meetings conducted thereunder shall be subject to the rules and regulations and conditions from time to time prescribed and promulgated by the commission."

Section 1079-8, General Code, reads:

"Any person, association, trust or corporation holding a permit to conduct a horse racing meeting may provide a place or places in the race meeting grounds or enclosure at which he, they or it may conduct and supervise the pari-mutuel or certificate system of wagering by patrons of legal age on the horse races conducted by such permit holder at such meeting. (Such pari-mutuel or certificate method of wagering upon the horse races held at or within such race track, and at the time of such horse racing meeting shall not be held or construed to be unlawful, other statutes of the state of Ohio to the contrary notwithstanding.) No other place, except that provided and designated by the permit holder, nor any other method or system of betting or wagering, except the pari-mutuel or certificate system, shall be used or permitted to the permit holder; nor shall the pari-mutuel or certificate system of wagering be conducted by the permit holder on any races except at the race track, grounds or enclosure for which the person, association, trust or corporation holds a permit. Each permit holder may retain as commission not to exceed ten per centum of the total of all moneys wagered and in addition to said commission the odd cents of all redistributions to be made on all mutuel contributions exceeding a sum equal to the next lowest multiple of ten. At the close of each racing day the permit holder shall pay to the state racing commission, as a tax, ten per centum of the first \$1,000.00, or any part thereof, fifteen per centum of the next \$4,000.00, or any part thereof, twenty per centum of the next \$5,000.00, or any part thereof, twenty-two and one-half per centum of the next \$5,000.00, or any part thereof, twenty-five per centum of the next \$5,000.00, or any part thereof, and thirty per centum of all moneys over \$20,000.00 of the amount such permit holder retained on said day as commission. No other license or excise tax or fee except as provided in this act shall be assessed or collected from such license by any county, township, district, city, village or any other body having power to assess or collect a tax or fee."

Section 1079-9, General Code, provides for the payment of the compensation and expenses of the representative of the State Racing Commission assigned to attend a racing meet for which a permit has been issued by the Commission, and further provides that the employe of the Commission assigned to the track "shall

have full and free access to the books, records and papers pertaining to the pari-mutuel or certificate system of wagering and to the enclosure or space where the pari-mutuel or certificate system is conducted at any horse racing meeting to which he shall be assigned for the purpose of ascertaining whether or not the holder of such permit is retaining the proper amount of commission as provided in this act."

Section 1079-14, General Code, which relates to the holding of local option elections for the purpose of determining whether horse racing meetings licensed as provided by the act, should be permitted, contains no provision which excludes a county agricultural society conducting a horse racing meeting for which a permit is required from the Racing Commission, from the results of an election held pursuant to that section. In other words, the tenor of the entire act is to place a county agricultural society conducting a horse racing meeting at which the pari-mutuel or certificate system of wagering or betting is allowed, in the same category as any other person, corporation or association engaged in conducting similar horse racing meetings. There is nothing in the act, express or implied, which would justify the State Racing Commission to consider the granting of a permit to a county agricultural society for the racing of horses where the form of betting as now allowed by law is to take place, as an exception, under the provisions of the Horse Racing Act. The fact that a county agricultural society under the laws of this state can receive public money for certain purposes (section 9880, General Code), does not make such a society an arm of the state government or a public corporation nor is such a society divested of its private corporate character merely because it receives public funds. Opinions of the Attorney General for 1922, page 40; Opinions of the Attorney General for 1930, page 1791; Opinions of the Attorney General for 1933, pages 30, 32, 362; and *Dunn vs. Agricultural Society*, 46 O. S. 93, 99. Thus, the provisions of the Horse Racing Act are just as applicable to a county agricultural society conducting a horse racing meeting at which legalized betting is allowed, as they are to other persons, corporations and associations engaged in conducting similar horse racing meetings.

Specifically answering your inquiry, it is my opinion that the State Racing Commission, in assigning dates for a horse racing meeting at which the pari-mutuel or certificate system of wagering is to be allowed, must take into consideration the dates assigned for the same track by the Racing Commission to a county agricultural society to conduct a horse racing meeting at which the pari-mutuel or certificate system of wagering was allowed.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

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3598.

POLICE PENSION BOARD—ACTION OF CITY COUNCIL IN ELECTING TWO TRUSTEES THEREOF DISCUSSED—DEFINITION OF "CHOOSING" UNDER SECTIONS 4616, 4617, GENERAL CODE.

*SYLLABUS:*

1. *Where a council of a city at a regular meeting, approved a motion to*