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FAIR GROUNDS, OHIO STATE—PERMISSION MAY BE GRANTED FOR USE BY A PERSON, FIRM, ASSOCIATION OR CORPORATION—EXPOSITION PURPOSES—SUCH PURPOSES MUST BE LAWFUL, NOT CONTRARY TO EXPRESS PROVISIONS, CONSTITUTION OF OHIO OR STATE CRIMINAL LAWS WITH RESPECT TO GAMBLING.

SYLLABUS:

Permission may be granted for the use of the Ohio State Fair Grounds by a person, firm, association or corporation for exposition purposes, but such purposes must be themselves lawful and not contrary to the express provisions of the Constitution of Ohio or the criminal laws of the state with respect to gambling.

Columbus, Ohio, March 14, 1949

Hon. A. W. Marion, Director, Department of Agriculture
Columbus, Ohio

Dear Sir:

This will acknowledge receipt of your request for my opinion, which reads as follows:

“I am respectfully requesting an opinion from your office as to the legality of an organization such as the L. Club holding a raffle at the Ohio State Fair Grounds. The following facts are for your information:

“50% of the proceeds of the raffle gained by raffling off various types of merchandise, including new automobiles, will be for the benefit of the L. Clubs sponsoring the raffle.

“50% of the proceeds go to private concerns who are operating the raffle with the L. Clubs.

“An early opinion from your office as to the legality of lottery or raffle of this type is respectfully requested.”

I assume from your letter, although it is not specifically so stated therein, that you have pending a request from the L. Club for the use of the Ohio State Fair Grounds and that the events you describe will take place during the time the grounds are permitted to be used by the said club.

The use of the State Fair Grounds at Columbus for purposes other than holding the annual state fair is authorized by Section 1094 of the General Code, which provides in part as follows:

“The board of agriculture shall have the custody of the land, buildings, and other property at the state fair grounds at Columbus, and shall use the same for agricultural purposes and may permit the use of the same to persons, firms, associations, or corporations for such exposition purposes and under such conditions as the board of agriculture may from time to time prescribe.”

You will note from the language used in the section just quoted that the use of such grounds may be granted “to persons, firms, associations, or corporations” and that such use may be granted “for such exposition purposes” as may be prescribed.

The Constitution of the state of Ohio, Article XV, Section 6, provides as follows:

“Lotteries, and the sale of lottery tickets, for any purpose whatever, shall forever be prohibited in this State.”

Pursuant to the constitutional provision above set forth, the General Assembly of Ohio has enacted a chapter on gambling, Section 13054, et seq. of the General Code. Lotteries and schemes of chance are mentioned by name in Section 13063 of the General Code. This section, as it existed prior to September 21, 1943, provides as follows:

“Whoever vends, sells, barter or disposes of a ticket, order or device for or representing a number of shares or an interest in a lottery, ‘policy’ or scheme of chance, by whatever name, style or title denominated or known, whether located or to be drawn, paid or carried on within or without this state, shall be

fined not more than five hundred dollars or imprisoned not more than six months, or both."

As amended in 1943, it now reads as follows:

"Whoever, for his own profit, vends, sells, barter or disposes of a ticket, order or device for or representing a number of shares or an interest in a lottery or scheme of chance, by whatever name, style or title denominated or known, whether located or to be drawn, paid or carried on within or without this state, shall be fined not more than five hundred dollars or imprisoned not more than ninety days, or both."

It will be noted that the new form of the statute includes the phrase "for his own profit" and we take it that, by the insertion of this language, one of the elements required to be alleged and proven upon the trial of a person charged with the violation of this section would be that it was "for his own profit", in addition to the other proof required to sustain the charge.

Section 13064 of the General Code, which was amended at the same time (September 21, 1943,) penalizes numerous acts in connection with a lottery or scheme of chance, including establishing, opening, carrying on, drawing or acting as backer. In its present form Section 13064, General Code, provides as follows:

"Whoever, for his own profit, establishes, opens, sets on foot, carries on, promotes, makes, draws or acts as 'backer' or 'vendor' for or on account of a lottery or scheme of chance, by whatever name, style, or title denominated or known, whether located or to be drawn, paid or carried on within or without this state, or by any of such means, sells or exposes for sale anything of value, shall be fined not less than fifty dollars nor more than five hundred dollars and imprisoned not less than ten days nor more than six months."

Under the terms of your letter, one-half of the proceeds "go to private concerns who are operating the raffle with the L. Clubs." Hence, the exception provided in the 1943 amendment of the two sections above quoted would be of no help in determining this question and the proposed use of the grounds would contravene both the constitutional provision and the misdemeanor statutes hereinabove set forth.

The Department of Agriculture and the office of the Director thereof are created by Section 154-3 of the General Code and by the

terms of Section 154-14 of the General Code specific provision is made that you, as Director, take and subscribe an oath of office. The Constitution of Ohio, Article XV, Section 7, provides as follows:

“Every person chosen or appointed to any office under this State, before entering upon the discharge of its duties, shall take an oath or affirmation, to support the Constitution of the United States, and of this State, and also an oath of office.”

Section 3 of the General Code provides as follows:

“The oath of office of each judge of a court of record shall be to support the constitution of the United States and the constitution of this state, to administer justice without respect to persons, and faithfully and impartially to discharge and perform all the duties incumbent on him as such judge, according to the best of his ability and understanding. The oath of office of every other officer, deputy or clerk, shall be to support the constitution of the United States and the constitution of this state, and faithfully to discharge the duties of his office.”

In conclusion, it is my opinion, based on the facts set forth in your letter, that the use intended to be made of the Ohio State Fair Grounds is in clear violation of the grant of authority contained in Section 1094 of the General Code, by virtue of which the board “may permit the use” of the State Fair Grounds “for such exposition purposes and under such conditions as the board of agriculture may from time to time prescribe.” The primary purpose of the use referred to in your letter would be for “holding a raffle” which, in my opinion, could not be classed as “exposition purposes.” It is further my opinion that granting the use of state property for such purposes would be contrary to the duties imposed upon state officers to support the Constitution and laws of this state.

Respectfully,

HERBERT S. DUFFY,
Attorney General.