

1082.

COUNTY FAIR—SALE OF BEER NOT PROHIBITED AT COUNTY AGRICULTURAL FAIRS—HORSE RACING ACT—PROHIBITION OF GAMES OF CHANCE OR GAMBLING NOT APPLICABLE TO FORM OF WAGERING PROVIDED THEREIN.

SYLLABUS:

1. Section 9884-4, General Code, does not prohibit the sale of beer containing 3.2 per centum of alcohol or less by weight at county agricultural fairs, in view of the provisions of section 6212-14, General Code, as amended in Amended Substitute Senate Bill No. 346.

2. The provisions of section 9884-4, General Code, prohibiting games of chance or gambling at county agricultural fairs, do not apply to pari-mutuel or the certificate form of wagering on horse races conducted under the provisions of the so-called "Horse Racing Act," as enacted by the 90th General Assembly in Amended Substitute Senate Bill No. 372.

COLUMBUS, OHIO, July 24, 1933.

HON. EARL H. HANEFELD, *Director, Department of Agriculture, Columbus, Ohio.*

DEAR SIR:—This will acknowledge your letter of recent date which reads as follows:

"I have had a number of inquiries from various County and Independent fairs relative to the matter of the administration of the new Pari-Mutuel or Certificate Form of betting and the Beer Act.

Will you kindly furnish the Department of Agriculture your opinion of these two bills as it may affect the right of County and Independent fairs to participate in the State per capita tax of \$800 (Section 9880 G. C.), the Junior Club fund of \$500 (Section 9894) or participation in the sum not to exceed \$2000 or less than \$1500 appropriated for the purpose of encouraging Agricultural Fairs (Section 9887) or any other section of the law which would affect participation in these various funds."

Section 9884-4, General Code, is pertinent to your inquiry and reads:

"County agricultural societies shall not sell or grant to any person or persons, or permit in any manner, the privilege of selling, dealing, or bartering in *spirituous, vinous or malt liquors, allow, or tolerate immoral shows, lottery devices, games of chance, or gambling of any kind, including pool selling and paddle wheels, in or about any building or anywhere on its fairgrounds, at any time.*

If it be shown from the report of any county agricultural society, from witnesses or otherwise, that the annual exhibition held by such society was not conducted along moral or agricultural lines or was not of sufficient educational value to justify the expenditure of the per capita tax as provided by section 9880 of the General Code, the certificate for such financial aid may be withheld by the state board of agriculture." (Italics the writer's.)

Section 9884-4 was enacted in 108 Ohio Laws, Part I, pages 381, 383 (1919). The statute, in substance, prohibits the sale or barter of spirituous, vinous or malt liquors at county agricultural fairs. A violation of that statute by a county agricultural society is sufficient cause for the Director of Agriculture to withhold the financial assistance of the State given to county agricultural societies.

The question presented by your inquiry is whether the provisions of section 9884-4 relating to the sale of liquors are affected in any way by the enactment of the so-called "Beer Bill." (Amended Substitute Senate Bill No. 346.) Section 21 of Amended Substitute Senate Bill No. 346, amending section 6212-14 of the General Code, provides that:

"Sec. 6212-14. In the interpretation of the provisions of the General Code of Ohio the word 'liquor' or the phrase 'intoxicating liquor' shall be construed to include alcohol, brandy, whiskey, rum, gin, beer, ale, porter, and wine, and in addition thereto any distilled, spirituous, malt, vinous, or fermented liquor, and also any liquid or compound whether or not same is medicated, proprietary, or patented, and by whatever name called, containing more than 3.2 per centum of alcohol by weight which is fit for use for beverage purposes: Provided, that the foregoing definition shall not extend to de-alcoholized wine, nor to any beverage or liquid produced by the process by which beer, ale, porter, or wine is produced, if it contains 3.2 per centum of alcohol or less by weight."

The provisions relating to prohibition in respect to the sale of liquor, contained in section 9884-4, must be read and construed with the provisions of section 6212-14, as amended in the Ackerman-Lawrence Bill, in mind. By virtue of the provisions of section 21 of the Ackerman-Lawrence Bill, it must be concluded that the legislature intended that the phrase "spirituous, vinous or malt liquors," contained in section 9884-4, is to be interpreted according to the provisions of section 6212-14, as amended, since it is expressly provided therein that the word "liquor" and the phrase "intoxicating liquor" wherever used in the General Code of Ohio shall be construed according to the provisions of that section. The phrase in section 9884-4 relating to the sale of liquors, construed in the light of the definition of the word "liquor" and the phrase "intoxicating liquor" as contained in section 6212-14, as amended, means that liquor, including malt liquor containing more than 3.2 per centum of alcohol by weight and fit for beverage purposes, cannot be sold or bartered at county agricultural fairs, but that beer, ale, porter or wine containing 3.2 per centum of alcohol or less by weight can be sold or bartered at such fairs.

Sections 8 and 13 of Amended Substitute Senate Bill No. 372, enacted by the 90th General Assembly, are pertinent and dispositive of your second question. Section 8 reads in part as follows:

"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 by the permit holder; nor shall the pari-mutuel or certificate system of wagering be conducted by the permit holder on any races except the races at the race track, grounds or enclosure for which the person, association, trust or corporation holds a permit."

Section 13 provides:

"All laws or parts of laws in conflict with the provisions of this act are hereby repealed, insofar as they conflict with any provision of this act and no laws or parts of laws inconsistent with the provisions of this act shall apply to pari-mutuel or certificate wagering in the manner and form as provided for by this act at any horse racing meeting held or conducted by any person, association, trust or corporation having a permit for the holding or conducting of such horse racing meetings as provided for in this act."

Gambling, which heretofore in Ohio in any form was illegal and contrary to law, is made permissible in a limited manner by the provisions of Amended Substitute Senate Bill No. 372 in respect to pari-mutuel or the certificate method of wagering on horse races. This form of gambling the General Assembly has seen fit to expressly provide shall not be prohibited any longer in Ohio, irrespective of statutes such as section 9884-4 providing to the contrary. The provision in section 9884-4 prohibiting games of chance and gambling at county agricultural fairs is modified, by virtue of the provisions of sections 8 and 13 of the aforesaid act, to the extent that pari-mutuel or the certificate form of wagering on horse races conducted as provided by Amended Substitute Senate Bill No. 372 may be permitted at county agricultural fairs.

Specifically answering your inquiry, I am of the opinion that:

1. Section 9884-4, General Code, does not prohibit the sale of beer containing 3.2 per centum of alcohol or less by weight at county agricultural fairs, in view of the provisions of section 6212-14, General Code, as amended in Amended Substitute Senate Bill No. 346.

2. The provisions of section 9884-4, General Code, prohibiting games of chance or gambling at county agricultural fairs, do not apply to pari-mutuel or the certificate form of wagering on horse races conducted under the provisions of the so-called "Horse Racing Act," as enacted by the 90th General Assembly in Amended Substitute Senate Bill No. 372.

Respectfully,

JOHN W. BRICKER,
Attorney General.