

2138

1. AGRICULTURAL SOCIETY—UNDER GENERAL LAWS OF OHIO CAN USE ITS PROPERTY FOR AUTOMOBILE RACING—OPINIONS ATTORNEY GENERAL, 1934, PAGE 449, AFFIRMED AND FOLLOWED.
2. CITY ORDINANCE—PROHIBITS AUTOMOBILE RACING WITHIN ITS BORDERS—ORDINANCE IS TO PROTECT SAFETY OF ITS CITIZENS—VALID EXERCISE OF POLICE POWER—ARTICLE XVIII, SECTION 3, CONSTITUTION OF OHIO—WHERE LANDS OF AGRICULTURAL SOCIETY LIE WITHIN CONFINES OF CITY, SOCIETY MUST ABIDE BY ORDINANCE.

SYLLABUS:

1. Under the general laws of Ohio an agricultural society can use its property for automobile racing (see Opinions of the Attorney General for 1934, No. 2488, p. 449, affirmed and followed).

2. When a city ordinance prohibits automobile racing within its borders, and the lands of such agricultural society lie within the confines of the city, such ordinance being designed to protect the safety of its citizens, is a valid exercise of the city's police power as provided for in Section 3 of Article XVIII of the Ohio Constitution, and therefore, the agricultural society must abide by this city ordinance.

Columbus, Ohio, August 7, 1950

Hon. Richard P. Faulkner, Prosecuting Attorney
Champaign County, Urbana, Ohio

Dear Sir :

Your request for my opinion reads as follows :

“A situation has arisen between the city of Urbana and the Champaign County Agricultural Society concerning which we desire an opinion.

The Champaign County Agricultural Society is an association not for profit, operating under the statutes covering agricultural societies, and holding real estate composed of the Champaign County Fairgrounds. The fairgrounds are located within the corporate limits of the City of Urbana.

The question we desire an opinion on is whether or not the City of Urbana has the right and authority to pass an ordinance prohibiting automobile racing on the track of the Champaign County Fairgrounds.”

Agricultural societies are provided for by Section 9880 et seq., General Code. It is therefore necessary to look to the statutes under which these societies are organized to ascertain their rights, powers and duties.

The only limitation placed on the use to which agricultural societies may put land which they own or control, is found in Section 9884-4, General Code, which reads in part as follows :

“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. * * *”

The implied authority of an agricultural society to lease out land under its control is found in Section 9906, General Code, which reads in part, as follows :

“* * * Moneys realized by the society in holding county fairs and derived from renting or leasing the grounds and buildings, or portions thereof, in the conduct of fairs or otherwise, over and above the necessary expenses thereof, shall be paid into the county treasury of the society, * * *”

In 1934 Opinions of the Attorney General No. 2488, page 449, at page 450, the then Attorney General stated :

“There is no provision in the chapter of the General Code relating to agricultural societies which prevents in any way the leasing or using of any grounds owned, controlled or used by a county agricultural society, for the racing of horses.”

While the above quoted statement refers to horse racing, it is my opinion that it would also apply to automobile racing.

Having determined that under state law agricultural societies are permitted to use their grounds for automobile racing, the problem of whether a municipality, in this instance, the City of Urbana may prohibit such automobile racing remains to be considered.

Authority of a municipality to forbid that which the State permits, is to be found in *Carnabuci v. City of Norwalk*, 70 O. App. 429, 46 N. E. 2d 773 (1942). Here a zoning ordinance was adopted by the city in 1938, which set aside certain areas for residential purposes. The defendant, in 1941, applied to the Liquor Department for a permit to manufacture wine, and in his request set forth the zoning regulations of the city. The permit was granted. Thus, the city was forbidding that which the state authorized. The court of appeals split two to one, the majority stating :

“The power and authority of the city to enact the ordinance is at least commensurate with that of the Department of Liquor Control to issue the permit, and it and the city must take cognizance of the lawful exercise of the power and authority possessed by the other.”

The dissenting judge stated that there was a “direct conflict” and therefore the ordinance must fall.

The specific authority of the City of Urbana to pass such an ordinance as here under consideration is to be found in Section 3 of Article XVIII of the Ohio Constitution, which reads as follows :

“Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws.”

It is a fundamental legal principle that rights in property are subject to reasonable limitations by governmental authorities which are essential

to public health, peace, safety and good order of the community. *Dennis v. Village of Tonka Bay*, 64 Fed. Supp. 214, affirmed 156 Fed. 2d, 672. Therefore, while the owner of property may use his property as he sees fit, this right is subject to the restriction that the property by its use is not a nuisance, hazard, or is used in violation of zoning ordinances or regulatory law within the police power of the governmental authority. *Davis v. City of Mobile*, 245 Ala. 80, 16 So. 2d, 1.

It may thus be stated that every citizen holds his property subject to the valid exercise of the "police power" and where there is a conflict between the owner's interests and those of society, the owner must subordinate his private rights to those of the public.

There is nothing in your request to indicate that the city ordinance here under consideration is not a valid exercise of the city's police power, therefore, the ordinance on its face, being a valid exercise of the city's police power the agricultural society's interest must be subordinated to the interests of the city and the safety of its citizens.

It is therefore my opinion that while under the general laws of Ohio an agricultural society could use its property for automobile racing, (see Opinions of the Attorney General for 1934, No. 2488, p. 449—affirmed and followed,) when a city ordinance prohibits automobile racing within its borders and the lands of such agricultural society lie within the confines of the city, such ordinance being designed to protect the safety of its citizens, it is a valid exercise of the city's police power as provided for in Section 3 of Article XVIII of the Ohio Constitution, and therefore, the agricultural society must abide by this city ordinance.

Respectfully,

HERBERT S. DUFFY,
Attorney General.