

3286

A BOARD OF TOWNSHIP TRUSTEES LACK THE AUTHORITY TO PROHIBIT BELL RINGING OR LOUD-SPEAKER VENDING TRUCKS SELLING ICE CREAM AND POPSICLES FROM TOWNSHIP STREETS—HOWEVER, DRIVERS OF SUCH VEHICLES MAY BE APPREHENDED ON WARRANTS OF DISTURBING THE PEACE—CHAPTER 509, REVISED CODE—§2923.41, REVISED CODE.

SYLLABUS :

A board of township trustees lacks authority to prohibit the operation of vending trucks sounding bells or loud-speakers, from which ice cream and popsicles are sold on township streets and highways; however, under Section 509.10, Revised Code, a township constable has the authority to apprehend, on view or warrant, operators of such trucks which are in violation of the disturbance of the peace provisions of Section 2923.41, Revised Code.

Columbus, Ohio, September 19, 1962

Hon. Thomas A. Beil, Prosecuting Attorney
Mahoning County, Youngstown, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"We have had requests from two (2) townships in this County concerning whether the township trustees can regulate ice cream and popsicle vending trucks on the streets of the townships. Naturally, this problem is occasioned by complaints of bells, loud speakers and debris, etc. and also, that the parents are concerned about the danger of children dashing into the street when these vehicles approach.

"Your opinion as to whether township trustees can regulate such business endeavors and if so, on what basis, would be appreciated by all parties concerned."

Townships possess only such powers and privileges as may be delegated to or conferred upon them by statute. 52 Ohio Jurisprudence (2d), Townships, Section 6, page 270. It was held in *Yorkawitz v. Board of Trustees of Columbia Township*, 166 Ohio St., 349, that a township may not by the adoption of a zoning regulation prohibit the establishment of airports in the unincorporated territory of a township by declaring airports a nuisance *per se*, and thus circumvent prior statutes whereby promotion of aviation and establishment of airports is declared a policy of the state. See also, Opinion No. 1232, Opinions of the Attorney General for 1957, page 638; Opinion No. 2493; Opinions of the Attorney General for 1961, issued August 29, 1961.

It is quite clear that with the exception of the power to adopt reasonable and lawful zoning regulations, townships do not possess any legislative powers. And it is equally clear, I think, that an attempt to regulate ice cream and popsicle vending trucks by the adoption of a zoning regulation would be foredoomed to failure, for the reason that zoning regulations deal with uses of land and structures thereon, and apparently cannot be extended so as to include moving vehicles.

While a township is without authority to regulate the described vending trucks directly, there is, I believe, an indirect method which might

be pursued in an endeavor to minimize, if not abolish, the dangers to small children about which parents are concerned in connection with the operation of vending trucks on the public streets and highways of the township.

Chapter 509., Revised Code, which deals with township constables, contains Section 509.10, which reads:

“Each constable shall apprehend, on view or warrant, and bring to justice, all felons, disturbers, and violators of the criminal laws of this state, and shall suppress all riots, affrays, and unlawful assemblies which come to his knowledge, *and shall generally keep the peace in his township.*

(Emphasis added)

It is to be further noted that Section 2923.41, Revised Code, provides:

“No person shall, after a request to desist, make, continue or cause to be made *by the use of any horn, bell, radio, loud speaker, or by the operation of any instrument or device*, any unreasonably loud, disturbing, and unnecessary noise or noises of such a character, intensity and duration as to *disturb the peace and quiet of the community* or to be detrimental to the life and health of any individual, and no person shall willfully conduct himself in a noisy, boisterous or other disorderly manner by either words or acts which disturb the good order and quiet of the community. Any person so offending shall be fined for each offense not less than ten dollars nor more than fifty dollars.”

(Emphasis added)

I thus conclude and you are advised that a board of township trustees lacks authority to prohibit the operation of vending trucks sounding bells or loud-speakers, from which ice cream and popsicles are sold on township streets and highways; however, under Section 509.10, Revised Code, a township constable has the authority to apprehend, on view or warrant, operators of such trucks which are in violation of the disturbance of the peace provisions of Section 2923.41, Revised Code.

Respectfully,

MARK McELROY

Attorney General