

of such lands was made, to the effect that said lands "be cultivated by the state as a Forestry, Botanic and Wild Animal Reserve Park and Experiment Station" to be called "The John Bryan Natural History Reserve."

Respectfully,

EDWARD C. TURNER,

Attorney General.

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MOTION PICTURES—HOUSE BILL No. 367 PROBABLY UNCONSTITUTIONAL.

SYLLABUS:

The motion picture business is not so affected with the public interest as to justify legislation as proposed in House Bill No. 367 regulating the making of contracts between producers or distributors and exhibitors.

COLUMBUS, OHIO, April 13, 1927.

HON. HARRY BALL, *Chairman, Judiciary Committee, Ohio House of Representatives, Columbus, Ohio.*

DEAR SIR:—I am in receipt of your communication in which you request my opinion as to the constitutionality of House Bill No. 367.

This bill is entitled:

"A bill to prevent unfair competition in the sale, leasing and distribution of motion picture films."

and reads as follows:

"Be it enacted by the General Assembly of the State of Ohio:

Section 1. That it shall hereafter be unlawful for any person, firm or corporation or their or its agents, engaged in producing, selling, leasing or renting motion picture films, to require, request or compel by threats of refusing to sell, rent or lease such motion picture films to any owner or lessee of a motion picture theater within this state, or to compel such owner or lessee by such threats to buy, take or lease more motion picture films than is desired by such motion picture owner or lessee.

Section 2. That it shall be unlawful for any person, firm or corporation engaged in the production, lease or sale of motion pictures to require, coerce or compel any person, firm or corporation owning or operating any motion picture theater within this state, to submit any matter or question which may be in dispute or in controversy between such motion picture producer and such motion picture theater owner or operator to submit to arbitration, any questions which in any way abridges the right of such motion picture owner or operator to the right of a trial by jury or a court or which in any way deprives such motion picture theater owner or operator of his or her right to have such question or matter in controversy tried and adjudicated by any court of competent jurisdiction.

Section 3. Nothing contained in this act shall be construed to apply to any contract, agreement or understanding which shall have been entered into prior to the taking effect of this act.

Section 4. Any person, firm or corporation who shall violate any of the provisions of this act, shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be fined in any sum not to exceed two hundred and fifty dollars and each and every day that violation continues, shall be deemed to constitute a separate and distinct offense."

This act seeks to regulate the making of contracts between persons, firms and corporations engaged in producing, selling, leasing or renting motion picture films and the owners or lessees of motion picture theaters.

The act further provides that any person who violates the provisions of the statute is to be deemed guilty of a misdemeanor and subject to a fine.

Except where the business is affected with a public interest, any legislation which seeks to regulate or limit persons who are engaged in a lawful business in the making of contracts is an invasion of private rights and contrary to the provisions of the Constitution of the United States and the Constitution of Ohio.

The Supreme Court of the United States in the case of *Tyson and Brother vs. J. H. Banton*, decided February 28, 1927, (reported in the United States Supreme Court Advance Opinions of March 15, 1927) held that places of amusement or entertainment are not public utilities or so affected with public interest as to justify legislative regulation of their charges. This is the ticket broker case wherein the court had under consideration the constitutionality of a law of the state of New York which required that brokers of theater tickets must have a license and that they should not resell any ticket or evidence of the right of entry to any theater, place of amusement or entertainment or other place where public exhibitions, games, contests or performances are given at a price in excess of fifty cents in advance of the price printed on the face of such ticket or other evidence of the right of entry. The court after referring to the provisions of the Federal Constitution which provides that no state shall pass any law which deprives any person of life, liberty or property without due process of law, and reviewing the cases, says in substance that a theater is a private enterprise which in its relation to the public differs obviously and widely both in character and degree from grain elevators, stockyards, insurance companies and public utilities and that the interest of the public in theaters and other places of entertainment may be more nearly and with better reason assimilated to the like interest in provision stores and markets and in the rental of houses and apartments for residence purposes although in importance it falls below such an interest in the proportion that food and shelter are of more moment than amusement or instruction. In the course of this opinion Mr. Justice Sutherland said:

"A business is not affected with a public interest merely because it is large or because the public are warranted in having a feeling of concern in respect of its maintenance. Nor is the interest meant such as arises from the mere fact that the public derives benefit, accommodation, ease or enjoyment from the existence or operation of the business; and while the word has not always been limited narrowly as strictly denoting 'a right,' that synonym more nearly than any other expresses the sense in which it is to be understood."

I am therefore of the opinion that the provisions of House Bill No. 367 are such as would unduly interfere with the rights of property and therefore would be contrary to the provisions of the Fourteenth Amendment to the Constitution of the United States and of Section 1 of Article I of the Constitution of Ohio.

Respectfully,

EDWARD C. TURNER,

Attorney General.