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the payment of premiums on health and accident insurance policies in general, since they may contain provisions for death benefits under life policies.

Section 1, Chapter 59, Acts of 1945, Burns' Statutes, Section 39-4221, provides that when group life insurance policies are issued to members of a labor union, the *Union* shall be deemed the "employer" for the purposes of this Act, thereby authorizing group policies through a labor union.

The history of legislation in Indiana would indicate that the main purpose of the restrictions against assignment of employees' wages has been for the protection of the employee and his family. It appears that the eleven (11) purposes set out in the statute for which wages may be assigned by employees and withheld by employers, are for the benefit of the employees. With such reasoning in mind, it is apparent that the proposed assignment is within the purpose of the Act and comes under one or more of sub-sections 1, 8 and 11.

Therefore, it is my opinion that the legislation referred to does not prohibit the assignment of wages and the withholding thereof for the payment of premiums on the policies of insurance contemplated by the members of the union. That the individual members may constitute the union as their agent to procure the insurance and the employer may withhold wages or a portion thereof for such purpose, upon the consent of the employees. This may be done within the authority given either by sub-section eight (8) or by sub-section eleven (11).

WOL:vb:aa

OFFICIAL OPINION NO. 69

July 26, 1949.

Mr. Carl Tyner,
Secretary Indiana State Fair Board,
Indianapolis, Indiana.

Dear Sir:

This is in further answer to your letter of July 19, 1949 in which you requested an opinion with respect to the power of

the City of Indianapolis through its Zoning Board in the use of certain real estate for parking purposes. You state that the Fair Board has entered into a Contract for the lease of ground lying south of 46th Street and east of the Monon Railway situated in the corporate limits of the City of Indianapolis and that you have also taken an option for the purchase of said real estate which is to become a part of the real estate to be used by the State Fair. By the request of certain officials of the City of Indianapolis I have made a further study of the question about which you ask.

The answer to this request has involved a study of decisions as to the power and authority of a municipal corporation upon which is conferred certain powers by the General Assembly with respect to zoning and how far this power may override the powers of the State or one of its official bodies in the discharge of its duty under the laws. The State of Indiana is a sovereign State and possesses sovereign powers so far as internal matters are concerned within the limits of the State.

Central Union Telephone Company v. Indianapolis Telephone Company, (1920), 139 Ind. 210.

There are several Indiana decisions as to the reasonableness and applicability of the Indiana Zoning ordinance, under varying conditions, chief among these is:

City of South Bend v. Markle 215 Ind. 84.

where the Indiana decisions are collated and cited, but there is a paucity of decisions on the direct question of the conflict between a board exercising power of sovereignty and the acts of a municipal corporation acting within the purview of its authority conferred upon it by law. There seems to be no authority on the direct question in the State of Indiana. This may be due to the fact that municipal zoning is rather recent in its origin, while other states have had zoning ordinances for a longer period of time.

It might be well to consider that the purpose of a zoning ordinance set out in our statute, Burns' 48-2301, is as follows:

"In order to conserve the value of property in the City and to the end that adequate light, air, con-

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venience of access, and safety from fire and other danger may be secured; that congestion in the public streets may be lessened or avoided, and that the public health, safety, comfort, morals, convenience, and general welfare may otherwise be promoted, * * *."

This purpose seems to be expressed in the zoning ordinances of other states and is the basis of action by a municipal corporation, and where a zoning ordinance does not reasonably meet these requirements the Courts have held them invalid.

One of the first cases arose in Cleveland, Ohio where a certain district was zoned for residential purposes and it was desired to construct a Jewish Orphanage within the limits of the district. The zoning board refused to grant a variation and its order was overruled by the Court on the theory that the restriction was not a valid and reasonable restriction.

The Village of University Heights v. Cleveland
Jewish Orphans Home, 20 Fed. (2) 743.
A. L. R. 54, page 1008.

Many other cases of similar character are annotated in the A. L. R. 54. The United States Supreme Court has upheld these decisions holding the ordinances invalid if not reasonable within the purview of the statute. Many of these decisions enumerated, universally hold that the exclusion of buildings devoted to business, trade, etc., from residential districts must bear a rational relationship to the health and safety of the community. Some other grounds are enumerated, namely; promotion of the health and security from injury of children and others by separating dwelling houses from territory devoted to trade and industry; suppression and prevention of disorder; facilitating the extinguishment of fires, and the enforcement of street traffic and other general welfare ordinances. It is held where a zoning ordinance does not contribute to one or more of these conditions that such an ordinance would be invalid and unconstitutional. In passing upon these various questions courts have held that it is proper to consider the location of the lands embraced within the district, its location in the community, whether a densely populated residential section or whether it is surrounded by business or industry, the character of the use of the particular

land, of all questions of similar character which bear upon the reasonableness of the zoning ordinances, and whether or not it is an unlawful and unconstitutional encroachment upon the rights of property owners.

However, the question here presents a different rule of law because it would be an attempt to interfere with the discharge of the duties of a department exercising the sovereign power of the State. This question appeared in the case of Decatur Park District v. Becker 368 Ill. 442 (14 N. E. (2) 496). In that case the Court held that the Legislature did not empower a city by zoning ordinances to exclude parks from residential districts. In the decision the Court referred to the fact where two State statutes seem to confer conflicting authority that they should both be construed so that the zoning ordinances would be effective in its own field and the park board have authority to operate in its field. See also: Madison v. Houghton, 182 Minn. 72 (233 N. W. 83).

Carrying the rule still further in the development of the law it was held in the State of Ohio that where there has been a zoning ordinance restricting the use of lots exclusively for residential purposes such restriction can not be construed as applying to the State or its agencies vested with the right of eminent domain.

Norfolk and Western Railway v. Gayle, 119 Ohio State 110 (162 N. E. 385).

The rule was announced in Doan v. Cleveland Short Line Company, 112 N. E. 505. The basis of these decisions is predicated upon the fact that where the power of eminent domain is given and the land in question was acquired under the right of eminent domain or could have been so acquired that that right excludes the municipal corporation from placing any restrictions upon the use of the land.

Neither does a zoning ordinance apply to a Federal Housing Project because it would impair the sovereign power of the United States.

Tim v. Longbranch, New Jersey, 171 A. L. R. 320.

Carrying this rule of law to the case in question we find that the State Fair Board comes within the exceptions noted

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above. It is by statute given authority to acquire land under the eminent domain statute.

Burns' 3-1721.

To make the case stronger against any restriction by a municipal corporation in its zoning ordinances restricting the power of the State Fair Board, it is provided as follows:

"The Indiana State Fair Board shall have power to hold state fairs at such times and places as it may deem proper and expedient and have the entire control of the same, fixing the amounts of various premiums offered embracing the various products of farm, field, garden, animal husbandry, or other industries relating to agriculture, including any article of science and art as it may deem expedient and proper. Said board is authorized to receive contributions and donations which may be made for the furtherance of its purposes. Said board shall also have *complete control* of said state fair grounds, the buildings and other equipment thereon and *all property and property rights* held for the furtherance of its purposes, and it is authorized to *purchase such other property*, equipment, and material and erect such other buildings or make improvements thereof, as may be deemed necessary to the proper control of the exhibitions held under its direction and to rent buildings or space therein, or space on said grounds for exhibitions during fairs and for such other purposes at other times as the board may determine; * * *." (Our emphasis.)

All property acquired by the State of Indiana from the Indiana State Board of Agriculture by deed executed pursuant to the provisions of Chapter 77, Acts 1921, with any additions to such property which has been or may hereafter be acquired by the State as incident to the management of such property, shall be held by the State in trust for the uses and purposes as defined in the deed of conveyance of said Indiana State Board of Agriculture, it being the legislative intent that said property be held by the State as trustee in the

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interest of agriculture and allied industries as expressed in said deed of conveyance.

Burns' Replacement, 15-226.

It is also provided:

"No municipal corporation or other authority shall have the right to enter upon any of the lands under the control of said board, for the purpose of laying out or opening any street, alley, or highway, on or over such lands, or for the construction of any drain, sewer, or other improvements without first obtaining the written consent of said board, nor shall any municipal corporation or other authority have the right to create any lien against any of said real estate or any obligation against said board for any drains, sewer, or other public improvement except for paving of any street adjacent to lands under the control of said board without first obtaining the written consent of such board."

(Our emphasis.)

In conclusion, taking into consideration the decisions of courts of last resort in other states as to the validity of zoning ordinances which restrict the State in the exercise of its sovereign authority and the restrictions applying to corporations having the power of eminent domain, and considering also the restrictions in the statutes of Indiana against interference with the operations of the State Fair Board, and the power and authority conferred by statute on this department, I am of the opinion that the municipal zoning ordinance would be invalid if it attempts to restrict the use of lands owned or controlled by such Board in the discharge of its duty under the law; and that it would be an invalid attempt to restrict the sovereign power of the State because the State Fair Board is a branch and department of the State.

CHJ:vb:aa