BOARD OF AGRICULTURE: Relation of Board to State Fair property.

Powers of Board.

STATE FAIR: Relation of same to Indiana Board of Agriculture.

February 10, 1943.

Hon. Paul C. Moffett,
President, Indiana State Fair Board,
Indianapolis, Indiana.

Dear Sir:

I have before me your request for an official opinion in answer to a group of questions relative to the State Fair Board. The first of these questions is:

"Is the fair grounds in the same category as other state property since the State of Indiana holds possession as a trustee and with the Board of Agriculture (State Fair Board) as active agents?"

In this connection you state that there is pending before the Legislature a bill which seeks to restore to the Indiana State Fair Board the control of the Indiana State Fair and the Indiana State Fair Grounds as nearly as practical according to the laws of 1921 and 1923 relating thereto.

The 1921 Act referred to by you was under consideration by the Supreme Court of Indiana in the case of Scott v. Indiana Board of Agriculture, 192 Ind. 311. In that case the history of the Fair Board and the basis for the change made in March, 1921 by the Legislature is quite fully set out.

See Scott v. Indiana Board of Agriculture, 192 Ind. 311, beginning on page 312, to page 318.

Section 5 of the 1921 Act authorizes the Governor on behalf of the State of Indiana to take from the State Board of Agriculture, a private corporation, a deed of conveyance and bill of sale, which conveyance and bill of sale should place in the name of the State of Indiana a fee simple title to the real estate belonging to said Board known as the Indiana State Fair Grounds. It was further provided that the conveyance
and the transfer of the property should be made subject to valid outstanding mortgages or other liens and other obligations of said Indiana State Board of Agriculture and on condition that the said grantee named in such conveyance “assume the payment thereof.” Section 9 of that Act authorized the Indiana Board of Agriculture, with the consent of the Governor, to borrow money and make and issue bonds secured by mortgage on the property described in the deed to an amount not exceeding $1,000,000 for the purpose of securing funds with which to pay and liquidate all debts and obligations of any kind and every kind outstanding against the Indiana State Board of Agriculture at the time of the transfer of the property to the State. Section 10 of the Act provided that, among other things:

“In order to create a fund with which to pay premiums and to meet interest obligations on any outstanding bond or other evidences of indebtedness issued or assumed by said Board as well as to provide a contingent sinking fund for the payment of any such obligations, there is hereby levied an annual tax * * *.”

No question apparently was raised in this case as to the method of appointment of the various members of the Board, but Sections 5, 9, and 10 of the Act came under very close scrutiny of the Court on the subject of their constitutionality upon other grounds. The members of the Court were quite divided upon the subject, but the final result was a per curia mandate to the effect that Section 10 is unconstitutional and void in toto; that certain parts of Sections 9 and also 5 are also unconstituional.

See Scott v. Indiana Board of Agriculture, supra, pages 329 and 330.

As the result of this decision the 1923 Act referred to was passed, having for its purpose the clear statement of the exact status of the State with reference to this property. Section 1 of that Act provided in part as follows:

“The property acquired by the State of Indiana from the Indiana State Board of Agriculture by deed
duly executed pursuant to the provisions of an act of
March 3, 1921 * * * with any additions to such prop-
erty which has been or may hereafter be acquired by
the state as incident to the management of such prop-
erty shall be held by the state in trust for the uses
and purposes as defined in the deed of conveyance from
said Indiana State Board of Agriculture, it being the
legislative intent that said property be held by the
state as trustee for the interest of agriculture and
allied industries as expressed in the said instrument
of conveyance.”

Section 2 of said Act of 1923 provided, among other things,
that:

“The Indiana Board of Agriculture * * * the active
agent of the state as trustee, in the control and man-
agement of said property and the conduct of the
business for which it has been set apart, be and hereby
is authorized and empowered to borrow money and
to make and issue bonds * * * to an amount not
exceeding one million ($1,000,000) dollars for the
purpose of securing funds with which to pay and
liquidate any outstanding debts,” etc.

This Section also contained the Proviso:

“That the credit of the State in its sovereign capac-
ity shall not be pledged for the repayment of any
such bonds or other obligations,” etc.

I have examined both Acts carefully and I do not believe
the relation of the Board to the real estate involved is con-
tractual in the sense that it cannot be changed without vio-
lating contract rights. This Board, it is true, was originally
designated as the active agent of the state in the performance
of its obligation to carry out the trust imposed by the 1923
Act. Of necessity the state would have to act by some form
of agency, but in my opinion any form of agency thus created
and the power thereby involved would be executive or admin-
istrative in character, and if that is correct the case of State
v. Tucker, 218 Ind. 614, would apply and would place the
appointing power in the Governor. The trust involved in
this particular property is more limited than as to the other property owned by the State being limited to "the interests of agriculture and allied industries." But it seems to me that the same rule would apply as to appointing power as would apply in other cases.

The second question is as follows:

"Is removal of the right of active management of this property and control of the fair—whether for two weeks or a year, a violation of the State's obligation to hold annually a State Fair?"

I do not find in the statute anything which requires the state to hold an annual state fair. The provision on the subject is in Section 6 of the Act of 1921 referred to above which provides that:

"The Indiana Board of Agriculture 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 fair premiums offered, embracing the various products of farm, field, garden, animal husbandry and other industries related 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 by it 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, to fix and collect rentals for the same, to fix and collect entrance fees, admissions fees, and privilege fees, as may be deemed just and proper: Provided, however, That the board shall not permit any use of the grounds or buildings in a man-
ner prohibited by the laws of the State of Indiana, nor shall any obscene shows, fakirs, fortune tellers or games of chance be allowed on the grounds. The board shall have power to enlarge the scope and field of its activities, from time to time as it may deem to the advantage of agriculture and its kindred pursuits. Any and all laws in force and applicable to the Indiana state board of agriculture are to be applicable to the Indiana board of agriculture in so far as they are not in conflict with any of the provisions of this enactment.

Moreover, as already indicated, I do not think that the designation of agency contained in the 1923 Act is absolute in the sense that the Legislature is without power to change it. Your second question therefore is that the state's obligation, so far as I can find, is not absolute as to time or place for the holding of a state fair.

Your third question is as follows:

"In case the Fair operated at a loss during the two years before this law became effective is the State of Indiana liable?"

The answer is in the negative. The State of Indiana is not liable in its sovereign capacity for such a debt.

Sec. 5, Art. 10, Indiana Constitution.

Your fourth question is as follows:

"Does the present law violate the State's constitution by making the taxpayers ultimately liable for a possible loss in Fair operations?"

I think the question which is involved here is the question as to whether the holding of a State Fair can be considered as a public purpose. It seems to me that it is a public purpose and that its support may be provided for by taxation if necessary.
Your fifth question is as follows:

"Does the Conference of Agricultural Delegates have the right to nominate to the Governor candidates for the State Fair Board who shall be appointed by him to that position?"

This question is answered in my answer to your first question. I do not think there would be any objection, from the constitutional standpoint, however, if provision is made for recommendations to the Governor. But I do not think that the nomination of candidates from which the Governor is required to make his appointments would be valid.

State v. Tucker, 218 Ind. 614.

Your sixth question is as follows:

"Does the legislature have the right to prescribe qualifications for such board members including districts and business represented and who may be appointed by the Governor?"

In created Boards the Legislature in my opinion has the authority and power to fix the qualifications of members of such boards so long as its qualifications so fixed are not merely whimsical and without basis.

Your seventh question is as follows:

"Does the State Fair Board have the right to conduct livestock breed shows and other livestock and agricultural functions throughout the year under the present law to be continued till October 1, 1944?"

I am not quite sure that I get the significance of the language, "to be continued till October 1, 1944." Legislation of this type is subject to change except as the Board may be bound by valid contracts. However, it appears from the reading of Section 15-107 of June, 1942 Cumulative Pocket Supplement of Burns' Indiana Statutes Annotated, 1933, that the right to hold state fairs at such times and places as it may deem proper and expedient is at present given to this Board, subject to the approval of the Governor and the Lieutenant Governor. The provision requiring the approval
of the Lieutenant Governor is perhaps invalid under the Tucker case.

Your eighth question is:

"Does the State Fair Board have the right to hire their own Secretary-Treasurer and other office help and Superintendent of grounds subject to approval of the Governor?"

It seems to me that the Board would have the right to so hire its own Secretary-Treasurer and immediate office help to enable it to function as a Board, but, if I understand the case of Tucker v. State, *supra*, the Governor would have the right to appoint the Superintendent of grounds. Note the following from Tucker v. State, 218 Ind. 614 at page 681.

"* * * The legislature does not have general authority over the property of the state, and that it has such general authority has never elsewhere been asserted to our knowledge. The management of the state's property is an executive function. The General Assembly may legislate concerning the state's property, the courts may adjudicate concerning it, but the Governor, vested with the executive power, must manage the state's property. * * *"

GENERAL ASSEMBLY: Whether Chapter 130 of Acts of 1935 applies to "strip mining".

MINING: Whether Chapter 130 of Acts of 1935 applies to "strip mining".

February 10, 1943.

Mr. Timothy C. O'Connor, Member,
House of Representatives,
State of Indiana,
Indianapolis, Indiana.
My dear Mr. O'Connor:

This is in response to your request for an opinion as to whether the provisions of Chapter 130 of the Acts of 1935,