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trary to the purposes and intent of the Legislature, which passed Acts 1963, ch. 296, as a supplemental aid to Acts 1959, ch. 202, as amended, and not to destroy its intent and purposes.

In my opinion Acts 1963, ch. 296, was passed with the legislative intent and purpose to give school corporations a tool by which they may adjust their boundaries by annexation or disannexation of school corporation territory and by which a losing school corporation may add all of its territory to existing community school corporations which meet the minimum standards set by the State School Reorganization Commission. It may not be used by a losing school corporation to give so much of its territory to other school corporations as to leave itself a school corporation below the standards set by the Commission and to destroy the work of that Commission and the various county committees reorganizing Indiana schools under Acts 1959, ch. 202, as amended.

OFFICIAL OPINION NO. 23

May 27, 1968

CONTRACTS—STATUTES—Power of Alcoholic Beverage Commission to Enforce Fair Trade Agreements or Price Fixing Contracts.

Opinion Requested by Hon. Robert E. Mahowald, State Senator.

This is in response to your letter of April 23, 1968, in which you request an opinion answering the following question:

"Does the Alcoholic Beverage Commission, or for that matter the General Assembly, have the power to enforce
fair trade agreements, or does the only enforcement of such agreements lie in the individual’s right to bring a civil action for breach of the contract or tortious inducement of a breach of the contract?”

The Indiana Alcoholic Beverage Commission derives its power to regulate or prohibit the sales of alcoholic beverages within the State when such sales are being carried on in violation of the Indiana Fair Trade Act, Acts 1935, ch. 226, § 6, as last amended by Acts 1941, ch. 237, § 2, the same being Burns IND. STAT. ANN. § 12-402, which reads as follows:

“... (14) To regulate the mode and method of dealing in, and the transportation of alcoholic beverages, and prescribe the manner and method in which all books, invoices, receipts, papers and documents, orders and bills, used or relating to such traffic or transportation shall be kept and require the preservation thereof, and to inspect and examine, and require true copies and duplicates thereof to be made and furnished to the commission. The commission may in its discretion, by rule or regulation, prohibit or regulate the sale of alcoholic beverages within the state when the same is being carried on in violation of the Indiana Fair Trade Act....”

Pursuant to this section, the Commission promulgated Regulation 11, Rule 7, as found in Burns IND. ADMINISTRATIVE RULES AND REGULATIONS ANN. (§ 12-402)-83, which reads as follows:

“Wilfully or knowingly advertising, offering for resale or reselling any alcoholic beverage at less than the price stipulated in any contract or agreement entered into pursuant to the provisions of this regulation, whether the permittee so advertising, offering for resale or reselling is or is not a party to such contract, is unfair competition and a violation of this regulation.” Alcoholic Beverage Commission, Regulation 11, Rule 7, adopted March 20, 1950, filed April 25, 1950, effective June 1, 1950.
The foregoing Regulation is substantially similar to section 6 of Acts 1937, ch. 17, as found in Burns § 66-306, which reads as follows:

"Wilfully and knowingly advertising, offering for sale or selling any commodity at less than the price stipulated in any contract entered into pursuant to the provisions of this act, whether the person so advertising, offering for sale or selling is or is not a party to such contract, is unfair competition and is actionable at the suit of any person damaged thereby."

As can be seen from the above, Regulation 11, Rule 7, purports to apply the provisions of Burns § 60-306 to Alcoholic Beverage Permittees.

Burns § 66-306, supra, was declared to be unconstitutional in part in the case of Bissell Carpet Sweeper Co. v. Shane Co., 237 Ind. 188, 143 N.E. 2d 415 (1952). In that case the appellant sought to bind the appellee to price fixing contracts to which the parties were not privy and no evidence was presented to indicate that the appellee had tortiously induced a breach of such contracts between the appellant and others. The court held that it was proper for the General Assembly to except fair trade price fixing contracts from provisions of restraint of trade acts in the State of Indiana,

"It is within the power of the General Assembly to change the common law rule in Indiana, and to except fair trade price fixing by contracts between buyers and sellers from the various provisions of the restraint of trade acts of this state." 237 Ind. at 192, 143 N.E. 2d at 418.

and at p. 200, at 421, 422 of 143 N.E. 2d, the court held that:

"By the Fair Trade Act, the General Assembly has removed the ban of the common law, as well as the acts concerning restraints of trade and monopolies which prohibited vertical price fixing by agreements or contract between buyers and sellers, but he who seeks to take advantage of the Fair Trade Act will
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have to base his action on a breach of his contract, or a breach of contract made for his benefit, or on a tortious inducement of a breach of such a contract. This the complaint did not do, and the demurrer was properly sustained.”

Thus, the court has limited the application of the Fair Trade Act and specifically Burns § 66-306, supra. It is logical to conclude that Regulation 11, Rule 7, is likewise limited.

However, the section of Burns § 12-402, supra, and Regulation 11, Rule 7, promulgated pursuant thereto, do not give the Indiana Alcoholic Beverage Commission the power to enforce fair trade contracts even as limited by the Bissell case. The Bissell case does not discuss the power of an administrative agency to enforce fair trade contracts, but merely limits the situations wherein they can be enforced in civil courts. The Commission does not have the power to enforce fair trade contracts as limited by the Bissell case, but the Commission may find as a matter of fact that the Indiana Fair Trade Act as limited by the Bissell case has been violated and may in its discretion prohibit or regulate the sale of alcoholic beverages done in violation of the Indiana Fair Trade Act.

Likewise, the General Assembly is not the proper forum for the enforcement of fair trade contracts, the forum properly being civil courts of competent jurisdiction.