

ILLINOIS POLLUTION CONTROL BOARD
February 16, 1995

RODNEY B. NELSON, M.D.,)
)
Complainant,)
)
v.) PCB 94-247
) (Enforcement - Noise)
KANE COUNTY FOREST PRESERVE,)
JACK COOK¹, CHAIRMAN and)
KANE COUNTY COUGARS, WILLIAM)
LARSEN, GENERAL MANAGER,)
)
Respondents.)

ORDER OF THE BOARD (by R.C. Flemal):

The instant matter is before the Board pursuant to Board order of December 14, 1994 requesting the parties to address whether the complained of activity is an "organized amateur or professional sporting activity" and whether the claim alleges violations of the Act which fall within the Board's purview.

On January 17, 1995, Kane County Forest Preserve District (Forest Preserve) filed a Memorandum in Support of Application of Sporting Activities Exemption. On January 23, 1995 Rodney Nelson, M.D. (Nelson), filed a Brief in Response to Board Order of December 14, 1994. On January 24, 1995 Nelson filed a Response to Kane County Forest Preserve's Memorandum in Support of Sporting Activities Exemption to the Case at Hand.² The Board notes there has been no filing by the Kane County Cougars, William Larsen, General Manager, in response to Board order of December 14, 1994. The initial complaint was filed on September 9, 1994 by Nelson, alleging that fireworks displays at the Kane County Cougar's baseball games emit noise in violation of Section 23 of the Environmental Protection Act (Act) (415 ILCS 5/23 (1994)).

¹ According to the Kane County Forest Preserve, in a document filed with the Board on January 18, 1995, Jack Cook has replaced Bradley Sauer as Chairman of the Kane County Forest Preserve District. The Kane County Forest Preserve District accordingly requests that Mr. Cook be substituted for Mr. Sauer Chairman in this proceeding. The Board today makes that substitution.

² Forest Preserve's brief will be cited as "Resp. at ____."; Nelson's brief will be cited as "Pet. at ____."

Section 25 of the Act places restrictions on the Board's ability to hear noise violations proceedings involving certain sporting activities:

No Board standards for monitoring noise or regulations prescribing limitations on noise emissions shall apply to any organized or amateur or professional sporting activity except as otherwise provided for in this Section. (415 ILCS 5/25 (1992).)

Section 3.25 of the Act, as amended in P.A. 84-1308, defines "Organized Amateur or Professional Sporting Activity" as:

[a]n activity or event carried out at a facility by persons who engaged in that activity as a business or for education, charity or entertainment for the general public, including all necessary actions and activities associated with such an activity. This definition includes, but is not limited to, (i) rifle and pistol ranges, licensed shooting preserves, and skeet, trap or shooting sports clubs in existence prior to January 1, 1994, (ii) public hunting areas operated by a governmental entity, (iii) organized motor sports, and (iv) sporting events organized or controlled by school districts, units of local government, state agencies, colleges, universities, or professional sports clubs offering exhibitions to the public. (415 ILCS 5/3.25 (1992).)

Both parties agree that the Kane County Cougars' (Cougars') baseball games are an organized sporting activity. (Resp. at 4; Pet. at 3.) Therefore, the Cougars' baseball games are exempt from the noise violation standards pursuant to Section 25. The sole issue is whether the fireworks displays at the Cougars' baseball games are also exempt and therefore not within the Board's jurisdiction.

PARTY BRIEFS

Nelson argues that "fireworks displays are not 'organized amateur or professional sporting activity'". (Pet. at 3.) Nelson cites to the definitions of "firework" and "sport" to show that fireworks displays are not part of the usually accepted meaning of sport, and hence are not exempt as an "organized amateur or professional sporting activity".

Among other matters Nelson claims that the "fireworks displays are neither associated with the baseball game, nor are they necessary to them". (Pet. at 3.) Nelson asserts that fireworks are not described in the rules of baseball, often come before or after the actual baseball game, and do not fit in the

common definition of "necessary" with regards to a baseball game. (Pet. at 4.) Nelson claims that the legislature included the word "necessary" to restrict the types of "associated actions and activities". (Pet. at 4.)³

The Forest Preserve contends that the fireworks displays are activities directly associated with an organized professional sporting activity and hence exempt under Section 25. The Forest Preserve cites Hinsdale Golf Club v. Kochanski to show the intent of the legislature to enlarge the types of activities excluded from the Board's jurisdiction under Section 25. (555 N.E.2d 31, Ill.App.2d 31 (1990).) The Forest Preserve also cites Fore v. Midstate Kart Club (PCB 93-171, Dec. 16, 1993) in which the Board examined the definition of "organized amateur or professional sporting activities" and found it is not limited to necessary activities but rather includes necessary activities. (Resp. at 3.)

DISCUSSION

The Board must today ascertain whether fireworks at the Cougars' baseball games are included in the "organized amateur or professional sporting activity" exemption of Section 25. The Board has reviewed and given consideration to all of the arguments presented by the parties. Based on this analysis, the Board observes that the fireworks displays themselves are not explicitly exempt from the Board's noise violation standards. However, the Board's examination of the role of fireworks during a professional baseball game does not stop at a cursory look at the statutory definition of Section 3.25.

"Organized amateur or professional sporting activity" is defined at Section 3.25 as "[a]n activity or event carried out at a facility by persons who engaged in that activity as a business or for education, charity or entertainment for the general public, including all necessary actions and activities associated with such an activity." The Board does not intend to dissect this definition whereby giving independent meaning to a particular word without regard for the activity as a whole. Instead, the Board is concerned with interpreting Section 3.25 to give force to the legislative intent of the statute as a whole. "A court's function in interpreting statutory provisions is to

³ Nelson additionally alleges that the Board is not prohibited from hearing this matter under Section 25 because the Board has independent regulatory authority under 35 Ill. Adm. Code 900.102. The Board does not accept this argument. The Board can give itself no authority that a statute would deny it; 35 Ill. Adm. Code 900.102 is a Board rule.

ascertain and give effect to the legislative intent underlying the statute; thus, the court must look at the statute as a whole, taking into consideration its nature, its purposes and the evil the statute was intended to remedy." (Hinsdale Golf Club v. Kochanski, 555 N.E.2d 31, Ill.App.2d 31, 33 (1990); Rodgers v. Department of Employment Security, 186 Ill.App.3d 194, 198, 134 Ill.Dec. 168, 542 N.E.2d 168 (1989).) The General Assembly clearly stated the purpose of Title VI would be to "prevent noise which creates a public nuisance". (ILCS 5/23.) The Board finds that fireworks displays at the Kane County Cougars baseball games were not the types of evil the statute was intended to remedy.

Moreover, an organized baseball game is more than simply players on a field with a bat and ball, it is an event. Organized baseball games are also aura, pageant, and spectacle. Organized baseball games are family fun; they are entertainment. Organized baseball games are cheers, hot dogs, pennants, announcers, baseball caps, the national anthem, and even fireworks. This Board will not presume to dissect away any of this spirit of an organized professional baseball game.

The Board has previously interpreted the definition of "organized amateur or professional sporting activities" and held it is not limited to necessary activities but rather includes necessary activities. Fore v. Midstate Kart Club (PCB 93-171, Dec. 16, 1993) In interpreting this definition broadly, the Board has given effect to the purpose of the exemption.

The legislature has twice enlarged the type of activities excluded from the Board's jurisdiction relating to Section 25, specifically Public Act 82-654 and Public Act 88-598. Prior to the current usage of "organized amateur or professional sporting activity", Section 25 exempted only sanctioned sporting events. The Legislature amended Section 25 in Public Act 82-654 to enlarge the exemption to cover "any organized amateur or professional sporting activity". (House of Representatives Transcription Debate, 82nd General Assembly, 47th Legislative Day, May 20, 1981). Reading the history of Section 25 and its present language, the legislative intent appears to be to further limit this type of noise-related case which could be brought before the Board's jurisdiction. Neither the appellate court nor the legislature has attempted to narrow the organized amateur or professional sporting activity exemption in Section 25 and the Board will not begin this process.

CONCLUSION

The Board concludes that the fireworks displays at the Kane County Cougars baseball games are included in the definition of an "organized amateur or professional sporting activity" to entertain the public as defined in Section 3.25 of the Act and

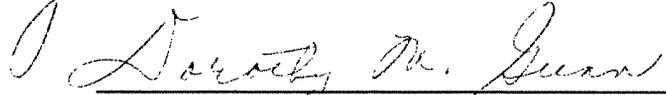
are therefore exempt from the Board noise regulations under Section 25 of the Act. Therefore, the Board does not have jurisdiction and accordingly dismisses this matter.

This docket is hereby closed.

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act (415 ILCS 5/41 (1992)) provides for the appeal of final Board orders within 35 days of the date of service of this order. The Rules of the Supreme Court of Illinois establish filing requirements. (See also 35 Ill.Adm.Code 101.246 "Motions for Reconsideration".)

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 16th day of February, 1995, by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board