

ILLINOIS POLLUTION CONTROL BOARD  
May 9, 1991

FRANKLIN D.R. & RUTH JEAN VICKERS )  
 )  
Complainants, )  
 )  
v. ) PCB 91-42  
 ) (Enforcement)  
 )  
VILLAGE OF MILLSTADT, )  
 )  
Respondent. )

ORDER OF THE BOARD (by J.C. Marlin):

The complaint in this matter was filed March 11, 1991 by Franklin and Ruth Vickers ("Vickers") against the Village of Millstadt ("Village") alleging violation of the Illinois Environmental Protection Act ("Act") and Board noise regulations caused by the use of an electronic siren. On March 19, 1991 the Village filed a motion to extend the time to file a response to the complaint. The Board issued an Order dated March 28, 1991 granting the Village the additional time requested. The Board received the Village's filing on April 19, 1991. The Board construes the filing as a motion to dismiss the action on the grounds that it is frivolous. The Vickers filed a reply on April 25, 1991.

In the Village's motion for extension of time the Village questioned whether legal limits on noise levels existed for emergency uses, informed the Board that sound readings had been taken, outlined the purpose of the siren as to alert the volunteer fire department and public to emergencies but admitted that "the additional ringing as a noon whistle is open to question as to it's importance." The motion added two points: 1) the common good outweighed the right of someone to object to the whistle's use, and 2) the use of a siren for noon and curfew whistle is something which should be determined at the local level. The Village went on to question whether the Vickers requested relief, i.e. its relocation of the whistle to a non-offensive location, was possible. The filing also attached a petition from a group denominated "Save Our Siren" which contained signatures.

The Vicker's reply gives background information regarding the history of their complaint, encloses decibel readings taken of the siren and a map of Millstadt, questions the foundation for the petition and the signatures filed by Millstadt and concludes that the Vickers would like to see the new siren moved to a more suitable location.

The Board may dismiss a case filed with it if it finds that the suit is frivolous. Ill. Rev. Stat., ch. 111 1/2, par. 1031(b).

The Board has determined the term "frivolous" to mean those cases which "fail to state a claim upon which relief can be granted." (RES 89-2; June 8, 1989) The Village has raised two grounds for dismissal in this regards: the emergency nature of the siren and the inability to remove the siren to a location that doesn't offend someone. We find neither of these grounds satisfies the legal test and we, therefore, deny the Village's motion to dismiss.

The Village claims the electronic siren is for emergency use and therefore falls within a statutory exception concerning permissible noise levels. See 35 Ill. Adm. Code 901.107. The Village admits however that its use as a horn whistle is "open to question." Our review of the complaint shows that the Vickers have complained of the whistle's use to signal time as well as possible fires. The Village does not assert that the whistle's use in this manner falls under the exception for sound emitted from emergency warning devices given by the legislature. If it did, the most invasive uses for non-emergency situations would be given blanket protection. Such a reading would lead to an absurd result, a construction we do not believe the legislature intended. Therefore, we find the motion deficient on this ground.

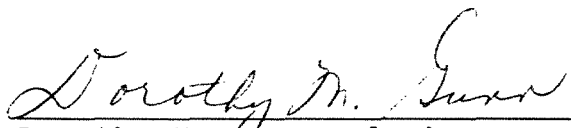
Lastly, the Village contends that the Board cannot grant the relief requested by the Vickers, namely, moving the siren to a suitable location. Our reading of the complaint shows that the Vickers request the siren be moved or that the noise pollution be stopped. (Complaint, p. 4) We find that some type of relief which does not impact upon the emergency functions maybe within the Board's power to order. We do not believe the speculation as to the difficulty in formulating a remedy deprives the Board of its ability to fashion relief should it find that noise pollution has been proven. We therefore find the Village's motion deficient on this ground also.

The Village of Millstadt's motion to dismiss is denied. This matter is accepted for hearing.

IT IS SO ORDERED.

J. Anderson concurred.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 9<sup>th</sup> day of May, 1991, by a vote of 7-0.

  
 Dorothy M. Gunn, Clerk  
 Illinois Pollution Control Board