ILLINOIS POLLUTION CONTROL BOARD
September 23, 1983

PEOPLE OF THE STATE OF ILLINOIS, Complainant,	)	
v.	)	PCB 76-84
SANTA FE PARK ENTERPRISES, INC., Respondent.	)	

ORDER OF THE BOARD (by J. Anderson):

This matter comes before the Board on the Attorney General's March 24, 1983 Motion to resume action on the March 26, 1976 complaint in this matter, alleging violations of Section 24 of the Environmental Protection Act and Rule 102 of Chapter 8: Noise Pollution. Pursuant to the Board's Order of April 7, 1983 granting the motion for briefing purposes and denying Santa Fe's March 31, 1983 motion to dismiss, the Attorney General filed a brief May 27, 1983 and Santa Fe filed a response May 27, 1983.

Procedural History

This action had been dismissed by the Board on April 12, 1979, which decision was confirmed upon reconsideration May 24, 1979. Subsequent to several hearings on the complaint, P.A. 80-1422, signed September 8, 1978 amended Section 25 of the Act. P.A. 80-1422 provided, in pertinent part, that

> "no Board standards for monitoring noise or regulations prescribing limitations on noise emissions shall apply to...any sanctioned motor racing event at a motor racing facility in existence prior to January 1, 1975, or..." [other sporting events sanctioned by various entities].

On November 20, 1978, Santa Fe moved to dismiss on the grounds that its activities were sanctioned by the Association for Motor Sports of Illinois, and hence that P.A. 80-1422 deprived the Board of authority to regulate noise emissions, to adjudicate claims that noise emissions unreasonably interfere with legitimate pursuits, or to impose penalties for any previous non-compliance (Santa Fe Brief of March 19, 1979, p. 20). The

Attorney General argued that the statute was unconstitutional on various grounds. It further argued that, even if constitutional, the statute exempted Santa Fe only from the monitoring standards and noise limitations of Chapter 8 contained in Part 2 "Sound Emission Standards and Limitations for Property-Line-Noise Sources", and then-existing Part 4, "Rules and Regulations for the Control of Noise from Motor Racing Facilities". Citing Ill. Coal Operator's Assn. v. PCB, 59 Ill. 2d 305, 319 N.E.2d 782 (1974), the Attorney General argued P.A. 80-1422 did not affect the Board's ability to deal with actions based on the general nuisance provisions of Rule 102 and Section 24 (A.G. Brief of January 31, 1979, p. 32-33).

The Board's Order of April 12, 1979 held that

> "...the Board finds that this is not a proper forum to decide the constitutionality of a statute enacted by the Legislature of the State of Illinois. In addition, the Board finds that in cases such as this the Board is constrained to apply the law as it is currently stated. Finally, the Board is not persuaded by technical arguments about the language of P.A. 80-1422 put forth by Complainant."

On appeal, the Appellate Court, First District reversed the Board's dismissal and remanded the cause for further proceedings. People of the State of Illinois v. Santa Fe Enterprises, Inc. and IPCB, 83 Ill.App.3d 802, 404 N.E.2d 352 (April 10, 1980). The court found that in exempting "sanctioned sporting events", P.A. 80-1422 unconstitutionally delegated legislative authority to private organizations, not accountable to the public, "whose interests may be adverse to the interests of others similarly situated or directly affected by the exercise of the power delegated". Given its finding on this issue, the Court saw "no need to address the question of whether the Board should have and could have addressed those issues", or to address other issues concerning the statute.

The mandate of the Appellate Court was issued May 12, 1981, after denial of Supreme Court review. On September 25, 1981, Section 25 of the Act was again amended by P.A. 82-654. P.A. 82-654 amends Section 25 and Section 1(v) to provide that

> "...no Board standards for monitoring noise or regulations prescribing limitations on noise emissions shall apply to any organized amateur or professional sporting activity." [Sec. 25, emphasis added] "Organized amateur or professional sporting activity" means an 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, skeet, trap or shooting sports clubs in existence prior to January 1, 1975, organized motor sports, and 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. [Sec. 1(v)]*

No further proceedings have been held in this matter subsequent to the appellate remand or passage of P.A. 82-654.**

Issues Presented

The issues here presented are three: whether the statutory exemption applies to Santa Fe, whether P.A. 82-654 is constitutionally defective on any of various asserted grounds, and whether, if it is not, the Board continues to have jurisdiction to hear a noise nuisance action based on the remainder of Section 25 and Rules 102 and 101(j).

Santa Fe argues, and the Attorney General does not contend, that the exemption would apply to Santa Fe, based on testimony and exhibits presented by the Attorney General at hearings in this case. "Organized motor sports" are specifically included in the definition of "organized...sporting activities". The definition also generally includes "an activity or event carried out at a facility by persons who engage in that activity as business". Santa Fe has been operating its motor raceway facility business at the same location for over 26 years.

---

*The Board has examined the legislative history of P.A. 82-654, HB 998. Comments illustrative of legislative intent were made only in the House. On third reading, Representative Bartulis explained that

> "House Bill 998 is meant to clarify the Legislature's intention to meet the court's objection by deleting the definition of sanctioned sporting event and providing an exemption for amateur or professional sporting events which was not objected to by the courts." (State of Ill. 82nd General Assembly, House of Rep., Transcription Debate, p. 302).

**Since passage of P.A. 82-654, another bill, P.A. 82-959 (HB 1955) has been enacted. This amends Section 25 to allow for night time noise regulation of certain sporting events in the City of Chicago, primarily affecting the use of Wrigley Field. This legislation is not specifically considered in this Order.

Prior to considering the constitutional issues, the Board will consider the effect, if any, of P.A. 82-654 on its jurisdiction to entertain noise nuisance actions. Santa Fe argues that, since P.A. 82-654 provides that "no Board standards ...shall apply" to organized sporting activity, the logical extension of that prohibition is that the Board has been precluded from requiring compliance with the Act. Since no enforcement is authorized, the Board can impose no penalty.

Santa Fe argues that since Section 25 prohibits regulation of sporting events noise, that the general Rule 102 Board prohibition of noise pollution [defined in Rule 101(j) as "unreasonable interfere(nce) with the enjoyment of life or with any lawful business or activity"] may not be applied to Santa Fe's activity. No cause of action based on Section 24 of the Act can therefore be brought before the Board, Santa Fe continues, because Section 24 prohibits unreasonably interfering noise emissions which "violate any regulation or standard adopted by the Board under this Act". The result, according to Santa Fe, is that to the extent sporting event noise may create a nuisance, that relief from such nuisance must be sought in Circuit Court, based on a common law or constitutional cause of action.

The Attorney General does not specifically counter Santa Fe's contention that Section 25 operates to negate the nuisance provision of Section 24. The Board finds Santa Fe's construction of the plain wording of P.A. 82-654 to be persuasive, and finds that the effect of that specific legislation was to entirely deprive the Board of sporting event noise jurisdiction.

The Attorney General forwards arguments that this divistiture of Board jurisdiction violates Article XI of the Illinois constitution--the "healthful environment guarantee--and that it violates presumably both the federal and state constitutions by way of being vague, and by being special legislation denying equal protection of the law. The threshold question here is whether the Board can or should consider these contentions. The Attorney General argues that, as a matter of policy, the Board must necessarily be empowered to reach determinations of constitutional questions, in furtherance of its mandate under the Act to "adjudicate the controversy before it" Ill. Power Co. v. IPCB, 100 Ill.App.3d 528, 531 (3rd Dist. 1981), particularly since such issues must be raised at the Board level Bulk Terminals v. IEPA, 65 Ill.2d 31, 357 N.E.2d 430 (1977).

The Attorney General argues that, if the Board has no such power, that every time a constitutional question arises calling for the exercise of legal judgment the parties or the Board would be required to proceed to the Illinois Circuit or federal District Courts for an opinion on the question, thus resulting in a multiplicity of litigation, fragmentation of issues, and delay in enforcement of the Act. Santa Fe's response is the bald contention that the Board cannot adjudicate such questions.

It has generally become a matter of hornbook law that "[w]e commit to administrative agencies the power to determine constitutional applicability, but we do not commit to administrative agencies the power to determine constitutionality of legislation", although it is noted that the issue seldom comes to court, because agencies commonly hold that they lack such power. Davis, Administrative Law Treatise, §20.04, and n. 1.

There is no authority in Illinois support of the proposition that the Board either lacks or holds such authority as it relates to the constitutionality of statutes, although the Board has been charged to consider the constitutionality of its own regulations, cf. Celotex v. PCB, No. 55848, slip op. (Feb. 1983), U.S. Steel Corp. v. PCB, 52 Ill.App.3d 1 (1977), and is mandated by Section 40.1 of the Act to consider the "fundamental fairness" of local government's site location suitability procedures. The Board is persuaded by the Attorney General's arguments that the Board is necessarily empowered to consider constitutional issues, and that, in appropriate cases, such issues should be addressed by the Board in the interests of efficient adjudication of the entire controversy before it. The Act establishes the Board as a unique, surrogate "circuit court" with primary jurisdiction in environmental matters, and provides a "fast track" immediate review directly by the appellate court. The Act's mechanism for arriving at prompt environmental answers is obviously frustrated where, as in the first go-around in this very case, the constitutional issue is central, must be presented to the Board according to accepted practice, but must inevitably be passed upward for determination, then back downward for implementation. Given the constitutional underpinnings of the act as explained below, the Board finds the general, administrative agency "no authority" rule inapplicable to its unique statutory role.

As to Article VI of the Illinois Constition, the Attorney General argues that, in effectively repealing the Environmental Protection Act regarding sporting noise, the General Assembly has acted "directly contrary" to the constitutional mandate contained in Art. VI, Sec. 1. This Section provides that

> "The General Assembly shall provide by law for the implementation and enforcement of [the] public policy [to provide and maintain a healthful environment]."

Santa Fe notes, however, that Article XI, Sec. 2 of the Illinois Constitution provides that

> "Each person has the right to a healthful environment. Each person may enforce this right against any party, governmental or private, through appropriate legal proceedings subject to reasonable limitation and regulation as the General Assembly may provide by law."

It suggests that the removal of sporting events noise from the purview of the Act and the Board's enforcement thereof, and the vesting of exclusive jurisdiction in the Circuit Court is merely an exercise by the General Assembly of its right of "reasonable limitation".

The Attorney General argues that the limitation is not reasonable since "P.A. 82-654 contains no legislative findings or purposes that could reconcile or justify [its] violation of this [constitutional] public policy, or the findings and general purposes of the Act" enunciated in Section 2(a) "...to establish a unified, statewide program...to restore, protect and enhance the quality of the environment, and to ensure adverse effects on the environment are fully considered and borne by those who cause them". He contends that if the designated sporting activities are allowed an exemption from environmental controls, that the precedent would be established for the carving out of gaping exceptions to the Act, resulting in a jigsaw puzzle of environmentally regulated versus exempted activities. Such has, he points out, already begun to occur, since HB 1955, P.A. 82-959 has taken certain nighttime professional sporting events (specifically in effect, only nighttime baseball at Wrigley Field) out of the umbrella of exemptions contained in P.A. 82-654.

The Board finds that P.A. 82-654's removal of most sporting events noise from the purview of the Act amounts to an unreasonable (as opposed to permissibly reasonable) limitation of the Article XI, Section 2 enforcement of the right to a healthful environment. Deletion of the sole statutory cause of action, when coupled with elimination of the Board forum, which can provide speedier, and less costly adjudication than can most overburdened circuit courts, renders the right to combat this type of noise pollution virtually meaningless.

Given this finding, the Board need not reach the Attorney General's vagueness and special legislation arguments. This cause will be assigned to a Hearing Officer, and the parties are ordered to resume hearings in this matter.

IT IS SO ORDERED.

Board Member W. Nega concurred.
Board Members D. Anderson and J.T. Meyer dissented.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 23rd day of September, 1983 by a vote of 3-2.

Christan L. Moffett
Christan L. Moffett, Clerk
Illinois Pollution Control Board