



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

May 26, 1977

ATTORNEY GENERAL OPINION NO. 77-175

Mr. Robert A. Gottschalk
Secretary
Kansas State Fair
Hutchinson, Kansas 67501

Re: Fairs--State Fair--Use of Designation

Synopsis: The use of the phrase "state exposition" to describe a fair conducted by the Shawnee County Board of County Commissioners does not violate the requirement of K.S.A. 2-201 that the phrase "state fair" may be used to describe only that fair held at Hutchinson, Kansas, by the Board of State Fair Managers.

* * *

Dear Mr. Gottschalk:

K.S.A. 2-201 states thus:

"A state fair shall be held annually in the city of Hutchinson, Kansas, at such time as shall be fixed by the board of state fair managers. It shall be unlawful for any person, corporation or association, or for any corporate entity other than the board of state fair managers of Kansas, to hold or conduct a state fair in Kansas or to hold or conduct any exhibition or display of any livestock or agricultural products under a designation, publicity or advertisement as a state fair.

A violation of this section shall constitute a misdemeanor."

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You indicate that the board of county commissioners of Shawnee County, Kansas, has scheduled an event to be held in early September, 1977, on the Shawnee County Fairgrounds, to be known as the "Sunflower State Exposition." You question whether this designation is in violation of the cited provision above. As you point out, one purpose of the statute is doubtless to prevent confusion, misrepresentation, misunderstanding and infringement, and you indicate that the use of the word "state" in the name of the Shawnee County exposition may well lead to misunderstanding and confusion among those you deal with, such as concessionaries and exhibitors, as well as the general public.

The provision is a penal statute, for violation is an unclassified misdemeanor, as a result of language which was added in 1972. See ch. 1, § 1, L. 1972. The applicable rules of construction were set forth in *State ex rel. Ferguson v. American Savings Stamp Co.*, 194 Kan. 297, 398 P.2d 1011 (1965) thus:

"It is a fundamental rule that penal statutes must be strictly construed in favor of the persons sought to be subjected to their operations The rule of strict construction simply means that ordinary words are to be given their ordinary meaning. Such a statute should not be so read as to add that which is not readily found therein or to read out what as a matter of ordinary English language is in it.

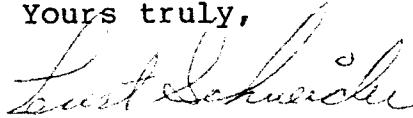
The object of the rule is to establish a rule of certainty to which the individual may safely conform without fear of the statute being misinterpreted by a court or prosecutor. If we go beyond the fair meaning of the language used in the statute we have abandoned certainty Courts are not at liberty to extend by intendment statutes creating and defining crimes. . . . Although the intention of the lawmakers is to be given effect . . . , the intention must be determinable from the words used in the statute to express intent." 194 Kan. at 300-301.

The apparent purpose of the statute is to assure that there will be only one state fair in this state. It is suggested, inferentially, that the statute should be broadly construed to prohibit the use of the word "state" in conjunction with any word which is synonymous

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with the term "fair," such as exposition, exhibition, or other such terms. In my judgment, the statute does not permit such elastic construction. Literal construction of its terms effectuates the legislative purpose, to assure that but one and only one fair in the state is known as the "state fair." The rules of construction which are applicable to penal statutes do not permit the enlargement of a prohibition merely to serve an imputed but unarticulated legislative intention. If the legislature intended to prohibit use of the word "state" in conjunction with other terms which imported an exhibition or event such as a fair, it could readily have found language to so indicate. I cannot fairly construe this provision as prohibiting the use of the word "state" in any phrase whatever which describes or connotes an exhibition or fair. In my judgment, it prohibits the use of the phrase "state fair" alone by any fair sponsor other than the Board of State Fair Managers, and it does not prohibit the use of other phrases by other fair sponsors, so long as such other fairs are not advertised or designated as a "state fair."

Yours truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj

cc: Mr. Frank Johnson
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