

December 9, 2011

Dear City Attorney:

You have the following question: Is the County School Board subject to the city's zoning ordinance with respect to baseball/softball field it wishes to build on school property?

The answer is no. I note that in a letter to the Mayor of the City, that the county attorney and I came to the same answer, citing for support a 1985 Tennessee Attorney General's Opinion. I have used and sent to both city and county attorneys the same opinion, which I think is an accurate reflection of the law on your question.

However, the county attorney points out the principle cited in that opinion "that the officers and agents of the state may not disregard local zoning regulations when and if to disregard such local zoning regulations when and if to disregard such regulations would result in the creation of a nuisance...." That is true, but under the above facts the most likely nuisance suit would brought by the neighboring private property owners who object to the ball fields being built, against the county school system.

While I cannot speak for what the city may do in response to the building of the ball field—the Mayor has already sent a letter to director of the County School System objecting to the school system's proposed construction of the ball fields—I predict that an attempt by anyone to block the school system from building the ball fields on the theory that they would be a nuisance would probably fail. A public school is not a nuisance per se, and I cannot find a single case in the United States where a court has enjoined the construction of one. The State of Tennessee (and probably every other state) is everywhere dotted with school athletic facilities and other recreational facilities abutting or near residential neighborhoods and that are the cause of periodic extremely heavy traffic and noise.

There have been a few cases in the United States in which the courts have held or suggested that the operation of a particular function of a school to be a nuisance to neighborhood property owners. The most instructive case in that area is *Stein v. Highland Park Independent School District*, 540 S.W.2d 551 (Tex. Ct. Civ. App. 1976), and a citation contained therein: 33 A.L.R.3d 703 (1970) (with cumulative updates). That case and citation include cases involving the sports functions of schools.

It has also been specifically held in a number of cases that the playing of baseball is not a nuisance, but that the manner of its playing may sometimes become a nuisance. A case on point is *Amdor v. Cooney*, 43 N.W. 2d 136 (Iowa 1959). That case involves the regular and continuous trespass of spectators on the plaintiff's property adjoining the all field, and traffic congestion. But also see *Ness v. Independent School Dist. Of Sioux City*, 296 N.W.2d 855 (Iowa 1941).

But generally, even the neighboring residents of schools must live with most of the inconveniences of school functions, including athletic functions.

Sidney D. Hemsley

Legal Consultant