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CONSTITUTIONAL LAW: Freedom of religion, speech, press and assembly.

CRIMINAL LAW: Trespass on property.

MIGRANT AGRICULTURAL WORKERS: Rights of visitation on camp.

PUBLIC HEALTH, DEPARTMENT OF: Power of director of public health to promulgate rules.

Representatives of public and private organizations may enter and remain upon the premises of an agricultural labor camp for the purpose of visiting migrant agricultural workers dwelling thereon without violating the state criminal trespass statute.

The rights of migrant agricultural workers and their visitors to assemble and associate with each other on the premises of a state licensed agricultural labor camp, as well as their rights of freedom of religion, speech, and the press, are guaranteed by the First and Fourteenth Amendments to the United States Constitution.

Director of public health is empowered to promulgate rules for the visitation of migrant agricultural workers on the premises of agricultural labor camps.

No. 4727 April 13, 1971.

Hon. David A. Plawecki
State Senator
The Capitol
Lansing, Michigan

You have requested my opinion on the following question:

> May representatives of public and private organizations enter and remain upon the premises of an agricultural labor camp for the purpose of visiting migrant agricultural workers dwelling thereon without violating the state criminal trespass statute?

The criminal trespass statute referred to in your inquiry, as found in 1931 P.A. 328, § 552, as added by 1951 P.A. 102; M.C.L.A. 750.552; M.S.A. 28.820(1), provides as follows:

> "Any person who shall wilfully enter, upon the lands or premises of another without lawful authority, after having been forbidden so to do by the owner or occupant, agent or servant of the owner or occupant, or any person being upon the land or premises of another, upon being notified to depart therefrom by the owner or occupant, the agent or servant of either, who without lawful authority neglects or refuses to depart therefrom, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by imprisonment in the county jail for not more than 30 days or by a fine of not more than $50.00, or both, in the discretion of the court."

1965 P.A. 289, being M.C.L.A. 286.621 et seq.; M.S.A. 17.424(1) et seq., provides for the licensing and regulation of agricultural labor camps. In Sec. 1 the legislature has defined "agricultural labor camp" to be a tract of land and all tents, vehicles, buildings and other structures pertaining

thereto, which are established, occupied or used as living quarters for 5 or more migratory workers engaged in agricultural activities, including related food processing. This section defines "camp operator" to mean the person or combination of persons, including corporations, who have been granted a license by the state to operate an agricultural camp.

In Sec. 2 of 1965 P.A. 289, supra, the legislature has mandated that no person shall operate an agricultural labor camp on and after January 1, 1966, or cause to be operated or allow the same to be occupied and used as an agricultural labor camp unless he obtains a license authorizing the operation of such agricultural labor camp from the state health commissioner.

The powers vested in the state health commissioner by 1965 P.A. 289, supra, were transferred to the department of public health under a type I transfer as provided in 1965 P.A. 380, § 427, being M.C.L.A. 16.527; M.S.A. 3.29(427).

Authority to adopt rules and regulations for the protection of the health, safety and welfare of seasonal or temporary workers and members of their families occupying agricultural labor camps and "for the housing of seasonal workers and their families, including adequate and safe construction and repair, fire protection, facilities for workers and their families to keep and prepare food and such other necessary matters that relate to the good health, safety and welfare of seasonal workers and their families", is conferred upon the department of public health in Sec. 9 of the act, supra.

Rules promulgated thereunder are published as Rules 325.1501 - 325.1515 and may be found in 1954 Administrative Code, 1964-65 Annual Supplement, pages 3211-3214. It is observed that the department of public health has not adopted a rule relating to visitation of agricultural labor camps by such persons, although it appears abundantly clear that the grant of power in Sec. 9 of the act, supra, to promulgate rules and regulations for the protection of health, safety and welfare of seasonal and temporary workers and their families occupying agricultural labor camps includes the authority to make reasonable rules and regulations for persons representing public and private agencies to enter and remain upon the premises of agricultural labor camps.

The 1968 Report and Recommendations on the Status of Migratory Farm Labor in Michigan, page 22, published by the Michigan Civil Rights Commission, indicates that some, even though only a small number, migrant agricultural workers pay rent and expenses for the agricultural labor camp housing occupied by them. It is also clear that a larger number pay the utilities consumed by them in such housing even though they do not pay any rent for such housing. As to any migrant agricultural laborers paying rent for the premises occupied by them in agricultural labor camps, there can be no question but that they are tenants of the premises they occupy. *Morrill v. Mackman*, 24 Mich. 279 (1872).

The law recognizes their right as tenants to select their own guests and persons with whom they desire to conduct lawful business transactions. The landlord cannot forbid persons invited by the tenant for lawful purposes to go on the premises. In *Lott v. State*, 132 So. 336 (Miss. 1931), a dealer in furniture and household goods was charged with violation of a state criminal trespass statute on the logging lands owned by a lumber

company while delivering goods to employees of the company. The employees of the lumber company had a verbal understanding with the lumber company and paid a weekly rental for the houses occupied by them. These were entirely located upon land of the company. The Mississippi Supreme Court held that employees had a right to select their own guests, including persons with whom they desired to have lawful business transaction. The right of the tenant to the undisturbed enjoyment of the leased premises carried with it freedom from dictation by the landlord as to what guests, if any, may visit the employee.

Persons representing private or public agencies entering or remaining on the premises of an agricultural labor camp with the consent of the migrant agricultural laborers residing thereon and paying rent for their dwellings would not be in violation of 1931 P.A. 328, § 552.

In *Brown v. Kisner,* 6 So. 2d 611, 617 (Miss. 1942), it was held that tenants of a plantation had such possession of the land occupied by them as to entitle them to grant permission to a person lawfully to come upon the plantation and to the dwelling occupied by them as their home for the purpose of assisting them in moving from such premises. A criminal prosecution for trespass under a state law would not lie against their invitee. It has also been held that the caretaker of the owner's property, who received occupancy of his home as part of his services, did so with the right to receive visitors. *Denver v Sharpless,* 159 A 2d 7 (Penn. S. Ct. 1960).

Under these authorities it may be contended that even those migrant agricultural workers who do not pay rent for the premises they occupy in the agricultural labor camp have such a possessory right in the agricultural labor camp housing they occupy as to grant permission to persons to enter and remain upon the lands of the agricultural labor camp so that no criminal prosecution for trespass should lie.

Even if a court of competent jurisdiction were to find a lack of a sufficient possessory interest in those migrant agricultural workers who did not pay any rent for their premises occupied by them in the agricultural labor camp, nevertheless the criminal trespass statute in question could not be invoked against persons representing public or private agencies who visited them on the premises of the agricultural labor camp because the premises of the agricultural labor camp, including ingress and egress therefrom, are public or quasi public and lawful presence thereon is safeguarded by the First and Fourteenth Amendments to the Constitution of the United States.

The First Amendment to the Constitution of the United States guarantees the freedom of persons to free exercise of religion, freedom of speech, freedom of the press, freedom of assembly and to petition the government for redress of grievances. These freedoms are protected against state action. *Cantwell v. Connecticut,* 310 U.S. 296; 60 S. Ct. 900; 84 L. Ed. 1213 (1940). The Fourteenth Amendment to the Federal Constitution guarantees that no state shall deprive any person of life, liberty, or property, without due process of law.

Most directly on point is *People v. Rewald,* 318 N.Y.S. 2d 40 (N.Y. Cty. Ct. 1971), where a visitor to a migrant workers' camp was charged with violation of a New York state criminal trespass statute, not unlike the

Michigan statute in question, in that it made a person guilty of criminal trespass when he knowingly enters or remains unlawfully in or upon the premises of another. The defendant was a newspaper reporter who was charged with criminal trespass because he refused a request of a migrant camp manager to leave the premises of the migrant camp. The court found that the resident migrant workers moved freely in and out of the migrant camp as a part of the public and concluded that public or partial public use of private premises, whether under express or implied invitation or permission, carries with it the license to enter and, absent of abuse of such privilege, carries with it the correlative license to lawfully remain. Termination of the right to remain cannot be predicated upon mere whim, caprice or arbitrary choice, as not within the fair intendment of the statute and would clearly raise serious questions of fundamental constitutional rights. Thus a constitutional construction of the statute requires that the right to exercise trespassory sanction may not be invoked where the use of the premises is public or partially public. The Court found that the defendant did not enter or remain upon the complainant's premises unlawfully.

The decision in *People v. Rewald,* supra, appears to be the only reported decision involving the right of visitation of migrant workers living upon agricultural camps without violation of state criminal trespass statutes and rests in large part upon the decision of the United States Supreme Court in *Marsh v. Alabama,* 326 U.S. 501; 66 S. Ct. 276; 90 L. Ed. 265 (1946). In *Marsh,* supra, the high court held that a state cannot, consistent with freedom of religion and press guaranteed by the First and Fourteenth Amendments to the Constitution of the United States, impose criminal punishment under a state criminal trespass statute on a person for entering upon or remaining on the premises of another after due warning for the purpose of distributing religious literature on the sidewalks of a company-owned town. The state of Alabama in *Marsh,* supra, urged the court that the company's right to control inhabitants of the company town is co-extensive with the right of a home owner to regulate the conduct of his guests and the court responded:

> "We cannot accept that contention. Ownership does not always mean absolute dominion. The more an owner, for his advantage, opens up his property for use by the public in general, the more do his rights become circumscribed by the statutory and constitutional rights of those who use it." 326 U.S. at p. 506; 66 S. Ct. at p. 278; 90 L. Ed. at 268.

The decision in *People v. Rewald,* supra, confirms the conclusion of Kent Spriggs in his Law Review article entitled "Access of Visitors to Labor Camps on Privately Owned Property," 21 Fla. L. Rev. 295, 297, 298 (1969).

> "The most rudimentary argument that can be made against a policy of restricting access of outsiders to labor camps is that to do so deprives both the residents and the visitors of their constitutionally protected rights to freedom of speech, assembly, and association . . .
>
> "The question on which the applicability of these rights to labor camp inhabitants turns is whether the camp's prohibition of visitors is done 'under color of law.' The first and fourteenth amendments prohibit the federal and state governments from acting to deprive

persons of the freedoms of speech, association, assembly, press, and religion, but generally do not reach such deprivations by private persons . . . Thus, generally, to bring the first and fourteenth amendments into play there must be 'state action.'

". . .

"The most obvious incidence of state action is a statute that either by its terms or natural application proscribes protected federal rights. During the last three decades, the Supreme Court has held unconstitutional a series of ordinances that were *essentially trespass laws.* (Footnote citing cases) . . ." (Emphasis supplied)

The United States Supreme Court in *Amalgamated Food Employees Union, Local 590 et al. v. Logan Valley Plaza, Inc., et al.,* 391 U.S. 308; 88 S. Ct. 1601; 20 L. Ed. 2d 603 (1968), prescribed the use of state criminal trespass laws to exclude persons from exercising their First Amendment rights of free speech by way of picketing upon the private premises of a shopping center to which the public had access.

". . . However, unlike a situation involving a person's home, no meaningful claim to protection of a right of privacy can be advanced by respondents here. Nor on the facts of the case can any significant claim to protection of the normal business operation of the property be raised. Naked title is essentially all that is at issue." 391 U.S. at p. 324; 88 S. Ct. at 1611; 20 L. Ed. 2d at 615.

In *Amalgamated Food Employees Union, Local 590,* supra, the United State Supreme Court in footnote 15 listed a series of state courts reaching similar conclusions as to shopping centers, and cited the equally divided decision of the Michigan Supreme Court in *Amalgamated Clothing Workers of America, AFL-CIO v. Wonderland Shopping Center, Inc.,* 370 Mich. 547 (1963), affirming a lower court holding that hand billing in a shopping center was protected by the First Amendment.

In light of this controlling decision of the United States Supreme Court, it would be well to quote from the opinion of Justices Black and Smith for modification and affirmance in *Amalgamated Clothing Workers of America, AFL-CIO v. Wonderland Shopping Center, Inc.,* supra:

"The rule of whimsical trespass defendants would have us declare and apply is more than portentous. If by the device of private ownership a 'business block' of 55 acres may lawfully be set up to selectively exclude the right of free speech on the public malls and sidewalks thereof, then why may not a 550 acre company-community be set up and made profitably operable with like right of discriminatory exclusion from the public areas of undesirable free speechers? Yes, indeed, let the privately owned shopping center of today expand to the privately owned community of tomorrow; the community where the lordship of freehold may determine, free from judicial intervention, what upon that freehold one may say or publish, what persons are deemed trespassers thereon and what ones are not, how generally one must act and how he must not until he departs therefrom; with all such determinations freed from constitutional inquiry on ground that the scene of offense or 'trespass' is private property.

"The Chief Justice has written, and we agree, that a test case is before us; a case which demonstrates again that the struggle for maintenance of constitutional rights will not end as new means and methods of commerce, business, transportation, communication, recreation and social life unfold as they have and will during this second half of the twentieth century." 370 Mich. at 570, 571.

It must be stressed that the freedom to associate is an important federally protected right as an inseparable aspect of the "liberty" guaranteed by the Due Process Clause of the Fourteenth Amendment. *National Association for the Advancement of Colored People v. Alabama,* 357 U.S. 449; 78 S. Ct. 1163; 2 L. Ed. 2d 1488 (1958). See also *National Association for the Advancement of Colored People v. Button,* 371 U.S. 415; 83 S. Ct. 328; 9 L. Ed. 2d 405 (1963). It must follow that the right of migrant agricultural workers and their visitors to assemble and associate with each other on the premises of the state licensed agricultural labor camp is as much protected by the United States Constitution as their respective rights to free exercise of religion, freedom of speech and freedom of the press guaranteed by the First Amendment.

It is also clear that the state criminal trespass statute cannot be invoked by the owner or person in control of migrant agricultural labor camp property against persons exercising rights protected by statutes. Illustrative of this conclusion is the decision in *National Labor Relations Board v. Lake Superior Lumber Corp.,* 167 F. 2d 147 (C.A. 6, 1948), the court holding that union organizers had the right of access to the premises of a private lumber company camp to visit woodsmen living in such camps in furtherance of the right of employees to engage in union activities protected by the National Labor Relations Act. The court relied upon the decision of the United States Supreme Court in *Marsh v. Alabama,* supra, that ownership of private property does not always mean absolute dominion where the owner opens up property for use by the public.

Migrant agricultural workers dwelling upon the premises of agricultural labor camps licensed by the state of Michigan pursuant to 1965 P.A. 289, supra, also have rights to benefits under the provisions of Title III of the economic opportunity act of 1964, as amended, being 42 U.S.C. 2701 et seq. In Sec. 311 of the act, being 42 U.S.C. 2861, Congress has stated the following purpose:

"The purpose of this part is to assist migrant and seasonal farm workers and their families to improve their living conditions and develop skills necessary for a productive and self-sufficient life in an increasingly complex and technological society."

Financial assistance to aid state and local agencies, private nonprofit institutions and cooperatives in developing and carrying out programs to meet the needs of migrant workers and their families in the areas of day care for children, education, health services, improved housing and sanitation, legal advice and representation, consumer training and counseling, education and training migrant workers to improve their well-being and self-sufficiency, and to promote increased community acceptance of migrant workers and their families, is set forth in Sec. 312 of the act, being 42 U.S.C. 2862.

It is patent that migrant agricultural laborers residing on the premises of state licensed agricultural labor camps can only receive the full measure of the rights to assistance under the attendant provisions of the economic opportunity act of 1964, supra, through the ability of private and public agencies and their representatives to have access to them on the premises of the agricultural labor camp. A holding that the owner or operator of such agricultural labor camp has opened the camp to use by the public aids in fulfillment of such statutory rights. There are other federal statutes providing benefits to migrant workers and their families which need not be recited here. They are equally important and applicable.

Distilling the holdings of these cases and making application thereof to the question at hand, certain conclusions are imperative:

The owner or operator of a migrant agricultural labor camp by permitting occupation and movement of migrant agricultural workers and their families on the premises of the agricultural labor camp has thereby made the use of the agricultural labor camp premises, including ingress and egress therefrom, public. The freedoms of religion, speech, press and assembly guaranteed by the First and Fourteenth Amendments to the United States Constitution are operative throughout the length and breadth of the land. They do not become suspended on the threshold of an agricultural labor camp. The camp is not a private island or an enclave existing without the full breath and vitality of federal constitutional and statutory protection.

Thus, the owner or operator of an agricultural labor camp may not invoke the instant state criminal trespass statute under claim of right of private property against those persons who, in the exercise of their federally protected freedoms guaranteed by both the First and Fourteenth Amendments to the United States Constitution and federal rights protected by law, choose to visit and associate with migrant agricultural workers and their families on the premises of agricultural labor camps. A constitutional construction can and must be given to 1931 P.A. 328, § 552, supra, so that persons representing private or public agencies do not enter the premises of a migrant agricultural labor camp unlawfully, nor do they remain on such premises unlawfully when they visit and associate with migrant agricultural workers and families on the premises of the agricultural labor camp. Trespass statutes cannot be invoked against the guest or invitee of a migrant agricultural worker who is a tenant and has a possessory interest.

Therefore, it is my opinion that representatives of public and private organizations may enter and remain upon the public premises of an agricultural labor camp for the purpose of visiting and associating with migrant agricultural workers and their families dwelling thereon without violating 1931 P.A. 328, § 552. The rights of migrant agricultural workers and their visitors to assemble and associate with each other on the premises of a state licensed agricultural labor camp, as well as their rights of freedom of religion, speech, and the press, are guaranteed by the First and Fourteenth Amendments to the United States Constitution.

FRANK J. KELLEY,
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