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**ARIZONA ATTORNEY GENERAL**  
July 10, 1962  
Letter Opinion No. 62-79-L  
R-367

REQUESTED BY: Justin Herman, Director  
Arizona State Highway Department

OPINION BY: Robert W. Pickrell  
The Attorney General

QUESTION: Does the Highway Commission have authority to allow municipalities to temporarily close State highways within municipal limits for the purpose of holding road races, sport or other entertainment?

CONCLUSION: No; but see body of opinion.

While the question addressed to this office was more specific than the referenced subject, this general problem has been presented on two other occasions within the past year. It is therefore felt that a statement concerning the entire subject is warranted.

The Legislature has not specifically authorized the Commission to temporarily close State highways to promote local entertainment or sports activities. However, our courts have held that the power of the Commission with respect to State highways is plenary. Therefore, unless prohibited specifically or by necessary implication, the Commission may act within a particular area. This does not mean, however, that there are no limitations upon the Commission's authority.

The case law from other jurisdictions indicates that there are generally two limitations upon public agencies temporarily closing public streets or highways for sport or entertainment. Such closing must (1) be for the public benefit and (2) must not constitute a nuisance.

With regard to the first limitation, a prominent legal encyclopedia states it as follows:

"In accordance with the principle that streets of a municipality are for the public use, power to close a street temporarily for the purpose of sport or entertainment has been denied in a number of cases wherein the public benefit to be derived therefrom was not made to appear. \* \* \*" 25 Am. Jur. Highways § 116, p. 414.

Where tested by court action the following purposes for closing public streets or highways have been held to constitute "public benefits": (1) fire department drill; (2) military

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parade; (3) baseball game; and (4) "procession, parade or display having some reasonable relation to the purposes for which streets were created." 34 A.L.R. 270.

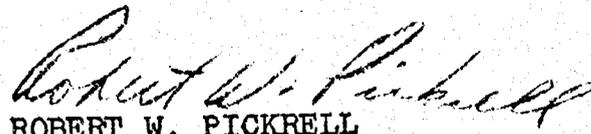
The second limitation has been very ably stated in the legal encyclopedia hereinabove quoted as follows:

"The use of streets and highways for game, sports and play is not necessarily improper, in the absence of any prohibitory regulation, unless it obstructs travel or endangers the safety of travelers, in which case, it becomes a nuisance. \* \* \*"

It would seem, therefore, that if traffic can be diverted to alternate routes during such temporary obstruction and the activity does not endanger the safety of the public, it does not constitute a nuisance.

However, concerning road racing particularly, some courts have held that where public highways are temporarily obstructed for such purposes, that the use and obstruction are unlawful and, per se, a nuisance, in the absence of a valid legislative grant of authority for such purposes. 25 Am.Jur., Highways § 506, p. 788. Your attention is called to the 1953 case of Saari v. State, 119 N.Y.S. 2d 507, decided in the State of New York. There, a statute provided that the state could issue a permit to allow road racing on public streets and highways. The court nevertheless held that in view of the inherent danger of automobile racing along an unprotected course such as a public highway, the state was liable in money damages to spectators who had received personal injuries when one of the race entries crashed into a crowd. 37 A.L.R. 2d 412.

To conclude, the Commission has the authority to temporarily close a street or highway for sport entertainment where the ordinary use of the street is not substantially interfered with, the sport or entertainment is for the public benefit, and does not constitute a nuisance.

  
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