

EQUESTRIANS ALLEGE PARK HORSEBACK RIDING REGULATION
UNCONSTITUTIONAL

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The *Risjord* opinion described herein nicely outlines the general legal principles to be applied by the state and federal judiciary in determining the constitutionality of public park regulations. In so doing, the courts will balance the nature of the right asserted by the individual against the government's police powers, i.e. regulations necessary to preserve the public health, safety, and welfare. If the challenged regulation does not involve a fundamental right (e.g. free speech) or a suspect classification (i.e., based upon race, creed, color, or national origin), courts will generally apply a rather relaxed standard, the "rational basis" test, in determining constitutionality. As illustrated by *Risjord*, when the rational basis test applies, courts will generally uphold park regulations and not second-guess legislative classifications. Under such circumstances, the judiciary will defer to legislative judgment and policy as long as a reasonable relationship exists between the regulatory framework and a legitimate governmental interest in preserving the public health, safety, and welfare.

A HORSE WITH NO NAME

In the case of *State v. Risjord*, 249 Kan. 497; 819 P.2d 638 (1991), the State of Kansas appealed to the Supreme Court of Kansas to reverse a trial court determination which found "a Johnson County Park and Recreation District regulation which restricts horseback riding within certain parks is unconstitutional." The facts of the case were as follows:

On May 28, 1990, Sally and John Risjord were horseback riding on Barkley Drive, a public roadway in Shawnee Mission Park. On that date, the Risjords were charged with violation of Article 1, Section 6 of the Johnson County Park and Recreation District Rules and Regulations for riding horses in the park without displaying valid riding permits. The Risjords were found guilty of violating the regulation in Johnson County Traffic Court.

The Risjords appealed to the district court and a trial... was held on October 4, 1990. Sally and John each stipulated they were riding in the park without a valid permit. They argued, however, that the regulation unconstitutionally regulated horse-drawn or horseback transportation on public roadways in violation of the equal protection and due process clauses of the Fourteenth Amendment of the United States Constitution and the applicable sections of the Kansas Constitution.

The district court determined the park governing board could not constitutionally prohibit horseback riding as a means of conveyance on the park roadways where other forms of transportation were not prohibited. In addition, the district court found the board could not charge for the use of park roadways simply because the elected mode of transportation was by horseback. The [traffic court] case was dismissed and the State appeals.

According to the state supreme court, "the sole issue presented in this appeal is whether Article 1, Section 6, of the Johnson County Park and Recreation District rules and regulations unconstitutionally regulates horseback riding on public roadways." As described by the court, these rules and regulations, as authorized by state law, provided, in pertinent part, as follows:

Article 1, Section 6 of the Board rules and regulations provides: "HORSEBACK RIDING: In the interest of public safety, horses may only be ridden in designated areas at Shawnee Mission Park and Heritage Park. Horses shall not be ridden on the park's paved roadways or asphalt trails except at designated horse crossings, where horses may cross at right angles to vehicular traffic. Each horse being ridden in the park area is required to have a visibly displayed, valid horseback riding permit."

K.S.A. 19-2868(g) empowers the Johnson County Park and Recreation District Board (Board) to adopt, promulgate, and enforce reasonable rules and regulations for the operation of parks. In addition, the Board is authorized to prescribe penalties for violation of any rules and regulations. K.S.A.1990 Supp. 19-2873. Finally, the Board is statutorily prohibited from charging an admission fee into a park, but is authorized to charge a reasonable fee for recreational activities. K.S.A.1990 Supp. 19-2873.

In determining "the validity of this regulation," the state supreme court cited the following "general principles applicable to appellate review of the constitutionality of a statute, ordinance, or regulation":

The constitutionality of a statute is presumed, all doubts must be resolved in favor of its validity, and before the statute may be stricken down, it must clearly appear the statute violates the constitution. In determining constitutionality, it is the court's duty to uphold a statute under attack rather than defeat it and if there is any reasonable way to construe the statute as constitutionally valid, that should be done. Statutes are not stricken down unless the infringement of the superior law is clear beyond substantial doubt.

The propriety, wisdom, necessity and expedience of legislation are exclusively matters for legislative determination and courts will not invalidate laws, otherwise constitutional, because the members of the court do not consider the statute in the public interest of the state, since, necessarily, what the views of members of the court may be upon the subject is wholly immaterial and it is not the province nor the right of courts to determine the wisdom of legislation touching the public interest as that is a legislative function with which courts cannot interfere...

[In] reviewing statutes or ordinances enacted pursuant to the police power [i.e., inherent governmental authority to preserve the public health, safety, and welfare]... the court begins with the proposition that all presumptions are in favor of their validity. The court does not sit in judgment on the merits of such legislation. If the statute here challenged does not contravene significant constitutional or inherent rights of individuals, if the classification on which it is based is reasonable, if it is within the scope of the police powers of the state, if it is appropriately related to a proper purpose of such police power, the statute is not to be invalidated by the judicial arm of government...

Once a subject is found to be within the scope of the state's police power, the only limitations upon the exercise of such power are that the regulations must have reference in fact to the welfare of society and must be fairly designed to protect the public against the evils which might otherwise occur. Within these limits the legislature is the sole judge of the nature and extent of the measures necessary to accomplish its purpose.

The reasonableness of restrictions imposed by the legislature by the exercise of the police power is a judicial matter, and all presumptions are in favor of constitutionality of the act. Within the zone of doubt and fair debate legislation is conclusive upon the court and must be upheld.

Cities and other governmental bodies have broad police powers to enact ordinances which regulate and restrict activities in the interest of the health, safety, and welfare of their citizens. It is well settled that governing bodies may properly exercise their police power to limit, control, or regulate the use of public roadways to promote the safety and general welfare of the people.

Applying these principles to the facts of the case, the state supreme court found that "the Board was acting within the scope of its police power when it enacted the regulation under consideration."

As characterized by the supreme court, the Risjords argued that "the Board regulation which prevents horseback riders from traversing the park on public roadways violates the fundamental right to travel."

Since a fundamental right is violated by the regulation, the Risjords argue, we must apply a "strict scrutiny" test rather than the traditional "rational basis" test to determine the constitutionality of the regulation. It is true that the "standard of scrutiny increases with the perceived importance of the right or interest involved and the sensitivity of the classification."

As noted by the Kansas state supreme court, the United States Supreme Court has enunciated the following "three levels of judicial review when determining whether a statute, ordinance, or regulation violates the due process or equal protection clause of the Fourteenth Amendment."

The most critical level of analysis is "strict scrutiny," which applies in cases involving "suspect classifications such as race, ancestry, and alienage, and fundamental rights expressly or implicitly guaranteed by the Constitution." When applying the strict scrutiny test, the burden is placed upon the State to show there is a compelling state interest in the statute, ordinance, or regulation; otherwise it is unconstitutional.

The least critical level of analysis is the "rational" or "reasonable" basis test. Under the "rational basis" test, if there is any rational relationship between the act and a legitimate governmental objective, the act passes muster. Under this test one challenging the constitutionality of the act bears the burden of showing no rational relationship exists between the means and the end.

Finally, "heightened scrutiny" is the intermediate level of review used by the United States Supreme Court and is applicable to "quasi-suspect" classifications. This court [Supreme Court of Kansas] has not adopted the "heightened scrutiny" level of judicial review when applying the Kansas Constitution. Gender- and legitimacy- based classifications have been subjected to intermediate-level scrutiny. Heightened scrutiny "requires the statutory classification to substantially further a legitimate legislative purpose. Under this standard, a greater justification for the statutory classification than is required under the rational basis analysis must be shown, including a direct relationship between the classification and the State's goal."

While acknowledging that "the right to travel is a fundamental right," asserted by the Risjords, the state supreme court disagreed with the argument by the Risjords that this regulation affects that right.

The Risjords have available to them all of the various modes of travel such as by automobile, bicycle, motorcycle, airplane, bus, train, or foot--all subject, of course, to regulation for safety. This regulation does not curtail the Risjords' fundamental rights; thus, the rational basis test is applicable.

The state supreme court then considered whether "regulation of horseback riding which applies to all equestrians alike... violates the due process or equal protection clause of the Fourteenth Amendment." As noted by the state supreme court, "[t]he test to determine the constitutionality of a regulation under due process and equal protection principles is virtually the same."

When a statute or regulation is attacked as violative of due process, the test is whether the legislative means selected have a real and substantial relation to the objective sought.

When a statute or regulation is attacked as violative of equal protection principles, a reasonable basis test is applied to determine whether any situation exists which justifies the classification. A classification that has some reasonable basis does not offend equal protection laws even if the classification results in some inequality. There need not be an exact exclusion or inclusion of persons or things, but the classification may not be created arbitrarily, discriminatorily, or unreasonably.

The Risjords argued that "the regulation is not reasonable and that the State has failed to demonstrate that horseback riding on public roads is more dangerous than other forms of transportation." Specifically, the Risjords contended that "a slippery road is also dangerous for pedestrians, bicyclists, roller skaters, joggers, and motorcyclists." Accordingly, the Risjords alleged that "the regulation which prohibits horseback riding on the park's public roadways is invidiously [i.e., maliciously, spitefully, viciously] discriminatory."

As noted by the state supreme court, the State contended that "the Board regulation bears a reasonable relation to its legislative objective of promoting public safety."

The State asserts horses are not allowed on the park roadways because asphalt can be slick and dangerous to both horse and rider. In addition, these roadways accommodate large volumes of vehicular, pedestrian, and bicycle traffic. According to the State, horseback riding on park roadways is hazardous to both the rider and other traffic;

thus, prohibiting equestrians from using the park roadways reduces the danger not only for the rider but also for the general public.

Under the circumstances of this case, the state supreme court found that "the regulation prohibiting equestrians from using public roadways within the park is reasonably related to the governmental objective of promoting public safety, health, and general welfare."

The interest affected by the regulation is not the freedom to travel but regulation of travel. The Board regulation restricts the mode of conveyance that may be used on the park roadways. As we previously stated, the Board may validly exercise its police powers to limit or control the use of public roadways whenever necessary to promote the safety and general welfare of the people. Finally, we recognize that preventing accidents and reducing the seriousness of accidents on public roadways is a legitimate governmental interest. Thus, the governmental interest justifies the issuance of a regulation prohibiting equestrians from use of public roadways by limiting the non-vehicular traffic on the roadways...

Regulating traffic on public roadways to promote public safety is a legitimate legislative objective. Recognizing innate differences of various vehicles using highways is a legitimate reason for governing bodies to regulate the use of those vehicles based upon differences in their characteristics...

All equestrians are treated alike. The Board has determined that horseback riding on asphalt roads poses a potential hazard to riders and other traffic. In addition, the distinct characteristics of horses present a justifiable reason for creating a separate regulation based upon both health and safety concerns. A horseback rider cannot exert the same control over the horse's movements as could the driver of a motor vehicle or bicycle. Sanitary concerns also justify the regulation of restricting horses to designated areas. Finally, we conclude that limiting traffic on public roadways to exclude animal traffic is a valid exercise of the Board's police power.

Accordingly, the state supreme court held that "the park regulation does not violate either the due process or equal protection clauses of the United States Constitution or the Kansas Constitution" and reversed the judgment of the trial court.