

SOUND AGRICULTURAL PRACTICE
Opinion Number 93-3

SUBJECT: Request for an opinion pursuant to Section 308 of the Agriculture and Markets law as to the soundness of a certain agricultural practice conducted by Andy Babinski, Jr.

REQUESTOR: Fred W. Thiele, Jr.
Supervisor
Town of Southampton
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Southampton, New York 11968
(516) 283-6055

Preliminary Statement

In a letter dated July 28, 1993, Fred W. Thiele, Jr., Supervisor for the Town of Southampton, asked for an opinion pursuant to Section 308 of the Agriculture and Markets Law as to whether a certain agricultural practice employed by Mr. Andy Babinski is sound. Mr. Thiele indicated that he had received a complaint concerning the noise generated by a propane air cannon used in fields operated by Mr. Babinski. According to Mr. Babinski, the cannon is used to prevent crows and blackbirds from damaging the crops. Mr. Thiele indicated that a neighbor called to report that the cannon operates from 7:00 a.m. until 11:00 p.m. and that it fires every ten minutes. Mr. Thiele questioned whether the use of the cannon is excessive and unwarranted or sound.

On September 8, 1993, Department Agricultural Resources Specialist, Mr. Matthew Brower, conducted an on-site review of the farm operation. In conducting the review, Mr. Brower focused on the use of the field cannon as a means of bird damage control. Mr. Brower visited two locations where the cannon had been used.

Information Considered in Support of the Opinion

1. The Babinski farm is located on Mecox Road in the Town of Southampton. It is a father-son operation consisting of approximately 365 acres of owned and rented land. Andy Babinski, Jr. uses approximately 30 acres for the production of melons, sweet corn, and other vegetables. The Zon 7002 field cannon is used on two rented noncontiguous fields. One field is approximately 14 acres in size; the other field is approximately 16 acres. The 16 acre field, consisting of two land parcels, is rented from the Halsey's. According to Ms. Carolyn Downey, Town of Southampton Assessor's Office, an eight-year agricultural commitment has been exercised on the Halsey property. The fields in which the cannon has been used are not in an agricultural district.

2. Mr. Babinski, Jr. indicated to Mr. Brower that the melons and vegetables were first grown in the fields in 1992. Mr. Babinski, Jr. began using a field cannon on July 10, 1993 to help reduce the amount of damage caused by crows and blackbirds. Prior to this date, Mr. Babinski, Sr. estimated that 50 percent of their watermelons and 10 to 15 percent of their muskmelons had been damaged by birds. After employing the field cannon, melon loss and damage was negligible, he said.

3. On the day of Mr. Brower's visit to the two parcels, September 8, 1993, the field cannon was located in the 14 acre field on Paul's Lane in the Town of Southampton. Melons and vegetables were being produced. The cannon was positioned near the center of the crop. It was located approximately 500 feet from the nearest house and the end of the barrel was pointed away from that structure. Mr. Babinski, Jr. took Mr. Brower to the 16 acre field, located north of county route 27, and showed him where the cannon had been positioned when it was in use. The field cannon was located approximately 200 feet from the nearest house. Sweet corn was grown in this field.

4. Mr. Babinski, Jr. indicated to Mr. Brower that the field cannon can be set to fire at intervals ranging from 1.5 minutes to 12 minutes. On the day of Mr. Brower's visit, the field cannon was set to fire every three minutes. Mr. Babinski, Jr. told Mr. Brower that he would change the firing sequence from time to time to prevent the birds from becoming accustomed to the repetitive noise intervals of the field cannon. Mr. Babinski, Jr. stated that the field cannon was used from sunrise until sundown and on the longest day of the growing season, it would operate from 7:00 a.m. until 9:30 p.m. Mr. Babinski, Jr. informed Mr. Brower that the field cannon had been rotated between the two fields during the growing season. Beginning on July 10, 1993, the field cannon was used on the 14 acre field on Paul's Lane for two weeks, moved to the 16 acre field on county route 27 for two weeks, and moved back to the 14 acre field for the remainder of the growing season. Mr. Babinski, Jr. told Mr. Brower that he tried to terminate the use of the field cannon, but after one week, the use of the field cannon had to be continued because the bird damage became too serious.

5. Mr. Brower reports that during his field visit, he could clearly hear the field cannon from the perimeter of the 14 acre field. Mr. Brower indicated that the noise was comparable to that of a shot gun. Mr. Babinski, Sr. indicated to Mr. Brower that all of their fields are located relatively close to houses and that planting the melons and vegetables in another location would not resolve the noise issue.

6. Mr. Frano, Ordinance Inspector for the Town of Southampton, told Mr. Brower on September 9, 1993 that the Babinskis have not received any citations from the town for using

the cannon; however, two complaints have been filed with his office. Mr. Frano informed Mr. Brower that for his own edification he unofficially recorded the levels of noise, measured in decibels, generated by the field cannon. Mr. Frano further stated that depending upon where he stood and whether he was positioned up-wind or down-wind from the cannon determined the extent to which the field cannon did or did not exceed the town's noise ordinance. However, in a telephone conversation with Mr. Babinski's attorneys, on October 14, 1993, they indicated that Mr. Babinski was issued a criminal summons, dated August 27, 1993, for a violation of the Town of Southampton Noise Ordinance, Section 235-2. As of this date, there has been no disposition of the matter.

7. On September 7 and 21, 1993, Mr. Brower contacted Dr. Paul Curtis (IPM Wildlife Specialist at Cornell University) to obtain information on bird control in fruit and vegetable crops. Dr. Curtis informed Mr. Brower that propane cannons may only be effective for short term control of certain birds; however, the use of cannons for controlling crows is more effective since crows do not become accustomed to the noise as easily as other species of birds. Dr. Curtis told Mr. Brower that field cannons should be used from sunrise until sundown because birds will not bother the fields during the night. Dr. Curtis suggested that other alternatives, such as plastic model owls and eye-spot balloons have been used, but very little research information is available on the efficacy of these alternatives.

8. On September 24, 1993, Mr. Brower spoke with Mr. Robert Stokvis, one of the complainants, about the use of the field cannon. Mr. Stokvis indicated that the cannon operates from sunrise to sundown and that it irritated his dog.

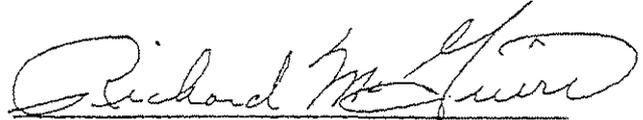
Conclusion and Opinion

Based upon the facts and circumstances described above, and in consultation with the State Advisory Council on Agriculture, the New York State College of Agriculture and Life Sciences, and the USDA Soil Conservation Service, I hereby conclude, pursuant to Section 308 of the Agriculture and Markets Law that the use of a propane field cannon, as employed in the subject case, to control blackbirds, crows, and other bird species, is sound. The major contributing factors in forming this opinion are as follows: 1) the use of a propane cannon is recognized as an effective control measure against damage to agricultural crops by birds and has been shown to be effective in this case; 2) the Babinskis are operating the cannon only during the hours and periods of the growing season when bird predation of crops is likely; 3) the Babinskis have placed and aligned the cannon in their fields to avoid, to the extent possible, noise consequences for neighbors; and 4) doubt exists whether any other reasonable alternatives are available to the Babinskis to effectively control crop damage from birds. I have taken due note of the citation issued for a violation of the

Town's noise ordinance. However, in light of the numerous countervailing factors described above, the practice is, in my opinion, sound.

10/26/93

Date



Richard T. McGuire
Richard T. McGuire
Commissioner