

3096.

HEATING AND VENTILATING SYSTEM—CONDITIONS UNDER WHICH INSTALLED FOR TEST—WHEN SYSTEM MUST COMPLY WITH BUILDING CODE.

SYLLABUS:

1. *The Ohio Board of Building Standards and the Director of Industrial Relations can not legally authorize a system of heating and ventilating which will not comply with the provisions of the building code of Ohio, under the guise of an experiment or test.*

2. *Such authorities may, however, authorize an actual test in a public school building of a heating and ventilating system which does not conform to the requirements of the building code, providing such installation is for the purpose of a test only.*

COLUMBUS, OHIO, March 27, 1931.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—This will acknowledge your letter of recent date, which reads in part as follows:

“You are respectfully requested to furnish this department with your written opinion upon the following:

Under the provisions of section 12600-54 of the General Code, relating to specifications for heating and ventilating school buildings, it is provided that the ventilating system shall be capable of supplying not less than six complete changes of air per hour in each study, class, recitation, assembly, laboratory and other room used for instruction purposes, and in each toilet room, and not less than three complete changes of air per hour in all other parts of the building, not otherwise excepted.

Question: May the Ohio Board of Building Standards and the Director of Industrial Relations legally authorize a system of heating and ventilating which will not comply with the provisions of this section, in the guise of an experiment or test?

Your inquiry arises by reason of the following facts: On October 18, 1930, George A. Hausmann, Chief Mechanical Engineer of the Board of Education of Cleveland, Ohio, requested permission of the Board of Building Standards to install for a trial a ventilating system which did not conform to all the requirements of the building code. Mr. Hausmann's letter to the Board of Building Standards is as follows:

“This office has from time to time been criticized for building what some people think is an expensive school building. It has also come to our attention that the building and maintaining of the modern school building is a heavy drain on the taxpayer of this state.

We have made very extensive studies in the last year on the subject of economies and wherein we can cut the cost of our future school buildings.

Heating and Ventilating has been one of the items that have received our attention and in our studies we find that there is now being advocated a ‘Thermal System’ of heating and ventilating that will undoubtedly cut the initial cost of installation quite considerable, and will effect still greater savings in the operating costs.

This so-called 'Thermal System' uses a special type of Unit Ventilator which will keep re-circulating the air in the room and add air as is necessary to maintain an even temperature. In other words, this system will be practically the same as what is known as Open Window Ventilation except that it will be controlled automatically.

A system of this kind will not meet all the requirements of the code, but we feel that it should be given a trial, and we are therefore asking your Honorable Board, if you can grant us permission to make an installation in our proposed John Marshall High School if when the bids are received, the bid covering this type of installation should be given serious consideration by our Board of Education."

This request was considered by the Board of Building Standards on October 20, 1930, and the following action was taken by the Board:

"The Board of Building Standards recommends to the Department of Industrial Relations that: The installation of the so-called Thermal System be permitted in a Cleveland school as requested by the Board of Education of Cleveland through their Engineer, George A. Hausmann, in his letter of October 18th, 1930, as a means of tests upon the subject of heating and ventilating. The period of testing may last for not more than one year. The object of this testing in the sight of the Board is to obtain information for a declaration of equivalency if the result shall warrant. It is understood and agreed that the results of the test upon this system are to be reported from time to time to the Board and if the results shall be found unsatisfactory to the Board the installation will be altered and operated as required by the Code."

On October 21, 1930, the Director of Industrial Relations approved and entered the following recommendation of the Ohio Board of Building Standards, relative to the so-called "Thermal System":

"The installation of the so-called Thermal System be permitted in a Cleveland school as requested by the Board of Education of Cleveland, through their Engineer, George A. Hausmann, in his letter of October 18, 1930, as a means of tests upon the subject of heating and ventilating. The period of testing may last for not more than one year. The object of this testing in the sight of the Board is to obtain information for a declaration of equivalency if the result shall warrant. It is understood and agreed that the results of the test upon this system are to be reported from time to time to the Board and if the results shall be found unsatisfactory to the Board, the installation will be altered and operated as required by the Code."

Section 12600-284, General Code, provides in part as follows:

"The purpose of this act is that all public buildings or parts and appurtenances thereof, wheresoever erected, that are to be used or that may be used as a place of * * * assembly * * * shall be so constructed, erected, equipped and maintained that they shall be safe and sanitary, for their intended use and occupancy, * * * .

* * * A building shall be considered safe when free from danger or hazard to the life, safety, health or welfare of persons occupying or frequenting it, or of the public * * * , whether such danger arises from the method or materials of its construction or from equipment in-

stalled therein for the purpose of lighting, heating, the transmission or utilization of electric current, or from its location or otherwise. A building shall be considered sanitary when it is free from danger or hazard to the health of persons occupying or frequenting it or to that of the public, if such danger arises from the method or materials of its construction or from any equipment installed therein, for the purpose of lighting, heating, ventilating or plumbing."

Section 12600-288, General Code, provides in part as follows:

"For the purpose of carrying out the provisions of section 1 (G. C. sec. 12600-284) of this act, the board of building standards shall have and perform the following powers and duties:

(1) To formulate and report to the general assembly from time to time, such amendments in existing statutes relating to the purposes declared in section 1 (G. C. sec. 12600-284) of this act as public health and safety and the development of the arts may from time to time require.

(2) To formulate and report to the general assembly from time to time such additional legislation as it may recommend with a view to carrying out fully in statutory form, the purposes declared in section 1 (G. C. sec. 12600-284) of this act.

(3) * * * * *

No department, officer, board or commission of the state government other than the board of building standards hereby created shall have power to determine such equivalents in any case, nor to permit the use of any fixture, device, material, system or method of construction at variance with what is described in any such section of the General Code.

(4) * * * * *

(5) To conduct such hearings, in addition to those required by this act (G. C. secs. 12600-284 to 12600-299), and to make or cause to be made such investigations and tests, and to require from other state departments, officers, boards and commissions such information as the board may deem necessary or desirable in order to assist it in the discharge of any duty or in the exercise of any power mentioned in this section or elsewhere in this act."

Section 12600-295 provides as follows:

"The board of building standards may require the department of industrial relations to make such investigations, reports and tests and to submit such information as it may deem necessary to assist it in the determination of any question coming before it, and may utilize for such purpose the services of the engineering experiment station at the Ohio State University."

Section 12600-299 provides as follows:

"Wherever in sections 12579 to 12592, both inclusive, and 12600-1 to 12600-282, both inclusive, of the General Code, particular fixtures, devices, materials, systems or methods or manners of construction or installation are described, such description shall be deemed to prescribe minimum standards of safety and sanitary condition exemplified by such particular fixtures, devices, materials, systems, or methods or manners of construction or installation. Where the use of another fixture, device, material, system or method or manner of construction or installation is desired at variance with what is so described, such use shall be permissible, anything in any of said sections to the contrary notwithstanding

if such other fixture, device, material, system, method or manner of construction be the equivalent of that described in such section as measured by the standard of safety, or sanitary condition so indicated, and the equivalence thereof be determined by rule or regulation adopted and promulgated by the board of building standards as provided in this act (G. C. secs. 12600-284 to 12600-299)."

Your inquiry is whether or not the Board of Building Standards may recommend and require the Department of Industrial Relations to make an actual test in a public high school of a ventilating system which does not conform to all of the requirements of the building code. It is evident from the sections heretofore quoted that it is the duty of the Board of Building Standards to formulate and report to the General Assembly from time to time amendments to existing statutes or to recommend additional legislation. The recommendations required to be made to the legislature must of necessity be the result of the findings made by the Board of Building Standards through investigations and tests which the Board of Building Standards is authorized to make or cause to be made. Whether or not the Board of Building Standards has authority to grant permission for the installation of the so-called thermal system of ventilating and heating in the John Marshall High School for the purpose of making an actual test of such system, depends on the interpretation given to section 12600-288, subsection 5.

The thermal system does not conform to all of the requirements of the building code of Ohio in such cases made and provided for, in that the system re-circulates the air in a building instead of making six complete changes of air per hour, as required by section 12600-64.

To interpret section 12600-288, subsection 5, as restricting the Board of Building Standards in its investigations and tests to construction of buildings and installation of equipment in other states or to laboratory tests would, in my opinion, defeat the very purpose of creating the Board of Building Standards which was organized for the purpose of declaring rules of equivalency for fixtures, systems, and so on, which have been found by the Board of Building Standards to be equal to or greater than that established by the building code already in existence and to make recommendations to the legislature of additional or new rules of building standards. The present building standards are no doubt the result of and based on past experience in the construction of buildings erected in the light of existing engineering and scientific knowledge. How can the legislature enact new safety standards into the building code if the Board of Building Standards is to be restricted to tests made in laboratories only?

I believe that the legislature did not intend to restrict the Board of Building Standards to the laboratory only in making its tests, for the reason that a more accurate result can be obtained from an actual test of a particular type of construction or installation of equipment when made in a building which is actually occupied and used. Benefits or disadvantages of any type of construction or equipment could be more readily ascertained from an actual test made in an occupied building than from a test made in a laborator. The only way the Board of Building Standards can fully accomplish the purpose of its creation is by investigations and tests which can be made either in the laboratory or elsewhere.

The intention of the legislature in enacting a building code was to establish building standards which would insure the health and safety of the public. The legislature was no doubt aware of the fact that every day new developments are made in the field of science and invention and the very purpose of section 12600-288

was to permit the Board of Building Standards to test, investigate and take advantage of these new developments so that it could recommend to the legislature amendments to existing statutes and new legislation which would be in step with the advancement of science in the construction of buildings in respect to health, safety, life and welfare of the public using such buildings.

Your attention is invited to section 12600-295, General Code, which authorizes the Board of Building Standards, for the purposes of making investigations and tests, to utilize the services of the engineering experiment station at Ohio State University. You will note that the use of the facilities at Ohio State University by the Board is not mandatory. You will also note that section 12600-299, General Code, authorizes the Board of Building Standards to permit the use of any other system which is at variance with that prescribed by the building code or by the rules and regulations adopted by the Board.

Sections 12600-284 and 12600-299, inclusive, were enacted by the legislature after the decision of our Supreme Court in the case of *State ex rel. v. Industrial Commission of Ohio*, 105 O. S. 103, wherein it was held that a variance in the method of construction of a building could not be permitted by the authorities in violation of the specific requirements of the building code. In other words, the law previous to the enactment of sections 12600-284 to 12600-299 was that the Board of Building Standards had no authority to excuse compliance with the positive mandatory provisions of the building code or adopt rules and regulations which were in variance to specific requirements of the building code. Therefore, it will be presumed that the legislature, knowing of the interpretation made by the Supreme Court, has seen fit to make possible, under section 12600-299, that which the Supreme Court has said in the Myers case, supra, could not be done under the former statute.

It is therefore my opinion that:

1. The Ohio Board of Building Standards and the Director of Industrial Relations can not legally authorize a system of heating and ventilating which will not comply with the provisions of the building code of Ohio, under the guise of an experiment or test.

2. The Board of Building Standards and the Director of Industrial Relations may authorize an actual test in a public school building of a heating and ventilating system which does not conform to the requirements of the building code, providing such installation is for the purpose of a test only.

Respectfully,

GILBERT BETTMAN,

Attorney General.

3097.

DOUBLE LIABILITY—STOCK OF NATIONAL BANK—WHEN SHAREHOLDERS OF FIXED INVESTMENT TRUST MAY BE SO HELD.

SYLLABUS:

The shareholders of a fixed investment trust may be held for the statutory double liability where the depository holds stock of a national bank. States having similar enactments in reference to state banks, would be inclined to construe their statutes to obtain a similar conclusion.

COLUMBUS, OHIO, March 27, 1931.

HON. THEODORE H. TANGEMAN, *Director of Commerce, Columbus, Ohio.*

DEAR SIR:—Recently I received from your office the following inquiry:

“The Division of Securities, Department of Commerce, is requested