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BUILDING REGULATIONS—ELECTRICAL INSTALLATION, MAINTENANCE AND REPAIR—COUNTY COMMISSIONERS, §307.37 R.C.—UNINCORPORATED AREAS OF COUNTY—EXCEPTION: BUILDINGS SUBJECT TO STATE REGULATIONS, §3781.10 R.C. AND OTHER SPECIFIC PROVISIONS.

SYLLABUS:

Under the authority of Section 307.37, Revised Code, the board of county commissioners may prescribe building regulations governing the installation, maintenance and repair of electric wiring and equipment in any buildings in unincorporated portions of the county except such buildings as are made the subject of the regulatory power of the state board of building standards, as provided in Section 3781.10, Revised Code, and except such as are subject to specific statutory building requirements.

Columbus, Ohio, August 12, 1958

Hon. William E. Didelius, Prosecuting Attorney
Erie County, Sandusky, Ohio

Dear Sir:

I have before me your request for my opinion which reads as follows:

“The Board of County Commissioners of Erie County, Ohio, has been requested to consider adopting an electrical code regulating the installation, maintenance and repair of electrical wiring in residential, commercial and industrial buildings located in the unincorporated portion of the County. The Board has inquired whether the provisions of Section 307.37 to 307.40 of the Ohio

Revised Code authorize it to adopt and to enforce such an electrical code.

“In view of the conclusions reached in Opinion No. 2761 rendered by your predecessor on June 24, 1953, to the effect that a board of county commissioners does not have the authority to adopt and to enforce a code of plumbing regulations, there would appear to be some doubt as to the authority of a board of county commissioners to adopt and to enforce an electrical code. I should appreciate having your opinion on this question.

“The Board of County Commissioners of Erie County also has been considering adopting a comprehensive building code under the authority of Sections 307.37 to 307.40 of the Ohio Revised Code. The question has arisen whether such a building code lawfully could incorporate provisions regulating the installation and maintenance of electrical wiring and equipment. I should also appreciate having your opinion on this question.”

Section 307.37, Revised Code reads in part as follows :

“The board of county commissioners, in addition to its other powers, may adopt, administer, and enforce regulations pertaining to the erection, construction, repair, alteration, and maintenance of residential buildings, offices, mercantile buildings, workshops, or factories, including public or private garages, within the unincorporation portion of any county. In no case shall such regulations go beyond the scope of regulating the safety, health, and sanitary conditions of such buildings. * * *”

The scope of the regulations which the board of county commissioners may prescribe, in so far as such regulations pertain to plumbing was delineated in Opinion No. 2761, Opinions of the Attorney General for 1953, p. 270. The Syllabus of that opinion reads as follows :

“A district Board of Health has authority by virtue of Section 1261-42, General Code, to adopt and enforce plumbing regulations in the unincorporated portion of a county, but the county commissioners do not have such authority under the provisions of Section 2480 of the General Code, or under any other provision of the statutes.”

In the text of that opinion my predecessor stated at p. 275 :

“Accordingly, since I can find no specific grant of power given to the commissioners to promulgate rules as to health involving such a technical calling as plumbing, I must conclude that the reference in Section 2480 *supra*, to health and sanitation is not sufficient to authorize the county commissioners to adopt and enforce a plumbing code, or require permits for plumbing installations, and that their powers, so far as they pertain to health and

sanitation should be confined to measures concerning the cleanliness of buildings and premises.”

Your query as to whether board of county commissioners may prescribe and enforce regulations pertaining to the installation, maintenance, and repair of electrical wiring presents a much different question.

It seems clear that any regulations governing the installation, maintenance and repair of electrical wiring and equipment is outside the domain of a general health district, because electrical wiring and equipment do not normally affect health or the sanitary condition of a building. However, were the board of county commissioners to prescribe regulations governing the installation, maintenance and repair of electrical wiring and equipment in residential, commercial and industrial buildings located in the unincorporated portion of the county, such regulations might conflict with regulations prescribed by the state board of building standards. Section 3781.10, Revised Code, provides in part as follows :

“The board of building standards shall :

(A) Formulate and adopt regulations governing the erection, construction, repair, alteration, and maintenance of all buildings or classes of buildings, specified in Section 3781.06 of the Revised Code, the installation of equipment therein, the standards or requirements for materials to be used in connection therewith, and other requirements relating to the safety and sanitation of such buildings. Such rules and regulations shall be the lawful minimum requirements specified for such buildings to which they are applicable, except that no rule or regulation which specifies a higher requirement than is imposed by any section of the Revised Code shall be enforceable; such rules and regulations shall be acceptable as complete lawful alternatives to the requirements specified for such buildings in any section of the Revised Code; and the board shall on its own motion, or on application made under Sections 3781.12 and 3781.13 of the Revised Code, formulate, propose, adopt, modify, amend, or repeal such rules and regulations to the extent necessary to effectuate the purposes of sections 3781.06 to 3781.18, inclusive, of the Revised Code; but no such rule or regulation shall be effective beyond October 1, 1959.”

The situation with which we are now confronted is that in 1941, the General Assembly passed the act which has now become Section 307.37, Revised Code, granting to the board of county commissioners the power to prescribe building regulations in unincorporated areas of the county, but in 1957, the General Assembly passed an act which became Section 3781.10,

Revised Code, granting to the state board of building standards the power to prescribe building regulations throughout the State of Ohio.

In 37 Ohio Jurisprudence 620, it is said :

“Consistency in statutes is of prime importance, and it is the duty of the court to attempt to harmonize and reconcile laws. That is, a statute or section should, if possible, be so construed as to harmonize and reconcile its provisions with other laws or sections so that all of them may stand. Accordingly, the rule is that all laws newly enacted by the general assembly must be presumed to harmonize with existing statutes on kindred subjects neither expressly nor impliedly repealed. Moreover, a construction of a statute which destroys the consistency thereof is to be avoided.
* * *

Let us look first, therefore, to determine if Section 3781.10, Revised Code, can possibly be construed so as to be in harmony with Section 307.37, Revised Code. Section 3781.10, Revised Code, provides that the state board of building standards shall formulate and adopt regulations governing the erection, construction, repair, alteration, and maintenance of all buildings or classes of buildings specified in Section 3781.06 of the Revised Code. Looking to Section 3781.06, Revised Code, I find that it provides in part as follows :

“All public buildings which may be used as a place of resort, assembly, education, entertainment, lodging, dwelling, trade, manufacture, repair, storage, traffic, or occupancy by the public, and all other public buildings or parts and appurtenances thereof erected within this state shall be so constructed, erected, equipped, and maintained that they shall be safe and sanitary for their intended use and occupancy, except that Sections 3781.06 to 3781.18, inclusive and Section 3791.04 of the Revised Code do not apply to single family, two-family and three-family dwelling houses.”

The effect of the above quoted section is to preclude the state board of building standards from prescribing regulations governing the erection, construction, repair, alteration and maintenance of any buildings except those which are thus listed therein. This leaves an area in which the board of county commissioners may exercise their regulative powers as granted them by Section 307.37, Revised Code, and within such area the board may adopt, administer and enforce regulations pertaining to the installation, maintenance and repair of electrical wiring and equipment in unincorporated areas of the county, all without any conflict with the jurisdiction of the state board.

Your attention is again invited to that portion of Section 3781.10, Revised Code, which reads as follows :

“Such rules and regulations (as are prescribed by the state board of building standards) shall be the lawful minimum requirements specified for such buildings to which they are applicable, except that no rule or regulation which specifies a higher requirement than is imposed by any section of the Revised Code shall be enforceable; * * *”

Section 3781.10, Revised Code, is the latest statutory enactment on the subject of building regulation, and it must be deemed to repeal by implication such portion of Section 307.37, Revised Code, which purports to authorize the board of county commissioners to promulgate rules applicable in the field in which the state board is authorized, by Section 3781.10, Revised Code, to prescribe minimum building standards.

There are a number of statutes also, which provide specific building requirements, especially where the building is classified as a workshop or factory. Because these sections are specific in their application they would prevail in any case of conflict with a rule of the board of county commissioners, and in this field, too, we must conclude that the board of county commissioners may not act.

It is therefore my opinion and you are advised that under the authority of Section 307.37, Revised Code, the board of county commissioners may prescribe building regulations governing the installation, maintenance and repair of electric wiring and equipment in any buildings in unincorporated portions of the county except such buildings as are made the subject of the regulatory power of the state board of building standards, as provided in Section 3781.10, Revised Code, and except such as are subject to specific statutory building requirements.

Respectfully,
WILLIAM SAXBE
Attorney General