

4229.

APPROVAL, NOTES OF METAMORA VILLAGE SCHOOL DISTRICT,  
FULTON AND LUCAS COUNTIES, OHIO—\$75,000.00.

COLUMBUS, OHIO, April 2, 1932.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

4230.

SMOKE ORDINANCE—CLEVELAND—STATE OWNED CENTRAL AR-  
MORY NOT SUBJECT TO SUCH ORDINANCE.

## SYLLABUS:

*The jurisdiction of the City of Cleveland, in the enforcement of its smoke ordinance, does not extend to the Central Armory which is under the exclusive control and management of the state.*

COLUMBUS, OHIO, April 4, 1932.

HON. FRANK D. HENDERSON, *Adjutant General, Columbus, Ohio.*

DEAR SIR:—I acknowledge receipt of your letter which reads as follows:

“This office is in receipt of a communication from the Department of Public Safety, City of Cleveland, Division of Smoke Inspection, which indicates that the use of Ohio coal with the present equipment at the Central Armory, Cleveland, Ohio, would doubtless cause a smoke condition which would constitute a serious public nuisance contrary to the Cleveland smoke ordinance. The Central Armory at Cleveland is owned by the County of Cuyahoga although an act of the Legislature in 1929 authorized the payment of a first installment of the purchase price by the state of Ohio for an armory. Referring to Opinion No. 3528, office of the Attorney General dated August 31, 1931, on a question of jurisdiction in the city of Cincinnati over the armory located in that city, it is assumed that the present situation in the city of Cleveland is similar in application. It is not possible, due to limited appropriations, to install special equipment as suggested in letter from the Division of Smoke Inspection, and it is desired to use Ohio coal under the boilers, in which case, your opinion is desired as to whether or not the jurisdiction of the city of Cleveland in the enforcement of the smoke ordinance would extend to prohibit the use of Ohio coal with the present equipment in use in case a violation of the smoke ordinance occurs.”

In 1929 the legislature passed an act authorizing the execution of a contract between the State and Cuyahoga County for the rental and for the ultimate purchase by the state of the Central Armory in Cleveland, which should be in the form of a lease for the term of two years, renewable for successive terms of two years each until the whole amount of the purchase price is paid. 113 O. L. 516. Such an agreement was executed, by the terms of which the adjutant general was given the supervision and control of the property at all times. In 1931, said lease was renewed by the state for an additional two years.

The title to this property does not pass to the state until the entire purchase price has been made, but said property is under the exclusive control and management of the state. Therefore, my opinion to which you refer is applicable to the present inquiry. In that opinion I held

“The jurisdiction of the officers and other employes of the building department of a municipal corporation in this state, acting under the assumed authority of an ordinance passed by the council of such municipality, does not extend to a building owned by the state in the municipality, with respect to alterations and repairs which the public safety requires to be made in such building.”

Section 3 of article XVIII of the State Constitution gives municipalities the power to adopt and enforce police, sanitary and other similar regulations which are not in conflict with general laws. Also, by section 3650, General Code, they are given the power:

“To cause any nuisance to be abated, to prosecute in any court of competent jurisdiction, any person or persons who shall create, continue, contribute to or suffer such nuisance to exist; to regulate and prevent the emission of dense smoke, to prohibit the careless or negligent emission of dense smoke from locomotive engines, to declare each of the foregoing acts a nuisance, and to prescribe and enforce regulations for the prevention thereof; to prevent injury and annoyance from the same, to regulate and prohibit the use of steam whistles, and to provide for the regulation of the installation and inspection of steam boilers and steam boiler plants.”

I assume that the ordinance in question is general in its nature and that no specific reference is made to state buildings.

General prohibitions and regulations in a city ordinance, made pursuant to general authority, apply to all private persons but are not rules of conduct for the state. *Milwaukee vs. McGregor, et al*, 140 Wis. 35; *Dollar Savings Bank vs. U. S.*, 19 Wall. 227.

Moreover, the general police power conferred upon a municipality does not include the power to regulate the conduct of the state with reference to property owned by it or under its management or control or to regulate the use thereof by the state. *Kentucky Institute for Education of Blind vs. Louisville*, 123 Ky. 767; *Board of Education vs. St. Louis*, 267 Mo. 356.

Legislation which would assist municipalities in combating the smoke nuisance and the evils resulting therefrom would, in my judgment, be a proper subject for consideration by the legislature, but as the law now stands I must conclude that the jurisdiction of the City of Cleveland, in the enforcement of its smoke ordinance, does not extend to the Central Armory which is under the exclusive control and management of the state.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*