

1420

1. ORDER—RECONSIDERED—PROMULGATED BY INDUSTRIAL COMMISSION—SAFETY CODE—MAY BE RECONSIDERED BY INDUSTRIAL COMMISSION—SECTIONS 154-45, 871-1 ET SEQ., 871-27, 871-29 G. C.
2. INDUSTRIAL ~~COMMISSION~~—HAS NO JURISDICTION TO CONSIDER APPEAL FILED WITH IT FROM ORDER OF DEPARTMENT OF INDUSTRIAL RELATIONS—POWERS AND DUTIES TRANSFERRED BY SECTION 154-45 G. C. SECTIONS 871-29, 980 THROUGH 1037, 12600-1 THROUGH 12600-296 G. C.

SYLLABUS:

1. By virtue of Section 154-45, General Code, an order promulgated by the Industrial Commission under the Safety Code, Section 871-1 et seq., General Code, may be reconsidered by the Industrial Commission as provided in Sections 871-27 and 871-29, General Code.
2. Under the provisions of Sections 871-27 and 871-29, General Code, the Industrial Commission has no jurisdiction to consider an appeal filed with it from an order of the Department of Industrial Relations which is made pursuant to Section 871-13 et seq., General Code, Sections 980 to 1037, General Code, and Sections 12600-1 to 12600-296, General Code, these being powers and duties transferred to said department by virtue of the enactment of Section 154-45, General Code.

Columbus, Ohio, May 14, 1952

Hon. Albert A. Woldman, Director, Department of  
Industrial Relations and  
Hon. Joseph J. Scanlon, Secretary, Industrial Commission of Ohio  
Columbus, Ohio

Gentlemen :

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

“Under date of December 10, 1951, a certain Order No. 5610, covering 44 different items or subject matters, was issued by the Division of Factory and Building Inspection of the Department of Industrial Relations, to or against G. Corporation, A., Ohio.

“The Department of Industrial Relations issued its aforesaid Order by virtue of the powers granted to it by Sections 871-13 seq.; 980 to 1037, and 12600-1 seq.

“Said Order No. 5610 required the G. Corporation to correct the alleged violations listed in said Order within 45 and 90 days from the date of said Order.

“Under date of January 14, 1952, the G. Corporation filed with the Industrial Commission of Ohio an appeal from said Order No. 5610, requesting the Industrial Commission of Ohio to forthwith issue an order suspending the effective date of all parts of said Order No. 5610, and further requesting the Industrial Commission to schedule and conduct a hearing on said Order to determine its lawfulness and reasonableness, and further, to determine the authority of the Director of Industrial Relations to issue said Order. This appeal would appear to have been filed with the Industrial Commission in accordance with Sections 871-27 and 871-29 of the General Code of Ohio.

“Attached hereto you will find a complete copy of said Order, together with a complete copy of the appeal which has been filed.

“After a conference between the Director of Industrial Relations and the Industrial Commission of Ohio, it was determined to present this entire procedure to your office and request your opinion as to whether or not the Industrial Commission has jurisdiction to consider this appeal as filed, and has jurisdiction under the law to make any order in this proceeding other than an order to the effect that it has no jurisdiction in this subject matter.

“We call your attention to Section 154-45, G. C., which creates the Department of Industrial Relations. You will note that when the Department of Industrial Relations was created by virtue of Section 154-45, G. C., it assumed all duties and powers of the Industrial Commission with certain exceptions.

“Among these exceptions—i.e., duties and powers reserved by the Industrial Commission—is Section 871-27, G. C.,—dealing with hearings ‘on the reasonableness and lawfulness of *any order of the Commission in the manner provided in this act.*’ (Underlining supplied.)

“We call your attention to the fact that the orders issued by the Department of Industrial Relations in its above Order No. 5610 are not orders of the Industrial Commission. They are orders which only the Department of Industrial Relations is empowered to exercise by virtue of Section 154-45, G. C. As cited in said Order No. 5610 the statutes invoked are Sections 871-13, -15, -16, -20, -21, -22, -25, -36, -37, -40, -41, -43 and -44, the duties, authority and powers of which were transferred to the Department of Industrial Relations by Section 154-45, G. C.

“We further call your attention to the fact that Order No. 5610 also contains orders issued by the Department of Industrial Relations which are not a part of ‘*this act*,’ to which Section 871-27 refers. These are orders issued by the Department of Industrial Relations by virtue of its powers under the Workshops and Factories Act—Sections 980 to 1037, G. C., inclusive; and the State Building Code—Sections 12600-1 to 12600-296, inclusive, G. C.

#### QUESTIONS:

“1. Has the Industrial Commission jurisdiction to hear and act in the G. Corporation, appeal relative to orders contained in Order No. 5610 issued by the Department of Industrial Relations by virtue of the powers vested in it by Section 154-45, G. C., namely, the powers enumerated in Sections 871-13, -15, -16, -20, -21, -22, -25, -36, -37, -40, -41, -43 and -44?”

“2. Has the Industrial Commission jurisdiction to hear and act on the aforesaid appeal regarding the orders listed in said Order No. 5610 by virtue of the powers vested in the Department of Industrial Relations by Sections 980 to 1037, G. C., and Sections 12600-1 to 12600-296, inclusive, G. C.?”

The sole question presented is whether the Industrial Commission has *jurisdiction* to consider an appeal from an order of the Department of Industrial Relations issued under the provisions of Section 871-13 et seq., Sections 980 to 1037 and Section 12600-1 et seq., General Code.

It is to be noted that Sections 871-1 to 871-45, General Code, relate to the creation of the Industrial Commission and general safety codes and is commonly referred to as the "Safety Code." Sections 980 to 1037, General Code, enumerate the duties of the chief inspector of workshops and factories, regulations as to factory and public buildings, and inspection thereof, and is commonly referred to as "Factory Code." The designation "Ohio State Building Code" refers to Sections 12600-1 to 12600-299, General Code, and relates to building standards and the enforcement thereof.

As the order of the Department of Industrial Relations from which the appeal has been taken involves three groups of statutes, the jurisdiction of the Commission will be discussed as to each separately and in the order to which reference has been made above.

The appeal apparently was filed under the provisions of Sections 871-27 and 871-29, General Code. Section 871-27, General Code, enacted on March 12, 1913, 103 Ohio Laws, 95, reads in part as follows:

"(1) Any employer or other person interested either because of ownership in or occupation of any property affected by any such order, or otherwise, may petition for a hearing on the reasonableness and lawfulness of *any order of the commission in the manner provided in this act.*

"(2) Such petition for hearing shall be by verified petition filed with the commission, setting out specifically and in full detail the order upon which a hearing is desired and every reason why such order is unreasonable or unlawful, and every issue to be considered by the commission on the hearing. The petitioner shall be deemed to have finally waived all objections to any irregularities and illegalities in the order upon which a hearing is sought other than those set forth in the petition. \* \* \*

"(3) Upon receipt of such petition, if the issues raised in such petition have theretofore been adequately considered, *the commission shall determine the same by confirming, without hearing, its previous determination,* or if such hearing is necessary to determine the issues raised, the commission shall order a hearing thereon and consider and determine the matter or matters in question at such time as shall be prescribed.

"\* \* \* (4) Upon such investigation, if it shall be found that the order complained of is unlawful or unreasonable, the commission shall substitute therefor such other order as shall be lawful and reasonable. \* \* \*"  
(Emphasis added.)

Section 871-29, General Code, which was also enacted on March 12, 1913, 103 Ohio Laws, 95, reads as follows:

“No action, proceeding or suit to set aside, vacate or amend *any order of the commission*, or to enjoin the enforcement thereof, shall be brought unless the plaintiff shall have applied to the commission for a hearing thereon at the time and as provided in section 27 of this act, and in the petition therefor shall have raised every issue raised in such action.

“*Every order of the commission shall*, in every prosecution for violation thereof, be conclusively presumed to be just, reasonable and lawful, unless prior to the institution of the prosecution for such violation an action shall have been brought to vacate and set aside such order, as provided in section 41 of this act.”

(Emphasis added.)

The definition of terms for the statutes comprising the Safety Code, Section 871-1 et seq., General Code, is found in Section 871-13, General Code, which was enacted in the initial bill on March 12, 1913, 103 Ohio Laws, 95. Paragraph 7 of that section reads:

“The term ‘order,’ shall mean and *include any decision, rule, regulation, direction, requirement, or standard of the commission, or any other determination arrived at or decision made by such commission.*”

(Emphasis added.)

Certain powers and duties of the Industrial Commission were transferred to the Department of Industrial Relations by passage of Section 154-45, General Code, as passed on April 19, 1921, 109 Ohio Laws, 105. This section reads in part as follows:

“*The department of industrial relations shall have all powers and perform all duties vested by law in the industrial commission of Ohio, excepting the following:*

“*Those powers and duties of the commission which it exercises as successor of the state liability board of awards, the state board of arbitration, the board of boiler rules, and in the investigation, ascertainment and determination of standards, devices, safeguards, and means of protection, being all powers and duties mentioned in paragraphs 3 to 8, both inclusive, of section 871-22 of the General Code, sections 871-23, 871-26, 871-27, 871-28, 871-30, 871-32, 871-33, 871-34 and 871-35, sections 1058-8 to 1058-12, both inclusive, 1058-16, 1063 to 1077, both inclusive, and sections 1465-37 to 1465-108, both inclusive, of the General Code, and the powers of the commission as successor of the board*

of boiler rules under section 1058-18 of the General Code, *which shall continue to be exercised and performed by the industrial commission of Ohio in the manner provided by law for the exercise of such powers and the performance of such duties. \*\*\**" (Emphasis added.)

An interpretation of the statutes quoted above is necessary in order to determine if an appeal lies to the Industrial Commission in the instant case. It is to be noted that Sections 871-27, 871-29 and 871-13, General Code, are unchanged since their original enactment in 1913.

The words "order \* \* \* by such commission" as contained in paragraph 7 of Section 871-13, supra, can have reference only to a ruling or determination of the Industrial Commission. Section 871-13, supra, has not been changed since its enactment in 1913. At the time of its enactment it was part of Chapter (9a), which was entitled "Industrial Commission."

Commencing with the premise that "order" as referred to in the Safety Code means a decision, ruling, or determination of the Industrial Commission, it now becomes necessary to examine the provisions of Sections 871-27 and 871-29, supra.

It is stated in Sutherland Statutory Construction, Volume 3, Section 6603, pages 269 to 275 :

"\* \* \* The general rule applied to statutes granting powers to administrative boards, agencies or tribunals is that only those powers are granted which are expressly or by necessary implication conferred, and the effect usually has been to accomplish a rather strict interpretation against the exercise of the power claimed by the administrative body. The rule has been variously phrased, including language to the effect that a power must be 'plainly' expressed; that a power is not to be 'inferred' or taken by 'implication'; or that the jurisdiction of an administrative agency is not to be 'presumed.' \* \* \*"

The only reference by a court to Section 871-27, General Code, which has come to my attention is to be found in the case of North American Committee v. Bowsher, 132 Ohio St., 599 (1937.) That case involved an interpretation of Section 871-53, General Code, as it then existed, 103 Ohio Laws, 399, relating to a review of an order of the Division of Film Censorship by the Supreme Court, and provides that the procedure shall

be the same "as is provided in the case of persons dissatisfied with the orders of the Industrial Commission." In a per curiam opinion, the Court stated at page 601 :

"\* \* \* However, Section 871-27, General Code, permits a person in interest because of ownership in any property affected by any order to petition the commission for a hearing on the reasonableness and lawfulness of any order, and *that section authorizes the commission to confirm, with or without hearing, its former order.*" (Emphasis added.)

It is readily seen that the Supreme Court interpreted Section 871-27 of the General Code, to refer only to a review by the Commission of "its" orders before a further appeal was to be made to the courts. The interpretation by the court of this section is unmistakably clear. There is absolutely no indication whatever that the legislature intended that this should be a review by the Commission of an order issued by any other body or board.

In determining legislative intent, inquiry must also be made to the history of the legislation in question as an aid in the interpretation of the statute.

In view of the fact that Sections 979 to 1037, General Code, and Section 12600-1 et seq., General Code, relating to the duties of the chief inspector of workshops and factories were enacted prior to the creation of the Industrial Commission and the inter-relation of these statutes to those having a reference to the Industrial Commission, the legislative history of these two groups of statutes will be considered in chronological order together with Section 871-1 et seq., General Code.

Section 2573, General Code, was initially passed on April 4, 1884, 81 Ohio Laws, 106, and provided for the appointment and duties of an inspector of shops and factories.

No significant change has been made of this section since its enactment. In 1911, 102 Ohio Laws, 72, it was renumbered as Sections 979 to 1037, General Code.

The original Workmen's Compensation Law was passed on May 31, 1911, Section 1465-37 et seq., General Code, 102 Ohio Laws, 524, creating a State Liability Board of Awards to administer a state insurance fund which was optional or elective in principle.

The Ohio State Building Code, Section 12600-1 et seq., General Code, 102 Ohio Laws, 586, became effective on June 14, 1911. Paragraph 2 of Section 12600-281, General Code, as initially enacted and reading at the present time, provides:

“It shall be the duty of the chief inspector of workshops and factories, or building inspector, or commissioner of buildings in municipalities having building departments, to enforce all the provisions herein contained for the construction, arrangement and erection of all public buildings or parts thereof, including the sanitary condition of the same in relation to the heating and ventilation thereof.”

The legislature on March 12, 1913, passed Senate Bill 137 enacting the Safety Code, Section 871-1 et seq., General Code, 103 Ohio Laws, 195, and created the Industrial Commission, Section 871-1, General Code, as the successor to the State Liability Board of Awards, Section 871-12, General Code. It is again to be noted that Sections 871-27 and 871-29, supra, were part of this bill and remain unchanged.

Section 871-24, General Code, effective September 1, 1913, reads, so far as pertinent, as follows:

“All duties, liabilities, authority, powers and privileges conferred and imposed by law upon the \* \* \* chief inspector of workshops and factories, first assistant chief inspector of workshops and factories, second assistant chief inspector of workshops and factories, district inspector of workshops and factories, \* \* \* are hereby imposed upon the industrial commission of Ohio and its deputies on and after the first day of September, 1913.

“All laws relating to the \* \* \* chief inspector of workshops and factories, first assistant chief inspector of workshops and factories, second assistant chief inspector of workshops and factories, district inspectors of workshops and factories, \* \* \* on and after the first day of September, 1913, shall apply to, relate and refer to the industrial commission of Ohio, and its deputies. \* \* \*

Section 871-22, General Code, relating to the powers and duties of the Commission reads in part as follows:

“It shall also be the duty of the industrial commission, and it shall have full power, jurisdiction and authority:

“(1) \* \* \* to retain and assign to their duties any or all officers, subordinate and clerks of the commissioner of labor



statistics, the chief inspector of mines, and chief inspector of workshops and factories, \* \* \*.”

Paragraph (2) of said section bestowed upon the Industrial Commission the responsibility of administering and enforcing laws relating to the protection of life, health, safety and welfare of certain specified persons and places of employment and assemblage.

The provisions of Section 871-1 et seq., General Code, were the subject of judicial opinion in the case of *Kissinger, etc. v. Board of Education, et al.*, 101 Ohio St., 298 (1920).

In the opinion Matthias, J., stated on pages 300 to 302:

“\* \* \* The express purpose of that act was to create the Industrial Commission which should supersede the State Liability board of Awards, and to abolish various departments, including the Chief Inspector of Mines, Chief Inspector of Workshops and Factories, and the State Board of Arbitration, and to merge certain powers and duties of said departments in and transfer certain powers and duties of said departments to the Industrial Commission. It was provided therein that the Industrial Commission should supersede and perform all the duties theretofore imposed by law upon the State Liability Board of Awards, and that on and after September 1, 1913, the several departments therein named, including the one theretofore designated as the Chief Inspector of Workshops and Factories, should have no further legal existence; that the Industrial Commission should have all the powers and enter upon the performance of all the duties theretofore conferred by law upon those departments, which included those enumerated in Section 1031, General Code; and that all laws relating to the several departments specified should after said date apply, relate and refer to the Industrial Commission of Ohio and its deputies. This act was passed on March 12, 1913, but by its express terms did not become effective until September 1, 1913. It expressly repealed many sections of the General Code, including those providing for the appointment of a Chief Inspector of Workshops and Factories, but did not repeal those defining and prescribing the authority and duties of that or of the other departments therein named. They were continued in force, the result and effect of such legislation being that all these specified departments were superseded by the Industrial Commission of Ohio, created by the act, and that all the powers and duties of said departments from and after September 1, 1913, should belong to and be exercised by the Industrial Commission.

“The well-known and often-repeated rules with reference to repeals by implication apply. The express repeal of the sec-

tion providing for the appointment of a chief inspector of workshops and factories cannot be held to work an implied repeal of the various sections conferring powers upon and assigning duties to the chief inspector of workshops and factories in view of the express provisions enacted at the same time whereby the Industrial Commission succeeded to those very powers and duties. These provisions are thus specifically kept in force and effect. \* \* \*

“The provision for the appointment of a chief inspector of workshops and factories was repealed, but the statutes enumerating certain powers and duties of that department were continued in force and the new provision enacted conferred those powers and duties upon the state Industrial Commission. They were neither amended nor repealed.”

The effect of the 1913 act was to confer powers and duties formerly exercised by the various departments upon the Industrial Commission and to eliminate those departments as separate entities. One of the departments so eliminated was that of the chief inspector of workshops and factories. The powers and duties formerly exercised by said chief inspector were transferred to the Industrial Commission. The Commission was to exercise the duties of those departments listed in the act, as well as the duties under the Workmen's Compensation Act. Among the powers and duties which were formerly exercised by the chief inspector of workshops and factories, and which were transferred to the Industrial Commission by this act, were those as provided in Sections 979 to 1037, General Code, and Section 12600-1 et seq., General Code.

The department of Industrial Relations was created in the Administrative Code passed April 19, 1921, 109 Ohio Laws, 105, and consisted of Section 154-1 et seq., General Code. Section 154-6, General Code, as passed on April 19, 1921, read in parts:

“Offices are created within the several departments as follows:

“\* \* \* In the department of industrial relations:

Chiefs of divisions as follows: Factory inspection.

“\* \* \*

\* \* \*

\* \* \*”

Section 154-45, supra, as passed on April 19, 1921, further provided in part:

“The industrial commission of Ohio shall be a part of the department of industrial relations for administrative purposes in

the following respects: The director of industrial relations shall be ex-officio the secretary of said commission, shall succeed to and perform all of the duties of the secretary of said commission, and shall exercise all powers of said secretary as provided by law; \* \* \*"

Included in the act passed on April 19, 1921, was Section 154-24, General Code, which remains unchanged at the present time and reads in part as follows:

"Whenever rights, powers or duties which have heretofore been vested in or exercised by any officer, board, commission, institution or department, or any deputy, inspector, or subordinate officer thereof, are, by this chapter, transferred, either in whole or in part, to or vested in a department created by this chapter, or any other department, office or institution, such rights, powers and duties shall be vested in, and shall be exercised by the department, office or institution to which the same are hereby transferred, and not otherwise; and every act done in the exercise of such rights, powers and duties shall have the same legal effect as if done by the former officer, board, commission, institution or department, or any deputy, inspector, or subordinate officer thereof. \* \* \*"

The 1921 act created the Department of Industrial Relations and transferred certain powers and duties formerly vested in the Industrial Commission under the Safety Code to that department. It is to be noted, however, that the exceptions as listed in Section 154-45, General Code, are powers and duties that were retained by the Industrial Commission, under the provisions of the Safety Code and the Workmen's Compensation Act. The Industrial Commission by this act was made a part of the Department of Industrial Relations, *but only for administrative purposes*.

A review of the 1921 act discloses no specific provision for an appeal from the order of the Department of Industrial Relations to the Industrial Commission. The only basis that could be used for arguing that such an appeal was intended is Section 871-27, General Code, which was one of the sections mentioned as to duties retained by the Industrial Commission. It is reasonable to assume that the intention of the legislature was that the procedure as provided in Section 871-27, General Code, relates to an order made by the Industrial Commission and that such a petition as mentioned in said paragraph is in the nature of a reconsidera-

tion by that body of its orders and decisions. The language of that section cannot be reasonably interpreted as providing for an appeal to the Industrial Commission from an order of the Department of Industrial Relations.

It is to be noted that the rights granted under Section 871-27, *supra*, were specifically reserved to the Industrial Commission but that the rights under Section 871-29, *supra*, were not listed among those powers retained by the Commission. In view of this fact it would seem at first blush that the duties of the Commission under Section 871-29, General Code, were transferred to the Department of Industrial Relations.

Close examination of Section 871-29, *supra*, will disclose that it is *in pari materia* with Section 871-27, *supra*, and that the two statutes must be construed together. It is to be noted that Section 871-29, *supra*, provides that one must "have applied to the commission for a hearing thereon at the time and as provided in section 27 of this act \* \* \*."

In Sutherland Statutory Construction, Volume 2, Section 5202, at page 535, it is stated:

"Statutes are considered to be *in pari materia*—to pertain to the same subject matter—when they relate to the same person or thing, or to the same class of persons or things, or have the same purpose or object. \* \* \*"

It is further to be noted that Section 871-29, General Code, refers to "orders of the Commission." There is no reference made therein as to any orders of other departments than the commission. In view of the fact that Section 871-29, General Code, is *in pari materia* with Section 871-27, General Code, and as the latter was a right expressly retained by the Industrial Commission under Section 154-45, General Code, the only reasonable conclusion that can be made is that it was the legislative intent that the procedure outlined in Section 871-29, *supra*, was reserved to the Commission by implication along with those expressly reserved in Section 871-27, *supra*. The procedure outlined in Sections 871-27 and 871-29, General Code, should be followed in seeking reconsiderations by the Commission of orders and decisions made by that body under the Safety Code.

Sections 871-38, 871-39 and 871-40, General Code, all refer to a procedure of appeal in cases, under the Safety Code, to the Supreme Court after a petition has been filed in accordance with Section 871-27,

General Code. It is further noted that these three sections were not listed among the powers and duties retained by the Industrial Commission in Section 154-45, General Code. The Supreme Court, however, has consistently held that the methods of appeal mentioned in these three sections, Sections 871-38, 871-39 and 871-40, General Code, relate to *orders of the Industrial Commission under the Safety Code*. See *Gatton v. Industrial Commission*, 93 Ohio St., 203; *Pittsburgh Coal Company v. Industrial Commission*, 108 Ohio St., 185; *Slatmeyer v. Industrial Commission*, 115 Ohio St., 654; *State, ex rel, Nichols v. Gregory, et al.*, 130 Ohio St., 165; *U. S. Wall Paper Co., et al. v. Industrial Commission*, 132 Ohio St., 372 and *Cincinnati House Wreckers, Inc. v. Industrial Commission*, 148 Ohio St., 184.

Assuming that the procedure outlined in Section 871-29, General Code, was one transferred to the Department of Industrial Relations by Section 154-45, General Code, the only interpretation that could be placed on that section would be to substitute in place of the word "commission" as contained in that statute, the words "department of industrial relations." By this, it could be said that the provisions of Section 871-29, General Code, provided for a reconsideration by the Department of Industrial Relations of its own orders and decisions. It is my opinion that such an interpretation is not one that was intended by the legislature and that as noted above the procedure outlined in Section 871-29, *supra*, was one of those retained by the Industrial Commission as this statute is in *pari materia* with Section 871-27, General Code. But even if such interpretation were accepted such would not authorize an appeal to the Industrial Commission from an order of the Department of Industrial Relations.

In view of the foregoing, it is, therefore, my opinion that the procedure provided in Sections 871-27 and 871-29, General Code, was reserved to the Industrial Commission under the enactment of Section 154-45, General Code, and relates to review of orders and decisions of the Industrial Commission made under the Safety Code as to powers reserved to it under said Code.

Section 154-45, General Code, was amended effective May 15, 1934, 115 Ohio Laws, Pt. 2, 242, further defining the powers and duties of the Industrial Commission and repealing that part of the statute making the Commission a part of the Department of Industrial Relations for ad-

ministrative purposes. A further amendment of that statute effective July 28, 1949, 123 Ohio Laws, 862 did not alter any of the provisions herein referred to.

In summation, it is to be noted that by Section 871-24, General Code, enacted in 1913, the powers and duties formerly vested in the chief inspector of workshops and factories were transferred to the Industrial Commission. The powers and duties under the provisions of the Safety Code were thereafter exercised by the Industrial Commission. The Commission's method of reconsidering its orders and decisions and appeals from such orders and decisions to the Supreme Court as provided in Sections 871-27, 871-29, 871-38, 871-39 and 871-40, *supra*, all relate to the powers exercised by the Commission under the Safety Code.

By enactment of Section 154-45, General Code, in 1921, certain powers of the Industrial Commission, under the provisions of the Safety Code, were transferred to the Department of Industrial Relations and other powers under that Code were retained by the Industrial Commission. By express mandate of the statute, the provisions of Section 871-27, General Code, were expressly retained by the Industrial Commission. As Section 871-29, *supra*, is in *pari materia* with Section 871-27, *supra*, I must conclude that the procedure outlined in that section was also retained by the Industrial Commission. Following this conclusion, it appears that there is no basis for an appeal to the Industrial Commission from an order of the Department of Industrial Relations made under the provisions of Section 871-13 *et seq.*, General Code.

To further substantiate this interpretation an analogy can be drawn to another section of the statute where a specific provision is made for an appeal to the Industrial Commission from an order of the Department of Industrial Relations. The chapter (12a) dealing with the inspection of elevators, Sections 1038-1 to 1038-24, General Code, is not involved in the order of the department from which the instant appeal was taken to the Industrial Commission. Reference is herein made to those sections in order to indicate that specific provision is made by the General Assembly for such an appeal when this is intended.

Section 1038-13, General Code, provides, so far as pertinent, that:

"Every inspector shall forward to the division of factory and building inspection a full report of each inspection made of any elevator, as required to be made by him under the provisions of

law, showing the exact condition of the said elevator, and said inspector shall leave a copy of said report at the elevator on the day the inspection is completed. \* \* \*

“Such owner or operator, within 20 days from receipt of the copy of such report or statement of changes in plans or specifications, may make written application to the industrial commission of Ohio, upon forms to be furnished by the industrial commission of Ohio, for a hearing on the report or the statement regarding changes in plans or specifications as to whether the elevator in question is reasonably safe or whether the elevator if constructed in accordance with such plans and specifications would be reasonably safe. The industrial commission shall promptly consider such application and proceedings consistent herewith shall be had thereon in accordance with the provisions of the administrative procedure act.”

This section was the subject of interpretation by one of my predecessors in Opinion No. 4620, Opinions of the Attorney General for 1941, page 1047, wherein it was held that the Industrial Commission lacked jurisdiction to consider such an appeal unless written application is filed with the Commission within the required time.

It is clear by analogy that in this instance where the legislature intended an appeal to the Industrial Commission from an order of the Department of Industrial Relations, specific provision was made therefor. In Sutherland Statutory Construction, Volume 2, Section 4915, page 412, relative to the maxim of *expressio unius est exclusio alterius*, it is said:

“\* \* \* there is an inference that all omissions were intended by the legislature. ‘When what is expressed in a statute is creative, and not in a proceeding according to the course of the common law, it is exclusive, and the power exists only to the extent plainly granted. \* \* \*’”

The right of appeal to the Industrial Commission from an order of the Department of Industrial Relations having been specifically made in the sections relating to elevator inspection and no specific provision having been made as to orders made under the Safety Code by that department, it must be presumed that the legislature did not intend such an appeal to be taken from an order by the Department of Industrial Relations made pursuant to the provisions of Section 871-13 et seq., General Code.

In view of the foregoing, it is my opinion that the Industrial Commission had no jurisdiction to consider an appeal from an order of the

Department of Industrial Relations made pursuant to Section 871-13 et seq., General Code. Sections 871-27 and 871-29, General Code, refer to a reconsideration of an order made by the Industrial Commission under the provisions of Section 871-1 et seq., General Code.

In your request for my opinion inquiry is made as to whether orders of the Department of Industrial Relations made pursuant to the provisions of the Factory Code, Sections 980 to 1037, General Code, and Building Code, Sections 12600-1 to 12600-296, General Code, may be reviewed by the Industrial Commission by virtue of Section 871-27, General Code. As heretofore stated, Section 871-27, General Code, provides for a review by the Industrial Commission of its order under the Safety Code. (See cases cited, supra.) Therefore, there is no necessity for an interpretation of Section 871-27, General Code, so far as the Factory Code and Building Code are concerned.

In view of the foregoing and in specific answer to your questions, it is my opinion, and you are so advised, that:

1. By virtue of Section 154-45, General Code, an order promulgated by the Industrial Commission under the Safety Code, Section 871-1 et seq., General Code, may be reconsidered by the Industrial Commission as provided in Sections 871-27 and 871-29, General Code.

2. Under the provisions of Sections 871-27 and 871-29, General Code, the Industrial Commission has no jurisdiction to consider an appeal filed with it from an order of the Department of Industrial Relations which is made pursuant to Section 871-13 et seq., General Code, Sections 980 to 1037, General Code, and Sections 12600-1 to 12600-296, General Code, these being powers and duties transferred to said department by virtue of the enactment of Section 154-45, General Code.

Respectfully,

C. WILLIAM O'NEILL

Attorney General