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FIRE DRILL—PENALTY—FAILURE OF PERSON IN CHARGE OF PUPILS TO INSTRUCT THEM IN FIRE DRILL—NOT APPLICABLE TO STATE OWNED AND PRIVATELY OWNED UNIVERSITIES—SECTION 12900 G. C.

SYLLABUS:

Section 12900, General Code, which provides a penalty for the failure of a person in charge of pupils, to instruct them in fire drill, is not applicable to state owned and privately owned universities.

Columbus, Ohio, November 29, 1948

Hon. Fred J. Milligan, Director, Department of Commerce
Columbus, Ohio

Dear Sir:

This will acknowledge receipt of your request for my opinion which reads as follows:

"Your formal opinion is respectfully requested in answer to the following question:

'Are State owned and private owned universities required to comply with the provisions of Section 12900 of the Ohio General Code?'"

Section 12900, General Code, provides as follows:

"Whoever, being a principal or person in charge of a public or private school or educational institution having an average daily attendance of fifty or more pupils, or the person in charge of any children's home or orphanage housing twenty or more minor persons, wilfully neglects to instruct and train such children by means of drills or rapid dismissals at least once a month while such school, institution or children's home is in operation, so that such children in a sudden emergency may leave the building in the shortest possible time and without confusion, or, in the case of schools, wilfully neglects to keep the doors and exits of such building unlocked during school hours, shall be fined not less than five dollars nor more than twenty dollars for each offense. The State Fire Marshal shall have authority to order the immediate installation of necessary fire gongs or signals in such schools, institutions or children's homes and enforce the further provisions of this section."

That Section 12900 was not intended to include State owned and private owned universities when it was enacted, is evidenced from the fact that Section 12904, General Code, enacted at the same time, specifically provides:

> "The provisions of sections 12900, 12901, and 12902, General Code, shall not apply to colleges and universities."

In June of 1943 Section 12904, General Code, was repealed, 120 v. 475 (609). Section 12900 continued to exist in the same form as it had before.

The only issue presented is whether the legislature of Ohio, by the repeal of Section 12904, intended that Section 12900, General Code, should thereafter include colleges and universities.

It is felt that no change was intended or in fact made in the meaning of Section 12900 by the repeal of Section 12904.

In the case of a policy-making statute there is said to be an indication of a policy change upon the repeal of the statute. That is not true in the instance with which we are here concerned, however, because Section 12904 did not add anything to Section 12900 but merely emphasized a clear legislative intent to punish those in charge of the children of the State, during their hours of public education, if they failed to instruct those children in fire drills.

Section 12904, General Code, was mere verbiage after one had read and construed Section 12900, General Code, and so was repealed in 1943 under a legislative plan to consolidate and simplify the then existing school code.

Proceeding to construe the section of the code here involved, we must first establish the intended meaning of the word "school", and the statute must be strictly construed since it is penal in nature. In 47 Am. Juris., 297, it is said:

> "* * * Thus, the word 'school', as used in Constitutions and statutory enactments, has been frequenty defined by the courts as referring only to the public common schools generally established throughout the United States, and usually known as the 'common schools' of the country. It has been held that when used in a statute or contract it will not include universities, business colleges, or other institutions of higher education, unless there is

> something clearly to indicate the intent that such institutions should be included."

There is nothing in the Ohio Code to indicate an intent to use the word "school" in other than its commonly accepted way.

Further examining the statute, it can not be said that the words "public" and "private" could be construed to include State owned and privately owned universities. In support of this we quote further from 47 Am. Juris., 298:

> "* * * The only difference between a public and a private school is the nature of the institution. One is a public institution, organized and maintained as one of the institutions of the state. The other is a private institution, organized and maintained by private individuals or corporations.
>
> "* * * Thus, 'common' or 'public' schools may include graded and grammar schools or high schools.
>
> "Schools which are not considered common or public schools include * * * colleges and universities."

Thus, it can be seen that the word "school" in its common and ordinary meaning does not include colleges or universities and that the addition of the words "public" or "private" merely designates the controlling authority. The next phrase "or educational institution having an average daily attendance of fifty or more pupils" can not be said, in and of itself, to include colleges or universities because the word "pupils" is not descriptive of those persons attending colleges and universities.

In Section 12900, General Code, the word "pupil" is used in conjunction with the word "school." Under Section 4853, General Code, provision is made for an annual enumeration of school children and fixes the age limits for such an enumeration between five and eighteen years of age, indicating that the word "pupil" is meant to include minors between the ages of five and eighteen. Indeed, the word came to us from the civil law, and is defined as one who is in his or her minority. Bouvier's Law Dictionary.

In Selectmen of Clinton v. Worcester Consol. St. Ry. Co., 199 Mass., 279, it was said:

> "The word 'pupils', by derivation and the definition of lexicographers, is properly applicable to children and youth. Students

in colleges and professional schools are not properly within the correct construction of the term."

This all leaves little doubt that Section 12900, General Code, was intended as a protective measure to individuals below the normal college age level, and was therefore not meant in any way to establish a course of action to be taken by college or university officials.

The remaining portion of Section 12900, General Code, could by no stretch of the imagination be thought to include State owned or private owned universities, and so we need not here further concern ourselves with it.

It should further be noted that House Bill No. 217, of the 95th General Assembly, by which Section 12904, General Code, was repealed, is entitled:

"AN ACT

To provide for the recodification and revision of the laws of Ohio pertaining to the public schools."

No mention is made of any plan to change the existing law in so far as colleges or universities are concerned.

Accordingly, in specific answer to your question, it is my opinion that state owned and privately owned universities are not required to comply with the provisions of Section 12900, General Code.

Respectfully,

HUGH S. JENKINS,
Attorney General.