

1245

COUNTY COMMISSIONER—NOT AUTHORIZED BY ANY PROVISION OF LAW TO ADOPT REGULATIONS—ISSUE PERMITS—COLLECT FEES.—§4503.31, R.C.

SYLLABUS:

Section 307.37, Revised Code, or any other provision of law does not authorize a board of county commissioners to adopt regulations, issue permits, collect fees and inspect sanitary construction (plumbing) for 1, 2 and 3 family dwellings in unincorporated areas, whether or not the board of health of the general health district has declined to act in this field.

Columbus, Ohio, April 11, 1960

Hon. John T. Corrigan, Prosecuting Attorney
Cuyahoga County, Cleveland, Ohio

Dear Sir:

Your request for my opinion asks the following questions:

“1. Is a Board of County Commissioners, through its County Building Department, enabled by law to adopt regulations, issue permits, collect fees and inspect sanitary construction (plumbing) for 1, 2 and 3 family dwellings in unincorporated areas?

“2. In the event that such authority exists, is the authority exclusive with the Board of County Commissioners or is the authority of the Board contingent upon the fact that the General Health District declines to act in this particular field?”

The powers of a board of county commissioners are strictly limited to those granted by statute, and such powers are administrative, purely,

and not legislative. In case of doubt as to the existence of a power, the doubt is resolved against it. (See *Jones v. Lucas County*, 57 Ohio St., 189, *Peter v. Parkinson*, 83 Ohio St., 36; *State ex rel. Laker v. Menning*, 95 Ohio St., 97)

The only provision of law which might be construed to authorize a board of county commissioners to regulate sanitary construction (plumbing) for family dwellings in unincorporated areas appears to be Section 307.37, Revised Code, reading in part:

“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 unincorporated 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. Any person adversely affected by an order of the board adopting, amending, or rescinding such a regulation may appeal to the court of common pleas of the county on the ground that the board failed to comply with the law in adopting, amending, rescinding, publishing, or distributing such regulation, or that the regulation, as adopted, or amended by the board, is unreasonable or unlawful, or that the revision of the regulation was unreasonable or unlawful.

“* * *

* * *

* * *”

This section, then Section 2480, General Code, was considered by one of my predecessors in Opinion No. 2761, Opinions of the Attorney General for 1953, page 270, in which the syllabus reads:

“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.”

At page 275 of Opinion No. 2761, *supra*, it is stated:

“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

installation, 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. * * *

At page 277 and 278 of the same opinion it is stated:

“While the question you present to me does not directly call for a ruling as to the power of the board of health to require licensing of plumbers, yet that decision does strengthen the conclusion which I have above indicated, that such board has broad powers in the regulation of plumbers and plumbing as a part of its function as guardian of the public health. Concurring with the ruling of the court in the case last cited, I have held in Opinion No. 2760, issued June 24, 1953, that district boards of health do possess the implied power to license plumbers.

“By way of contrast let us compare the statutes granting powers to the board of health on the one hand and to county commissioners on the other. As to the first, it is provided that such board ‘may make such orders and regulations as it deems necessary * * * for the public health, the prevention or restriction of disease, and the prevention, abatement or suppression of nuisances.’ All such orders or regulations are to be adopted with the same formality as are ordinances of municipalities. And Section 4414, General Code, provides for fine and imprisonment for violation of any such regulations.

“On the other hand, note that the county commissioners are merely authorized to adopt and enforce regulations relating to the ‘erection, construction, repair, alteration and maintenance’ of certain buildings, and ‘in no case shall said regulations go beyond the safety, health and sanitary *conditions* of such buildings.’ This reference to ‘health and sanitary conditions’ appears to be rather by way of limitation than affirmative grant.”

On reviewing the provisions of Section 307.37, *supra*, I find that I am in accord with the reasoning of my predecessor in Opinion No. 2761, *supra*, and am of the opinion that such reasoning may be applied to the instant question. In answer to your first question, therefore, I am of the opinion that the reference in Section 307.37, Revised Code, to health and sanitation is not sufficient authority to authorize a board of county commissioners to adopt regulations, issue permits, collect fees and inspect sanitary construction (plumbing) for 1, 2 and 3 family dwellings in unincorporated areas.

While the answer to your first question is apparently dispositive of the second, it would appear that a review of the powers of a board of health

to act in the field in question, would be appropriate in answering your request.

Provision for a general health district is found in Section 3709.21, Revised Code, which reads in part:

“* * *

“The township and villages in each county shall be combined into a health district and shall be known as a ‘general health district,’

“* * *

Section 3709.21, Revised Code, pertaining to orders and regulations of a board of health of a general health district, reads in part:

“The board of health of a general health district may make such orders and regulations as are necessary * * * for the public health, the prevention or restriction of disease, and the prevention or restriction of disease, and the prevention, abatement, or suppression of nuisance * * * All orders and regulations not for the government of the board but intended for the general public, shall be adopted, recorded, and certified as are ordinances of municipal corporations and the record thereof shall be given in all courts the same effect as is given such ordinances * * *.”

Referring to this section, it was held in the case of *Weber v. Board of Health*, 148 Ohio St., 389:

“General Code, Section 1261-42 which provides that ‘the board of health of a general health district may make such orders and regulations as it deems necessary for its own government, for the public health, the prevention or restriction of disease, and the prevention, abatement or suppression of nuisances * * *,’ but does not provide specific standards for guidance, is a valid and constitutional enactment.”

The court further held that such board has wide discretion in enacting regulations for the protection of public health.

Regarding the authority of a board of health of a general health district the syllabus of Opinion No. 2760, Opinions of the Attorney General for 1953, page 264, reads:

“The board of health of a general health district, under the provisions of Sections 1261-3 and 1261-42, General Code, is given by implication the power to require a license of persons who engage in the occupation of plumbing in such district.”

Sections 1261-3 and 1261-42, General Code, are now Sections 3703.01 and 3709.21, Revised Code. Section 3703.01, *supra*, pertains to the duties of the state department of health and provides in part:

“The department of health shall:

“* * *

“(B) Condemn all unsanitary or defective plumbing that is found in connection with such places;

“(C) Order such changes in the method of construction of the drainage and ventilation, as well as the arrangement of the plumbing appliances, as are necessary to insure the safety of the public health.

“The department shall not exercise any authority in municipal corporations or other political subdivisions in which ordinances have been passed or resolutions or regulations have been adopted and are being enforced by the proper authorities regulating plumbing or prescribing the character thereof.”

“* * *

(Emphasis added).

Section 3709.21, Revised Code, was discussed earlier.

In view of the foregoing and in accord with the conclusions of Opinions Nos. 2160 and 2161, *supra*, I am of the opinion that a district board of health has authority by virtue of Section 3709.21, Revised Code, to adopt regulations, issue permits, collect fees and inspect sanitary construction (plumbing) for 1, 2 and 3 family dwellings in unincorporated areas.

I might add that the fact that a board of health did not act in a particular field in which it was authorized to act, could not give a board of county commissioners authority to so act where the board of county commissioners was otherwise unauthorized to act in such field.

In conclusion and answering your specific question, it is my opinion and you are advised that neither Section 307.37, Revised Code, nor any other provision of law authorizes a board of county commissioners to adopt regulations, issue permits, collect fees and inspect sanitary construction (plumbing) for 1, 2 and 3 family dwellings in unincorporated areas, whether or not the board of health of the general health district has declined to act in this field.

Respectfully,

MARK McELROY

Attorney General