

2688.

APPROVAL, BONDS OF FAIRPORT VILLAGE SCHOOL DISTRICT IN AMOUNT OF \$14,000.

COLUMBUS, OHIO, December 14, 1921.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.

2689.

APPROVAL, BONDS OF CHAGRIN FALLS, CUYAHOGA COUNTY, OHIO, IN AMOUNT OF \$9,500 FOR CONSTRUCTION OF WATER MAINS.

COLUMBUS, OHIO, December 14, 1921.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.

2690.

STATE BUILDING CODE—WHERE USE OF ANOTHER FIXTURE, DEVICE OR CONSTRUCTION DESIRED WHICH IS AT VARIANCE WITH CODE—WHEN DEPARTMENT OF INDUSTRIAL RELATIONS HAS AUTHORITY TO APPROVE OTHER FIXTURE, DEVICE OR CONSTRUCTION NOT MENTIONED IN BUILDING CODE.

Where the use of another fixture, device or construction is desired which is at variance with what is described in the state building code, the Department of Industrial Relations has authority to receive and examine plans, specifications and details relative thereto; and if after such examination said department finds that the fixture, device or construction proposed answers to all intents and purposes the fixture, device or construction described in the state building code, said department then has the authority to approve the proposed fixture, device or construction.

COLUMBUS, OHIO, December 14, 1921.

HON. PERCY TETLOW, *Director, Department of Industrial Relations, Columbus, Ohio.*

DEAR SIR:—Acknowledgment is made of your letter of recent date, reading thus:

“I am transmitting herewith for your consideration an inquiry directed to me on November 21st by Mr. E. U. Whitacre, chief, division of factory inspection.

The question at issue is set forth in Mr. Whitacre’s communication, and I would request that you render an opinion in this matter, in order to make clear the authority of the division under the law and the Ohio state building code.”

The letter of Mr. Whitacre reads thus:

"In the examination of plans and specifications for public buildings, we quite frequently have plans submitted where the construction or equipment of the building does not comply strictly with the Ohio state building code.

(1) Metal Lumber and Hollow Tile.—Metal lumber and hollow tile are not classed as fireproof material in the Ohio state building code, but are often shown on plans where fireproof construction is required in the separation of theaters and assembly halls from buildings used for other purposes, also for enclosed standard fireproof stairways, partitions and floor construction. These materials are considered by many of our leading engineers and architects as the equal to brick or monolithic concrete, which is classed as fireproof material by the Ohio state building code.

(2) Heating and Ventilating.—We often have drawings to examine that show a split system of heating and ventilating for school buildings, also direct-indirect systems with the fan attachments. These systems are not provided for in the Ohio state building code. In a great many cases these are considered as good or better than furnace system which is approved.

(3) Re: Electrical Apparatus.—The Ohio state building code provides that all picture machines be hand operated. The facts in the case are that at least 90 per cent of these machines are electrically operated.

Re: Fire Gongs in School Buildings.—The code provides that they shall be trip fire gongs of the manually operated type. There are on the market electrically operated fire alarm systems that are considered by many good authorities to be equal or superior to the hand-operated systems.

After carefully reading sections 12600-277 and 12600-281 of the General Code of Ohio, we are of the opinion that this department has the authority to approve plans and specifications where the fixture, device or construction are at variance with the Ohio state building code, if, in our opinion, they answer to all intents and purposes of those specified in the code."

Before going directly to the question as to whether the authority to approve non-specified fixtures, devices, etc., exists, it may be well to note, in a general way, the method by which the legislature has established such specifications.

The Ohio state building code was enacted in 1911 and is found in 102 O. L. 586. The first part of the code, as the same appears in 102 O. L., to-wit the first seven sections thereof, are administrative in character. "Part 2" is entitled "Special Requirements," and the preamble thereto (section 12600-1 G. C.) says: "Under part two which follows, will be found under their respective titles, the various classes of buildings covered by this code together with the *special requirements* for their respective design, construction and equipment." The various buildings are then classified under some seven titles, to-wit:

- Title 1. Theaters and assembly halls.
- Title 2. Churches.
- Title 3. School buildings.
- Title 4. Asylums, hospitals and homes.

- Title 5. Hotels, lodging houses, apartments and tenement houses.
- Title 6. Club and lodge buildings.
- Title 7. Workshops, factories and mercantile establishments.

However, the legislature enacted only titles 1 and 3. Title 1 deals with theaters and assembly halls, and title 3 deals with school buildings.

Part 3 of the building code is entitled "Standard Devices," and the preamble to this part says: "Under the different titles of part 3 will be found detailed descriptions of, or specifications for, the *standard devices* to which reference is made under the several titles of part 2." Then follows an enumeration of standards, under the following titles:

1. Standard Construction.
2. Standard Fire Wall and Fire Stops.
3. Standard Fire Doors.
4. Standard Shaft and Belt Openings.
5. Standard Rolling Steel Doors and Shutters.
6. Standard Fireproof Windows.
7. Standard Fire Ladders and Fire Escapes.
8. Standard Fireproof Heater Room.
9. Standard Enclosed Fireproof Stairways.
10. Standard Ventilating Stoves.
11. Standard Stand Pipes and Hose.
12. Standard Fire Extinguishers.

As bearing upon the particular subjects referred to in your letter (namely fireproof materials, heating and ventilating for school buildings, motion picture machines, and fire gongs on school buildings), the following sections of the building code are pertinent here.

Sec. 12600-78 G. C. "Fireproof Walls, Ceilings and Floors. Where masonry or fireproof walls, or fireproof ceilings and floors are called for under the various titles of Part 2, including stairway and elevator enclosures, and fire stops between the different kinds of occupancy in the same building; the walls shall be of brick not less than twelve (12) inches thick or of monolithic concrete not less than eight (8) inches thick and the floor and ceilings shall be of not less than the following, viz.: Reinforced concrete four (4) inches thick, brick arches four (4) inches thick covered with one (1) inch of cement mortar and supported by fireproof steel with the necessary tie rods, or by hollow tile arches six (6) inches thick covered with two (2) inches of concrete, plastered on the under side and supported by fireproof steel with the necessary tie rods.

The above walls shall start from the foundation or shall be supported upon fireproofed steel girders and masonry piers, or fireproofed steel carried down to the foundation.

Where necessary the thickness of the above walls, floors and ceilings shall be increased as called for under subsequent parts of this code.

Openings placed in or through the above fireproofed floors or ceilings shall be covered by standard fire doors."

Sec. 12600-121a G. C. "Where fireproof apartments are required for the heating apparatus, the furnace or boiler, including the breeching, fuel room and firing space shall be enclosed by brick walls not less

than twelve (12) inches thick or by monolithic concrete walls not less than eight (8) inches thick; and the ceiling over the same shall not be less than the following, reinforced concrete slab four (4) inches thick, brick arches four (4) inches thick covered with one (1) inch of cement mortar and supported by fireproof steel with the necessary tie rods, or by hollow tile arches six (6) inches thick covered with two (2) inches of concrete, plastered on the under side and supported by fireproof steel with the necessary tie rods.

All openings into the above apartments shall be covered by standard self-closing fire doors.

Sec. 12600-64 G. C., which says in part:

"The heating system to be installed where a change of air is required, shall be either standard ventilating stoves, gravity or mechanical furnaces, gravity indirect steam or hot water; or a mechanical indirect steam or hot water system."

Sec. 12600-16 G. C. "By the term 'motion machine' is meant any machine or device operated by or with the aid of electricity, adapted and used to project upon a screen, or other surface, pictorial representations of any character which the public are admitted to view, upon the payment of admission fee or otherwise. * * * *No motion picture machine shall be operated other than by hand power.*"

Sec. 12600-70 G. C. "Fire Alarm. All buildings basement, and all buildings over one story high shall be provided with eight (8) inch in diameter trip fire gongs with connections enabling the ringing of same from any story or basement.

In semi-detached buildings gongs shall be provided for each section and shall be connected up so as to ring simultaneously from any story or basement of either section.

Gongs shall be centrally located in the main halls, and the operating cords shall be placed so as to be always accessible.

EXCEPTIONS. In institutions for the deaf, electric lights with red globes shall be placed near each teacher's desk, and these shall be operated simultaneously by switches placed in each story and basement."

It now remains to consider how these sections of the building code providing specifications are to be interpreted in view of the provisions of section 12600-277 G. C., to which your letter refers. That part of the section last named which is pertinent here, reads:

"Where the use of another fixture, device or construction is desired at variance with what is described in this statute, plans, specifications and details shall be furnished to the proper state and municipal authorities mentioned in section 1 (G. C. 12600-281) for examination and approval, and if required actual tests shall be made to the complete satisfaction of said state and municipal authorities that the fixture, device or construction proposed answers to all intent and purposes the fixture, device, or construction hereafter described in this statute, instead of actual tests satisfactory evidence of such tests may be presented for approval with full particulars of the results and containing the names of witnesses of said tests."

Said section 12600-277 G. C. is also a part of the building code, being the fifth section of the original act (102 O. L. 587). Inspection of this original act

makes it clear that the authorities referred to as "the proper state and municipal authorities mentioned in section 1 for examination and approval" are the authorities mentioned in what is known in the General Code as section 12600-281 G. C. Said section reads thus:

"It shall be the duty of the state fire marshal or fire chief of municipalities having fire departments to enforce all the provisions herein contained relating to fire prevention.

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.

It shall be the duty of the state board of health or building inspector or commissioner, or health departments of municipalities having building or health departments to enforce all the provisions in this act contained, in relation and pertaining to sanitary plumbing. But nothing herein contained shall be construed to exempt any other officer or department from the obligation of enforcing all existing laws in reference to this act."

The language of section 12600-277 G. C. is plain and explicit. In using that language the legislature has very clearly indicated that a fixture, device or construction is not to be taboo merely because it is *at variance* with the specifications elsewhere appearing in the building code. On the contrary, if the fixture, device or construction seems to the proper authorities, upon examination, to answer *to all intents and purposes* the fixture, device or construction specified in the building code, the authorities have the right to *approve* the same. Once approved, such fixture, device or construction may be used to the same extent as if it had been specifically mentioned in the code.

Such an interpretation of the law does, we believe, no injustice to the letter thereof, and is in full accord with its underlying spirit and intention, which was to establish building regulations which would insure the health and safety of the public. The law makers were doubtless aware that each year succeeding the year of the passage of the building code, would bring forth new developments in the realm of science and invention, and the purpose of section 12600-277 G. C. was to make it possible to take advantage of these developments and to render it unnecessary for the legislature, at each subsequent session, to canvass the situation anew and enact amendatory legislation covering particular new devices, etc.

We are therefore of the opinion that authority does exist for the examination of fixtures, devices or constructions which are at variance with what is described in the state building code, and for the approval of such as are found to answer, to all intents and purposes, the fixture, device or construction in said code described.

The next question is, what state agency has that authority?

It will be noted that the agency spoken of in section 12600-277 G. C. is, so far as the *state* is concerned, the

"proper state * * * authorities mentioned in section 1."

Section 1, now known as section 12600-281 G. C., mentions

"the chief inspector of workshops and factories or building inspector."

In 1913, however, the legislature terminated the department of inspection of workshops and factories as a separate state department, and imposed upon the industrial commission all the powers and duties of the chief inspector of workshops and factories. See sections 871-11 G. C. and 871-24 G. C. (103 O. L. 97, 103).

Section 871-22 G. C., a part of the same act found in 103 O. L. 95, provides :

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

(1) Appointment of advisers * * *.

(2) On and after the first day of September, 1913, to administer and enforce the general laws of this state relating to mines, manufacturing, mechanical, electrical, art and laundering establishments, child labor, employment of minors, explosives, printing, telegraph and telephone offices, railroad depots, hotels, memorial buildings, tenement and apartment houses, school houses, colleges, opera houses, halls, theaters, churches, infirmaries, children's homes, hospitals, medical institutes, asylums, and other buildings used for the assemblage or betterment of people in the state, bakeries, employment offices, stores, intelligence offices and bureaus, manufacturers of cigars, sweat shops, fire escapes, and means of egress from buildings, scaffolds, hoists, ladders and other matters relating to the erection, repair, alteration or painting of buildings and structures, employment of females, hours of labor, licensed occupations and school attendance, and all other laws protecting the life, health, safety and welfare of employes in employments and places of employment, frequenters of places of employment or relating to the health and safety of persons occupying or assembled in the structures named above, on and after the first day of September, 1913.

(3) To investigate, ascertain, and on and after the first day of September, 1913, to declare and prescribe what hours of labor, safety devices, safeguards, or other means or methods of protection are best adapted to render the employes of every employment and place of employment and frequenters of every place of employment, safe, and to protect their welfare as required by law or lawful orders, and to establish and maintain museums of safety and hygiene in which shall be exhibited safety devices, safeguards and other means and methods for the protection of life, health, safety and welfare of employes ;

(4) To ascertain and on and after the first day of September, 1913, to fix such reasonable standards and to prescribe, modify and enforce such reasonable orders for the adoption of safety devices, safeguards and other means or methods of protection to be as nearly uniform as possible as may be necessary to carry out all laws and lawful orders relative to the protection of the life, health, safety and welfare of employes in employments and places of employment or frequenters of places of employment ;

(5) To ascertain, and on and after the first day of September, 1913, fix and order such reasonable standards for the construction, repair and maintenance of places of employment as shall render them safe ;

(6) To investigate, ascertain and determine such reasonable classifications of persons, employments and places of employment as shall be necessary to carry out the purposes of this act.

(7) To adopt reasonable and proper rules and regulations relative to the exercise of its powers and authorities, and proper rules to govern its proceedings and to regulate the mode and manner of all investigations and hearings; such rules and regulations shall not be effective until ten days after their publication. A copy of such rules and regulations shall be delivered to every citizen making application therefor, and a copy delivered with every notice of hearing;

(8) To do all in its power to promote the voluntary arbitration, mediation and conciliation of disputes between employers and employes and to avoid the necessity of resorting to lockouts, boycotts, blacklists, discriminations and legal proceedings in matters of employment. In pursuance of this duty it may appoint temporary boards of arbitration, provide the necessary expenses of such boards, order reasonable compensation not exceeding five dollars per day for each member engaged in such arbitration, prescribe rules of procedure for such arbitration boards, conduct investigations and hearings, publish reports and advertisements, and may do all other things convenient and necessary to accomplish the purposes directed in this act. The commission shall designate a deputy to be known as chief mediator and may detail other deputies from time to time to act as assistants for the purpose of executing these provisions. The deputies may act on temporary boards without extra compensation. * * *

Section 154-45 G. C., part of the recently enacted administrative code (109 O. L. 105), says:

“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.

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; but such director may designate any employe of the department as acting secretary to perform the duties and exercise the powers of secretary of the commission. All clerical, inspection and other agencies for the execution of the powers and duties vested in the said industrial commission shall be deemed to be in the department of industrial relations, and the

employes thereof shall be deemed to be employes of said department and shall have and exercise all authority vested by law in the employes of such commission. But the industrial commission of Ohio shall have direct supervision and control over, and power of appointment and removal of such employes whose position shall be designated by the governor as fully subject to the authority of such commission.

The commission may appoint advisers, who shall without compensation assist the commission in the execution of the powers and duties retained by it under this section."

By reason of this section, the *department of industrial relations* must be deemed to have the authority to approve fixtures, devices or constructions not described in the state building code (section 12600-277 G. C.), unless such power is included in the *exceptions* recognized in section 154-45 G. C.

I am unable to find that the power just mentioned is so included. On the contrary, the fact that subsection 2 of section 871-22 G. C. is *omitted* from the specific enumeration of exceptions found in section 154-45 G. C., leads me to believe that the legislature intended the power hereinabove discussed to reside in the *department of industrial relations, rather than in the industrial commission*. It will be observed that subsection 2 deals with the power to administer and enforce the general laws of this state relating to mines, manufacturing, mechanical, electrical, art and laundering establishments * * * *school houses* * * * *opera houses, halls, theaters.* * * *

You are therefore advised that where the use of another fixture, device or construction is desired which is at variance with what is described in the state building code, the department of industrial relations has authority to receive and examine plans, specifications and details relative thereto; and if after such examination said department finds that the fixture, device or construction proposed answers to all intents and purposes the fixture, device or construction described in the state building code, said department then has the authority to approve the proposed fixture, device or construction.

Respectfully,

JOHN G. PRICE,
Attorney-General.

2691.

TOWNSHIP CLERKS—NOT EMPOWERED TO TAKE ACKNOWLEDGMENT OF CEMETERY DEEDS—SEE SECTIONS 3303 AND 8510 G. C.

1. *Under the provisions of section 3303 G. C. township clerks are not empowered to take the acknowledgment of cemetery deeds.*
2. *Under the provisions of section 8510 G. C. the officials are specifically designated who are authorized to take the acknowledgments of deeds, mortgages or lease of any estate or interest in real property.*

COLUMBUS, OHIO, December 14, 1921.

HON. ISAAC C. BAKER, *Prosecuting Attorney, Hamilton, Ohio.*

DEAR SIR:—Your letter of recent date has been received reading as follows :

"Kindly inform me whether or not there is an opinion in your de-