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INDUSTRIAL RELATIONS, DEPARTMENT OF, DIRECTOR—
AUTHORITY TO CONDEMN SCHOOL BUILDING—FIRE PRE-
VENTION—DISASTER—SAFE AND SPEEDY EGRESS—AS-
SEMBLY—SECTIONS 1031 TO 1037 G. C.

SYLLABUS:

The director of the department of industrial relations has, under the provisions of Sections 1031 to 1037, inclusive, General Code, the authority to condemn for use a school building, where he finds that necessary precautions for the prevention of fire or other disaster have not been taken, or that means for the safe and speedy egress of persons assembled therein have not been provided.

Columbus, Ohio, May 22, 1943.

Hon. George A. Strain, Director, Department of Industrial Relations,
Columbus, Ohio.

Dear Sir:

I acknowledge receipt of your communication requesting my opinion,
reading as follows:

“Section 7730-1 of the General Code provides:

‘In order to protect the rights of the petitioners mentioned
in Section 7730, where a school has been suspended through either
or any of the proceedings mentioned in such section, the school

building and real estate located in the territory of such suspended school and in which property the board of education has legal title, shall not be sold by the board of education of the district until after four years from such date of suspension of said school unless the said building has been condemned for school use by the director of industrial relations of Ohio; * * *.

Although such statute provides in substance that a school building may be disposed of in less than a four-year period if condemned by the Director of the Department of Industrial Relations, I would appreciate your formal opinion advising me under what authority the Director of the Department of Industrial Relations has the right to condemn a school building."

The word "condemn" as used in the statutes has at least two meanings. In certain statutes relating to the taking of private property for public use, it is synonymous with "appropriate". Plainly it is not used in that sense in the section which you have quoted. Quite evidently it has rather the ordinary significance suggested by the definitions given in Webster's International Dictionary, such as, "to pronounce to be wrong; to disapprove of; to censure; to pronounce a judicial sentence against", etc. When used in connection with the action of a public officer relative to a building or other property which he finds to be unfit and unsafe for the use or purpose for which it was originally intended, it follows one of the accepted definitions of the word "condemn" given by Webster, to-wit, "to pronounce or adjudge to be unfit for use or service."

We therefore look to the statutes to see under what authority, if any, you have the right to condemn a school building, that is, to declare it unfit for use as such.

Section 1031, General Code, reads as follows:

"The department of industrial relations shall cause to be inspected all 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. Such inspection shall be made with special reference to precautions for the prevention of fires, the provision of fire escapes, exits, emergency exits, hallways, air space, and such other matters which relate to the health and safety of those occupying, or assembled in, such structures."

Section 1032 provides:

"Upon inspection of such structure, the inspector shall file with the department of industrial relations a written report of the condition thereof. If it is found that necessary precautions

for the prevention of fire or other disaster have not been taken or that means for the safe and speedy egress of persons assembled therein have not been provided, such report shall specify what appliances, additions or alterations are necessary therefor.

Thereupon the department of industrial relations shall issue an order in writing stating what necessary appliances, additions or alterations shall be added to or made in such structure and shall send a copy of such order to the owner or persons having control of such structure and thereafter shall publish in some newspaper of general circulation in the neighborhood of such structure, a copy of such order or a brief statement of the contents of such order. If such structure is located in a municipality a copy of such order shall be mailed to the mayor or chief executive thereof, otherwise a copy of such order shall be mailed to the prosecuting attorney of such county."

Section 1032-1 authorizes any board of education, board of trustees, board of county commissioners, council of a city or village, city commission, or owner or person having control of such structure, to appeal from such order to the court of common pleas, and the section outlines the procedure upon such appeal.

Section 1033 provides:

"If no appeal is taken or if the court sustains the order, the mayor or chief executive with the aid of the police or the prosecuting attorney with the aid of the sheriff, as the case may be, shall prevent the use of such structure for public assemblage until the appliances, additions or alterations required by such notice have been added to or made in such structure."

Section 1034 reads:

"Upon receipt of such notice, if no appeal be taken or if the court shall find in favor of the department of industrial relations the owner or person in control of such structure shall comply with every detail embodied therein, and upon completion thereof report such fact in writing to the department of industrial relations and to such mayor or prosecuting attorney."

Section 1037 reads as follows:

"Whoever, being a person, firm or corporation or member of a board and being the owner or in control of any building mentioned in section ten hundred and thirty-one of this chapter, uses or permits the use of such building in violation of any order prohibiting its use issued as provided by law, unless the common pleas court has made a finding setting aside such order, or

fails to comply with an order so issued relating to the change, improvement or repair of such building, unless the common pleas court shall make a finding setting aside such order, shall be fined not less than ten dollars nor more than one hundred dollars, and each day that such use or failure continues shall constitute a separate offense."

It will thus be seen that by virtue of the statutes above quoted and referred to, the director of industrial relations is given very broad powers to condemn a school building which he finds to be unfit or unsafe for its intended use and that the issuance of his orders, unless complied with or set aside by the court, makes it unlawful to use such building for school purposes and imposes serious penalties upon the boards of education who permit it to be so unlawfully used in violation of such order. In this connection you will note the language of Section 7730-1, which refers to a building which has been "condemned" *for school use* by the director of industrial relations.

No authority is given to the director of industrial relations to cause such building to be demolished. I have found no definition of "condemn" which carries with it the power to destroy. That power is reserved to the state fire marshal and in certain cases to the chief of the fire department and certain other officers of a city or village by Sections 834 and 835 of the General Code, and is predicated upon the existence of conditions which make a building especially liable to fire where it is so situated as to endanger other buildings or property. There is also found in Section 3636, General Code, authority for any municipality to provide by ordinance for the removal of insecure buildings.

Statutes similar in their provisions to Section 1031 et seq., have been sustained as constitutional within the purview of Section 1 of the Fourteenth Amendment to the Constitution of the United States, which forbids any state to "deprive any person of life, liberty, or property without due process of law." *Cincinnati v. Steinkamp, Trustee*, 54 O. S. 285. The statutes here in question were under consideration in the case of *Board of Education v. Sawyer*, 7 N. P. (N. S.) 401, where it was held:

"The provision of this act which authorizes the closing of school houses and other public building pending the installation of such appliances for protection against fire as the chief inspector of workshops may have ordered, is not in excess of the police powers of the state.

The duty of determining what appliances and alterations are necessary for protection and safety of persons against dangers from fire in public buildings and school houses may properly

be delegated to inspectors as prescribed in this act; and the fact that details as to such inspection are not fixed, but are left to be worked out by the administrative officers, does not invalidate the act."

Therefore, in specific answer to your inquiry, it is my opinion that the director of the department of industrial relations has, under the provisions of Sections 1031 to 1037, inclusive, General Code, the authority to condemn for use a school building, where he finds that necessary precautions for the prevention of fire or other disaster have not been taken, or that means for the safe and speedy egress of persons assembled therein have not been provided.

Respectfully,

THOMAS J. HERBERT,
Attorney General.