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NUISANCES—MUNICIPAL CORPORATIONS NOT “PERSON”
WITHIN MEANING OF CHAPTER 3767. R.C.—§3767.01 R.C.

SYLLABUS:

The term “person” as defined in Section 3767.01, Revised Code, does not include municipal corporations and such corporations are not subject to the prohibitions and penalties of Chapters 3767., Revised Code, for the maintenance of nuisances; therefore, a nuisance inspector has no power over municipal corporations under this chapter.

Columbus, Ohio, January 29, 1958

Hon. Robert E. Cook, Prosecuting Attorney
Portage County, Ravenna, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"In attempting to clean up that portion of the Cuyahoga River that is located in Portage County, Ohio, the following question has arisen:

"What powers does a nuisance inspector, appointed under Revised Code 3767.27, have under Revised Code 3767.13, against municipal corporations corrupting or rendering unwholesome or impure a watercourse located in the county which he services as nuisance inspector?"

"I find authority in the case law to the effect that municipal corporations are liable to lower riparian proprietors as individuals, if they have not derived the right to do so by compensation for the taking of such property, (*Mansfield vs. Balliett*, 65 OS 451), but I find nothing in the statutes as to whether a municipal corporation is subject to the criminal nuisance statute."

Section 3767.13, Revised Code, reads in part:

"* * * No *person* shall unlawfully obstruct or impede the passage of a navigable river, harbor, or collection of water, or corrupt or render unwholesome or impure, a watercourse, stream, or water, or unlawfully divert such watercourse from its natural course or state to the injury or prejudice of others." (Emphasis added)

Section 3767.01, Revised Code, defines the word "person" as:

"(B) 'Person' includes any individual, corporation, association, partnership, trustee, lessee, agent, or assignee;"

Although the courts of this state have not passed directly on the question here presented, it is well understood in a majority of other jurisdictions that the word "corporation" does not include a municipal corporation. *Attorney General v. City of Woburn*, 322 Mass., 634; 79 N. E. (2d), 187, 189; 116 A.L.R. 1283. "The ordinary meaning of the word 'corporation' is such as to signify a *private* corporation, and that meaning should always be ascribed unless it can be positively shown that a larger

use of the word were intended." *City of Tyler v. Texas Employers' Insurance Ass'n*, 288 S. W., 409. This rule has been followed by the United States Supreme Court. *East Oakland v. Skinner*, 94 U. S., 255. The courts hold that the general word "corporation" must be restricted to mean private or ordinary business corporations and not extended to embrace municipal corporations and bodies politic. *Wallace v. Lawyer*, 54 Ind., 501. Cited and followed in *Emes v. Fowler*, 89 N.Y.S., 685.

In definition and legal classification and terminology a well settled distinction exists, and is recognized generally, between a "corporation" and a "municipal corporation." Each term has a distinct and commonly accepted meaning. As illustrative, reference may be had to our statutes. The numerous statutory provisions relating to the organization, powers, *etc.*, of municipalities are collected and classified under the designation "municipal corporations." See, for example, Title 7, Revised Code. Reverting to statutory language in this state, the term "corporation" is used and refers to private and business corporations and the statutes relating to such corporations are assembled under the classification or designation of "corporations" in Title 17, Revised Code. Likewise where the term "corporation" is used in our Constitution it uniformly refers to private or business organizations of individuals. Neither by the language of the Constitution nor statutes is the term "corporation" so used as to apply to and include a municipality or municipal corporation and where a city or town is referred to, in the sense of being a corporate entity, the term "municipal corporation" is used. And looking to the context of the act as a whole, I find no language or provisions therein from which an implication necessarily arises that it was the legislative intent to include a municipal corporation within the act. This gains significance in the light of the fact that no other political subdivision has been included in the definition of the word "person" as defined in Section 3767.01, *supra*.

In view of the foregoing considerations, the meaning commonly ascribed to the word "corporations," both in popular usage and legal nomenclature, and absence of language indicating a legislative intent to use it in a different sense, I must assume it was used in its ordinary and commonly understood meaning and it legitimately follows that had the legislature intended to include a municipality in the act it would have specifically done so.

Accordingly, it is my opinion and you are advised that the term "person" as defined in Section 3767.01, Revised Code, does not include

municipal corporations and such corporations are not subject to the prohibitions and penalties of Chapter 3767., Revised Code, for the maintenance of nuisances, therefore, a nuisance inspector has no power over municipal corporations under this chapter.

Respectfully,

WILLIAM SAXBE

Attorney General