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PLANS, SCHOOL STRUCTURES—COUNTY BUILDING DEPARTMENT WITHOUT AUTHORITY TO APPROVE OR DISAPPROVE PLANS FOR SUCH BUILDINGS TO BE ERRECTED IN UNINCORPORATED PORTION OF COUNTY—§ 3791.04 RC.

SYLLABUS:

A county building department is without authority under the provisions of Section 3791.04, Revised Code, to approve or disapprove plans for school structures to be erected in an unincorporated portion of the county.

Columbus, Ohio, October 17, 1957

Hon. Harry Friberg, Prosecuting Attorney
Lucas County, Toledo, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“We would appreciate your interpretation of Section 3791.04 of the Revised Code regarding the jurisdiction of the State

Department of Inspection and the County Building Department. In Lucas County, there is a Building Department and the question has arisen as to whether the State or County has jurisdiction in the construction of School Buildings. Prior to the amendment of this act we had interpreted the statute so that the County Building Department had no jurisdiction over anything but residential buildings, office and merchantile buildings, workshops, or factories, including public or private garages. However, since the amendment of Section 3791.04 to include County Building Departments with a reference to any building as enumerated in Section 3781.06, we have interpreted the legislative intent of this amendment to give jurisdiction to the County Building Department.

“There seems to be some questions raised as to our interpretation of this matter. We would appreciate your opinion as to whether the County Building Department or the Division of Workshops and Factories has jurisdiction in this matter.”

Section 3791.04, Revised Code, as amended, effective October 5, 1955, now reads as follows :

“Before entering into contract for or beginning the construction or erection of any building to which section 3781.06 of the Revised Code is applicable, the owner thereof shall, in addition to any other submission of plans or drawings, specifications, and data required by law, submit the plans or drawings, specifications, and data prepared for the construction, erection, and equipment thereof, or the alteration thereof or addition thereto to the municipal or county building department having jurisdiction, and if there is no municipal or county building department, to the chief of the division of workshops and factories, for his approval. No owner shall proceed with the construction, erection, alteration, or equipment of any such building until said plans or drawings, specifications, and data have been so approved. No plans or specifications shall be approved unless the building represented thereby would, if constructed, repaired or equipped according to the same, comply with the provisions of Chapters 3781., 3783., 3785., 3787., 3789. and 3791. of the Revised Code and any rule or regulation made thereunder.

“The board of building standards or the legislative authority of a municipal corporation or county may by rule, regulate the requirements for the submission of such plans and specifications to the respective enforcing departments and for the processing of the same by such departments. When any such plans and specifications shall be approved by the department having jurisdiction, the structure and every particular thereof represented by such plans and specifications and disclosed therein shall, in the absence

of fraud or a serious safety or sanitation hazard, be conclusively presumed to comply with the provisions of Chapters 3781., 3783., 3785., 3787., 3789. and 3791. of the Revised Code and any rule or regulation issued pursuant thereto, if constructed, altered or repaired in accordance with such plans and specifications and any such rule or regulation in effect at the time of approval.

“The provisions of sections 4107.36, 4107.37 and 4107.38 of the Revised Code shall be subject to this section of the Revised Code.

“The approval of plans under this section is a ‘license’ and the failure to approve such plans as submitted within thirty days after filing or the disapproval of such plans is ‘an adjudication order denying the issuance of a license’ requiring an ‘adjudication hearing’ as provided by sections 119.07 to 119.13 of the Revised Code and as modified by sections 3781.031 (3781.03.1) and 3781.032 of the Revised Code. An adjudication order denying the issuance of a license shall specify the reasons for such denial.

“No owner or person having control as an officer, or as a member of a board or committee, or otherwise, of a building to which section 3781.06 of the Revised Code is applicable, and no architect, designer, engineer, builder, contractor, sub-contractor, or any officer or employee of a municipal or county building inspection department shall violate this section.

“Whoever violates this section shall be fined not more than five hundred dollars.”

Section 3781.06, Revised Code was also amended effective October 5, 1955 and now reads as follows :

“All public buildings which may be used as a place of resort, assembly, education, entertainment, lodging, dwelling, trade, manufacture, repair, storage, traffic, or occupancy by the public, and all other public buildings or parts and appurtenances thereof erected within this state shall be so constructed, erected, equipped, and maintained that they shall be safe and sanitary for their intended use and occupancy, except that sections 3781.06 to 3781.18, inclusive, and section 3791.04 of the Revised Code, do not apply to single-family, two-family, and three-family dwelling houses.

“As used in such sections a building is any structure consisting of foundations, walls, columns, girders, beams, floors, and roof, or a combination of any number of these parts, with or without other parts or appurtenances.

“A building is considered safe when free from danger or hazard to the life, safety, health, or welfare of persons occupying

or frequenting it, or of the public and from danger of settlement, movement, disintegration, or collapse, whether such danger arises from the methods or materials of its construction or from equipment installed therein, for the purpose of lighting, heating, the transmission or utilization of electric current, or from its location or otherwise.

“A building is sanitary when it is free from danger or hazard to the health of persons occupying or frequenting it or to that of the public, if such danger arises from the method or materials of its construction or from any equipment installed therein, for the purpose of lighting, heating, ventilating, or plumbing.”

From a cursory examination of the two sections standing alone it might appear that, in the absence of a municipal building department or if located outside a municipality, plans for a school building might be approved by a county building department.

I do not, however, believe this to be true. It is well established that counties possess only such powers as may be granted them by the legislature and those that are necessarily implied to exercise the powers expressly given. With this precept in mind your attention is invited to the words “department having jurisdiction” used twice in Section 3791.04, Revised Code.

The authority of the counties to regulate building in unincorporated portions is contained in Section 307.37, Revised Code and reads in pertinent part as follows :

“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. * * *”

Since there is no mention of school or education buildings, I must conclude that the county building department has no jurisdiction over or authority to regulate the building of schools.

With this fundamental lack of authority on the part of the county, it could not be suggested seriously that the power in question was conferred by inference by Section 3791.04, Revised Code, or by mere reference to Section 3781.06, Revised Code.

Nothing in this opinion should be construed, however, to apply to the powers of a municipality as set out in Sections 715.26, 737.37 and 3781.01, Revised Code, as your inquiry is concerned only with the county and state departments.

It has also been suggested that Section 3781.03, Revised Code, also recently amended, confers the power in question on county building departments. The pertinent language of that section is :

“The fire marshal or fire chief of municipal corporations having fire departments or the fire chief of townships having fire departments shall enforce all provisions of Chapters 3781., 3783., 3785., 3787., 3789., and 3791. of the Revised Code relating to fire prevention.

“The chief of the division of workshops and factories, or building inspector or commissioner of buildings in municipal corporations or counties having building departments shall enforce all the provisions in such chapters relating to construction, arrangement, and the erection of all buildings or parts thereof, as defined in section 3781.06 of the Revised Code, including the sanitary condition of the same in relation to heating and ventilation.”

In my opinion it was not the intention of the legislature in using that language to confer any additional power upon county building departments. It simply directs them to enforce the enumerated chapters to the extent of their authority.

In specific answer to your query, therefore, it is my opinion that a county building department is without authority under the provisions of Section 3791.04, Revised Code, to approve or disapprove plans for school structures to be erected in an unincorporated portion of the county.

Respectfully,
WILLIAM SAXBE
Attorney General