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1. FIRE MARSHAL, STATE—ASSISTANTS—HAVE AUTHORITY TO ENTER INTO ALL BUILDINGS WITHIN STATE WHERE FIRE OCCURRED—PURPOSE, INSPECTION, CONDITIONS AS TO LIABILITY TO FIRE OF SUCH BUILDINGS OR OTHER BUILDINGS IN VICINITY—AUTHORITY EXTENDS TO BUILDINGS PRIVATELY OWNED OR THOSE OWNED BY STATE OR ANY OF ITS SUBDIVISIONS—SECTION 833 ET SEQ., G. C.
2. DWELLINGS CONSTRUCTED OR OWNED BY UNITED STATES, PURSUANT TO FEDERAL LEGISLATION WHICH PRESERVES TO STATE AND ITS POLITICAL SUBDIVISIONS CIVIL AND CRIMINAL JURISDICTION OVER PROPERTY, MAY BE ENTERED AND INSPECTED BY STATE FIRE MARSHAL AND ASSISTANTS FOR PURPOSES MENTIONED IN SECTIONS 833 TO 837 G. C.

## SYLLABUS:

1. The State Fire Marshal and his assistants have authority, pursuant to Section 833 et seq. of the General Code, to enter into all buildings within the state where a fire has occurred, and to enter into all such buildings for the purpose of inspection as to conditions that render such buildings or other buildings in the vicinity liable to fire; and such authority extends not only to privately owned buildings, but to those owned by the state or any of its subdivisions.

2. Dwellings constructed or owned by the United States, pursuant to federal legislation which preserves to the state and its political subdivisions their civil and criminal jurisdiction over such property, may be entered and inspected by the State Fire Marshal and his assistants for the purposes mentioned in Sections 833 to 837, inclusive, of the General Code.

Columbus, Ohio, March 26, 1945

Hon. Harry J. Callan, State Fire Marshal  
Columbus, Ohio

Dear Sir:

Your recent communication requesting my opinion, reads in part as follows:

“This office has been called into the cities of Cleveland and Akron, on the investigation of Federal Housing Project fires,

which have resulted in the loss of time, money, material and manpower. These Housing Projects are a part of the National Housing Agency of the Federal Housing Authority. These projects provide temporary wartime shelter and are below acceptable peacetime standards, with the result that seven fatalities have occurred within a period of seven months at the location of these portable units.

This experience, together with other known federal authorities engaged in housing of people raises the question of the authority of this office as to the force and effect of Sections 833, 834, 835 and 836-2, \* \* \*

More specifically, what authority does the Office of State Fire Marshal have to enforce orders on federally owned or leased dwellings?

What authority does the Office of State Fire Marshal have to order the elimination of life or fire hazards existing in privately or publicly owned dwellings in the State of Ohio?"

Of the sections of the General Code set out in your letter, it appears that the following provisions are pertinent to your inquiry. Section 833, General Code, provides:

"In the performance of the duties imposed by the provisions of this chapter, the state fire marshal and each of his subordinates, at all times of day or night may enter upon and examine any building or premises where a fire has occurred, and other buildings and premises adjoining or near thereto."

Section 834, General Code, authorizes the State Fire Marshal, his deputies and certain officers of the various political subdivisions to enter into all buildings and upon all premises within their jurisdiction at reasonable hours for the purpose of examination.

Section 835, General Code, provides that if any of the aforesaid officers finds that a building or other structure for any cause is especially liable to fire and is so situated as to endanger other buildings or property, such officer shall order the same repaired or torn down, and in the event he finds inflammable materials on the premises, he may order them removed. Such order is to be made against and served personally or by registered letter upon the owner, lessee, agent, or occupant of such building or premises, and thereupon such order shall be complied with by the owner, lessee, agent or occupant within the time fixed in the order.

Sections 835-1 and 835-2, General Code, relate especially to defective gas plumbing and authorize the State Fire Marshal to fix reasonable standards and make and enforce orders for safe gas equipment.

Sections 836 and 836-1, General Code, provide for an appeal from an order of any of the officers aforesaid and for a final decision by the probate court. Section 836-2, General Code, gives the officers aforesaid the right, in case their orders are not obeyed, to have the buildings in question repaired or demolished, the materials removed and all dangerous conditions remedied at the expense of such person, and to certify such expense to the county auditor, to be placed on the tax duplicate against the real estate upon which the building is situated.

Section 837, General Code, imposes a penalty by way of fine for a violation of orders made by the State Fire Marshal or his assistants under the provisions of Sections 835, 836, 836-1 and 836-2, General Code.

In an opinion rendered by me on March 19, 1945, being numbered 182, it was held that the penal provisions of Section 837 *supra*, did not apply to orders made by the officers of the political subdivision named in Section 834 nor to the provisions of Sections 835-1 and 835-2, General Code.

It will be noted that under the provisions of the statute above referred to, your office has the express power to enter into "any building or premises where a fire has occurred and other buildings or premises adjacent or near thereto". Furthermore, you and your assistants have the authority at all reasonable times "to enter into all buildings and upon all premises within their jurisdiction for the purpose of examination." In an opinion which I rendered on February 21, 1945, being numbered 136, I held that the authority given to the chief of the fire department of a city or to the other officers of subdivisions named in Section 834, General Code, included the right to enter into public buildings owned by the state and its subdivisions, for the purpose of making inspections with a view to fire protection. While that opinion was directed only to the right of the subordinate officers named, yet that section gives equal authority to you and your assistants, and I have, therefore, no hesitancy in holding that you have the full authority to enter into *public and private* buildings at all reasonable times for the purpose of making inspections for the preven-

tion of fires and also that you have the authority to enter into all public buildings of the state or any of its subdivisions in or near which a fire has occurred, for the purpose of determining the cause of such fire.

The only question remaining to be considered is whether the buildings described in your communication as federal housing projects are within the scope of your authority, both as to the investigation of fires which have occurred and as to orders and changes that may be required to prevent fires either in those buildings or in other property in the vicinity.

In an opinion rendered by my immediate predecessor, November 4, 1944, being numbered 7201, the then Attorney General had occasion to consider questions relative to the jurisdiction over residences built on federally owned territory by agencies of the federal government for the temporary housing of war workers. That opinion related particularly to the right of inhabitants of such dwellings to vote at state elections, and it was held:

“Residence on federal-owned territory, acquired under the authority of the ‘Urgent Deficiency Appropriation Act, 1941’, Public Law Numbered 9-77th Congress, the ‘Additional Urgent Deficiency Appropriation Act, 1941’, Public Law Numbered 73-77th Congress, and Public Law Numbered 849-76th Congress, as amended, popularly known as the ‘Lanham Act’, standing alone, does not constitute grounds for denying the right to vote, and persons residing on such territory are entitled to vote, if otherwise qualified.”

Certain provisions of the Constitution of the United States and certain actions of the Legislature of Ohio relative to federally owned property within the state are set out at length in that opinion, as well as Acts of Congress providing for defense housing, and reference may be had thereto for the complete text of those constitutional and statutory provisions. It is sufficient for the present purpose to point out that the Constitution of the United States, in Article I, Section 8, Clause 17 gives Congress the authority to exercise exclusive legislation over “all places purchased by the consent of the legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dockyards and other needful buildings”.

Consent to such acquisition and jurisdiction was given by the General Assembly of Ohio in 1902, in the enactment of Sections 13770, 13771 and 13772 of the General Code.

It is well settled, however, that the constitutional provision above referred to does not compel the United States to assume exclusive jurisdiction in all such cases even though the consent of the state has been given. Among other cases so holding I note the case of *Stewart & Company vs. Sadrakula*, 309 U. S. 94, 84 L. Ed. 596. Quoting from the decision of Mr. Justice Reed:

“It is now settled that the jurisdiction acquired from a state by the United States whether by consent to the purchase or by cession may be qualified in accordance with agreements reached by the respective governments. The Constitution does not command that every vestige of the laws of the former sovereignty must vanish. On the contrary its language has long been interpreted so as to permit the continuance until abrogated of those rules existing at the time of the surrender of sovereignty which govern the rights of the occupants of the territory transferred.”

Turning then to federal legislation pursuant to which dwellings of the character mentioned in your letter have presumably been built, I note the following: Public Law numbered 9-77th Congress carried an appropriation of \$5,000,000 to enable the President of the United States through such agencies of the government as he might designate, to provide temporary housing for defense workers in localities where by reason of national defense activities a shortage of housing exists. Public Law Numbered 73-77th Congress carried an appropriation of \$15,000,000 for a similar purpose. The third supplemental appropriation act for 1942, carried an additional appropriation for the same purpose, in the sum of \$300,000,000.

From what is known as the Lanham Act, codified as USC, Title 42, sections 1521 to 1552, inclusive, I quote sections 1547 and 1552, which read as follows:

USC, Title 42, section 1547.

“Notwithstanding any other provision of law, the acquisition by the Administrator of any real property pursuant to this Act (Sec. 1521 et seq. of this title) *shall not deprive any State or political subdivision thereof of its civil and criminal jurisdiction in and over such property, or impair the civil rights under the*

*State or local law of the inhabitants on such property. As used in this section the term 'State' shall include the District of Columbia."*

(Emphasis added.)

USC, Title 42, section 1552.

*"Any agency designated by the President to provide temporary shelter under the provisions of Public Law Numbered 9, Seventy-seventh Congress, Public Law Numbered 73, Seventy-seventh Congress, or the Third Supplemental National Defense Appropriations Act, 1942, shall have the same powers with respect to the management, maintenance, operation, and administration of such temporary shelter as are granted to the Federal Works Administrator under section 304 and section 306 of this Act (secs. 1544, 1546 of this title) with respect to projects constructed hereunder, and the provisions of section 307 (sec. 1547 of this title) shall apply to such temporary shelter projects and the occupants thereof."*

(Emphasis added.)

The above quoted provisions of the federal statute seem to make it clear that Congress has disclaimed any intention of taking such exclusive jurisdiction of the lands and property so acquired as to deprive the state and its agencies of its civil or criminal jurisdiction over such property. It is also to be noted that Congress declared that it was not its intention to impair the civil rights of persons living on such lands.

While I have no positive information that the buildings referred to in your communication were built pursuant to the Federal Acts above mentioned, I feel that it is highly probable that they were, and I am therefore basing my opinion on that assumption. Accordingly, it appears to me that your department would have the right to enter into those buildings whenever a fire has occurred in or near to them, with a view of ascertaining the cause of the fire, and the further right to enter into such buildings for the purpose of inspection with a view to discovering and remedying conditions which would be liable to cause fire and consequent loss of life and property not only in those buildings but also in other buildings in the vicinity.

Enforcement of orders that might be made by you, looking to repair or demolition of federally owned buildings which constitute fire hazards would doubtless present serious difficulty, in that you could not enforce

such an order against the United States as owner of the property. If, however, conditions are found that are plainly due to the act or negligence of the occupant or agent in charge, I see no reason why they should not be answerable to the law if they fail to remedy the conditions that are within their control. So far as concerns the United States government as owner, your action would doubtless be limited to calling the attention of the proper authorities to the dangerous conditions and securing cooperation so far as possible in remedying the same.

Specifically answering your inquiries it is my opinion:

1. The State Fire Marshal and his assistants have authority, pursuant to Section 833 et seq. of the General Code, to enter into all buildings within the state where a fire has occurred, and to enter into all such buildings for the purpose of inspection as to conditions that render such buildings or other buildings in the vicinity liable to fire; and such authority extends not only to privately owned buildings, but to those owned by the state or any of its subdivisions.

2. Dwellings constructed or owned by the United States, pursuant to federal legislation which preserves to the state and its political subdivisions their civil and criminal jurisdiction over such property may be entered and inspected by the State Fire Marshal and his assistants for the purposes mentioned in Sections 833 to 837, inclusive, of the General Code.

Respectfully,

HUGH S. JENKINS

Attorney General