

CIVIL DEFENSE—BOARD OF COUNTY COMMISSIONERS,
MONTGOMERY COUNTY—RIGHT TO CONTRACT WITH
CITY OF DAYTON FOR COOPERATIVE ACTION IN AP-
POINTMENT OF DIRECTOR OF CIVIL DEFENSE—MAY PAY
TO CITY AGREED PORTION OF EXPENSE OF OPERATION—
STATUTES OF OHIO—REGULATIONS PROMULGATED BY
GOVERNOR.

SYLLABUS:

Under the provisions of the statutes of Ohio relating to civil defense, and in accordance with the regulations promulgated by the Governor relative to civil defense, the Board of County Commissioners of Montgomery County has the right to contract with the city of Dayton for cooperative action in the appointment of a Director of Civil Defense, and properly may pay to such city an agreed portion of the expense of the operation of such organization.

Columbus, Ohio, March 12, 1951

Hon. Mathias H. Heck, Prosecuting Attorney
Montgomery County, Dayton, Ohio

Dear Sir:

I have before me your request for my opinion, reading as follows:

“I am enclosing a copy of a proposed ordinance to be passed by the City of Dayton, which when accepted by the Board of County Commissioners of Montgomery County, will constitute a contract between the city and county for the expenditure by the county of county funds for its share of the expense for civil defense under Sections 5291 to 5315 both inclusive of the General Code. The Board of County Commissioners is in doubt concerning their authority to make expenditures of this character.

“While I feel that Section 5298 G. C. confers this authority, but as the matter is of state wide importance, I prefer that your office confirm this.

“In addition to this, Section 5305 G. C. provides that the governor shall prescribe rules and regulations governing these matters. Consequently contracts of this sort should conform, at least not conflict with these rules and regulations.

“As I have not seen these rules and regulations and feel that all counties and cities should act in harmony with the civil defense organization of the State, I wish you would inform me,

if the expenditure of county funds under this contract is a proper exercise of the authority conferred upon counties under the civil defense sections of the code; and is not in conflict with the rules and regulations prescribed by the Governor."

By an Act of the General Assembly passed May 23, 1949, there was established an organization for civil defense against possible enemy action. This Act was passed as an emergency measure and became effective May 26, 1949. It was codified as Sections 5291 to 5315, inclusive, of the General Code.

Section 5291, General Code, provides as follows:

"The governor shall promulgate and enforce, and as he deems necessary from time to time, amend or rescind, regulations with respect to the establishment of a civil defense organization for the state of Ohio *for the purpose of providing a defense for its people against enemy action*. Such regulations shall become effective upon being filed in the office of the secretary of state and thereupon *shall have the full force and effect of law* until amended or rescinded. They shall be made available for public inspection at the headquarters of the state and each local organization for civil defense, and at such other places and during such reasonable hours as may be fixed by the governor."

(Emphasis added.)

Section 5292, General Code, established this organization as a section within the Adjutant General's Department and made the Adjutant General the State Director for Civil Defense.

Section 5295, General Code, reads as follows:

"Each county and incorporated municipality of this state is hereby authorized to establish a local organization for civil defense in accordance with such regulations as shall be promulgated by the governor. Each local organization for civil defense shall have a director who shall be appointed by the county commissioners for the counties and by the chief executive for the incorporated municipalities, and who shall have direct responsibility for the organization, administration and operation of such local organization for civil defense, subject to the direction and control of such county commissioners and chief executive and not inconsistent with regulations promulgated by the governor. Each local organization for civil defense shall perform civil defense functions within the territorial limits of the political subdivision within which it is organized, and in addition, shall conduct such functions *outside of such territorial limits as may be required pursuant to regulations promulgated by the governor*."

(Emphasis added.)

Section 5296, General Code, reads as follows:

“The director of each local organization for civil defense may, in collaboration with other public and private agencies within this state, develop or cause to be developed mutual aid arrangements for reciprocal civil defense aid and assistance in case of enemy action too great to be dealt with unassisted. Such arrangements shall be consistent with the regulations promulgated by the governor and shall be approved by the state director of civil defense. In time of emergency it shall be the duty of each local organization for civil defense to render assistance in accordance with the provisions of such mutual aid arrangements.”

(Emphasis added.)

Pursuant to the authority conferred upon him by Section 5291 supra, the Governor on the 15th day of January, 1951 issued and filed with the Secretary of State certain regulations. I quote Section 4 of these regulations:

“Local Organizations.

“a. Each board of county commissioners shall appoint a director of civil defense for the territory lying outside of the incorporated municipalities within its county pursuant to the provisions of section 5295 of the General Code.

“b. Each mayor or executive head of a municipal corporation shall appoint a director of civil defense for such municipal corporation pursuant to the provisions of section 5295 of the General Code.

“c. Provided, however, that the board of county commissioners and the mayors or executive heads of the municipal corporations within any county may by agreement establish a county-wide civil defense organization when authorized by a resolution of the board of county commissioners of such county and by ordinance passed by the legislative body of each participating municipal corporation within the county setting forth the manner of the discharge of the obligation of providing a defense for the people within such county against enemy action. Such county-wide civil defense organization shall have authority to appoint a director of civil defense for the territory comprising the county. Any such agreement shall become effective when approved by the legislative bodies of at least a majority of such incorporated municipalities, including the municipality having the largest population within such county, and by the state director of civil defense. When so established and upon the appointment of a civil defense director such county-wide civil defense organization shall have the power and authority to:

“1) Receive and disburse funds

2) Acquire, own, hold, use and control property pursuant to the terms set forth in the resolution of the board of county commissioners and the ordinances of the respective municipal corporations.”

It would appear from the language both of the statutes and of the Governor's Regulations that it was contemplated that the political subdivisions constituting local civil defense organizations should collaborate for the attainment of the common purpose of defense in case of invasion or attack by an enemy. The language used in both cases is quite general and imposes no restrictions. It is manifest that in preparation for the extreme emergency which was in the mind of the legislature in enacting this legislation, any arrangements for mutual assistance in case of invasion or attack would have to be made in advance. Plainly, it would be both ineffectual and absurd to wait until a bomb had been dropped upon a community before calling upon a neighboring subdivision for assistance.

It appears from the terms of the proposed ordinance of the city of Dayton, a copy of which you have submitted, that the ordinance when accepted by the county commissioners of Montgomery County is to constitute a contract whereby the city and county would appoint a director of civil defense for said county and city. Presumably both would exercise the power given them by law by appointing the same person. I can see no objection to this procedure in view of the language of the statute and the regulation to which I have called attention.

The ordinance further contemplates that the initial cost of operating such defense organization would be borne by the city and that the county should reimburse the city monthly, to the amount of 40% of the monthly expense.

In this connection I call attention to Section 5298, General Code, which provides:

“Each political subdivision shall have the power to make appropriations for the payment of the expenses of its local organization for civil defense.”

Here again it will be noted that there is no limitation placed on the manner of this expenditure.

The method of proceeding proposed by the ordinance may differ somewhat from the county-wide civil defense organization suggested by

the Governor's Regulations but I do not see that it is in conflict therewith or that it is violative of the powers given by law to the city and county, respectively.

It is a well settled rule of statutory construction that a measure which has been passed, as was the act in question, as an emergency measure, is entitled to a liberal interpretation, and this is particularly true when the emergency is of such character that it has produced or may produce a great disaster or public calamity. In Sutherland Statutory Construction, Section 7212, it is said:

“Legislation enacted for the purpose of alleviating grave conditions which result from economic disaster and public calamity are deserving of a generous interpretation so that their purposes may be accomplished. Thus, a statute changing a rule of evidence in permitting a destroyed will to be probated in the absence of express provision was liberally extended as a result of the great San Francisco fire.”

In re. Patterson, 155 Cal. 626.

The same author in speaking of statutes pertaining to national defense, in Section 7216 says:

“It is imperative that legislation providing for national defense and the prosecution of war shall be liberally construed to accomplish its important objectives.”

Sweester v. Emerson, 236 Fed. 161-163.

“Likewise, legislation pertaining to war production must not be impeded by technical interpretations.”

Roxford Knitting Company v. Moore, 265 Fed. 177.

“* * * and it has not been uncommon for the courts to recognize that a statute may have a different meaning in time of war than it does have in time of peace.”

Schenck v. United States, 249 U. S. 47.

The same rules as to interpretation may properly be applied to the regulations issued by the Governor.

Accordingly, in specific answer to your question it is my opinion that under the provisions of the statutes of Ohio relating to civil defense, and in accordance with the regulations promulgated by the Governor relative

to civil defense, the Board of County Commissioners of Montgomery County has the right to contract with the city of Dayton for cooperative action in the appointment of a Director of Civil Defense and properly may pay to such city an agreed portion of the expense of the operation of such organization.

Respectfully,

C. WILLIAM O'NEILL
Attorney General