

however, as the time within which abutting property owners had a preferred right to purchase the several parcels of surplus Miami and Erie Canal Lands from the State has long since past, no question can now be raised with respect to your right to sell this property to the grantee named in said deed.

Upon examination of said deed form, I find that the same corresponds in every respect with the requirements of said act; and said deed is approved by me as to legality and form as is evidenced by my endorsed approval thereon.

Respectfully,
GILBERT BETTMAN,
Attorney General.

3527.

APPROVAL, LEASE TO STATE RESERVOIR LANDS AT PORTAGE LAKES—WM. A. BLANK—H. D. STEVENS.

COLUMBUS, OHIO, August 28, 1931.

HON. I. S. GUTHERY, *Director, Department of Agriculture, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge the receipt of recent communications from the Division of Conservation in your Department submitting for my examination and approval two certain reservoir land leases in triplicate, by which there are leased to Wm. A. Blank and H. D. Stevens, the respective lessees therein named, and for terms of fifteen years each, two certain parcels of State reservoir lands at the Portage Lakes. One of these parcels, which has an appraised valuation of \$100.00, is described as being the water front and State land in the rear thereof, that lies immediately in front of Lot No. 9, of the Lakeview Terrace Addition, Portage Lakes. The other parcel of land, above referred to, has likewise an appraised valuation of \$100.00 and is described as being a water front and State land in the rear thereof, that lies immediately in front of Lot No. 230, of the Sawyer and Haynes Shore Acres, Portage Lakes.

Upon examination of these leases, each of which call for an annual rental of \$6.00, payable semi-annually, I find that the same have been properly executed and that the terms and provisions thereof are in conformity with the requirements of section 471, General Code, as amended in the enactment of the Conservation Act, and with other statutory provisions relating to leases of this kind.

I am accordingly approving said leases as is evidenced by my approval endorsed thereon and upon the triplicate copies thereof.

Respectfully,
GILBERT BETTMAN,
Attorney General.

3528.

MUNICIPALITY—BUILDING DEPARTMENT OF CITY HAS NO JURISDICTION OVER STATE BUILDING LOCATED IN MUNICIPALITY.

SYLLABUS:

The jurisdiction of the officers and other employes of the building department of a municipal corporation in this state, acting under the assumed authority of an ordinance passed by the council of such municipality, does not extend to a building owned by the state in the municipality, with respect to alterations and repairs which the public safety requires to be made in such buildings.

COLUMBUS, OHIO, August 31, 1931.

HON. FRANK D. HENDERSON, *Adjutant General, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge the receipt of a communication from you enclosing a communication from the Department of Buildings of the city of Cincinnati, in which an order is made directing certain alterations and repairs of an armory owned by the state of Ohio at Cincinnati. The order of the Director of Buildings of said city here referred to is as follows:

“O. N. G. Cavalry Armory,
326 Helen St.,
Cincinnati, Ohio.
Gentlemen:—

You are hereby notified that the building or structure located in the City of Cincinnati known as 326 Helen St., being a 2 story brick and frame building, does not conform to the requirements of Ordinance No. 2585, Title 3, Building Code. In order to comply with said Building Code, you will be required to make the following changes, viz.:

No. 1—Provide new stair treads for stairs leading to basement of 2 story brick building.

No. 2—Remove wood lath and loose plaster in shower room and provide metal lath and cement plaster, coated with water proof paint.

No. 3—Take down and rebuild East stone foundation wall of Riding ring building. Also, plumb frame construction above wall and replace all rotted sills, posts and metal siding with sound material.

No. 4—Take down all of frame building, north of Riding ring, as same is in an unsafe and dangerous condition.

This department expects you to give this notice your immediate attention.

Respectfully,

C. M. STEGNER,

Director of Buildings.

By F. H. Kiekmeier

Supervising Bldg. Inspector.”

In your communication to me my opinion is requested on two questions stated by you therein as follows:

“(a) Whether or not the jurisdiction of the city of Cincinnati extends to include the said property, owned by the state of Ohio.

(b) What method of enforcement may be used by the city, in obtaining compliance with their requirements.”

I do not have before me a copy of the ordinance of the council of the city of Cincinnati, under the assumed authority of which the order above quoted was made. In this connection, it is noted, however, that aside from the general power and authority granted by section 3 of article XVIII of the state constitution to municipal corporations to adopt and enforce within their limits such local police, sanitary and other similar regulations as are not in conflict with the general laws, the legislature in the enactment of section 3636, General Code, has conferred express power upon municipal corporations to regulate the erection, operation and repair of buildings in the municipalities. This section reads as follows:

“To regulate the erection of buildings and the sanitary condition thereof, the repair of, alteration in and addition to buildings, and to

provide for the inspection of buildings or other structures and for the removal and repair of insecure buildings; to require, regulate and provide for the numbering and renumbering of buildings either by the owners or occupants thereof or at the expense of the municipality; to provide for the construction, erection, operation of and placing of elevators, stairways and fire escapes in and upon buildings."

Not having before me a copy of the ordinance of the city of Cincinnati, referred to in the communication from the Director of Buildings of said city, above quoted, I do not know to what extent, if at all, the provisions of said ordinance are in conflict with statutory provisions relating to the same subject. In this connection, it will be noted that sections 1031 and 1032, General Code, provide as follows:

Sec. 1031. "The department of industrial relations shall cause to be inspected all school houses, colleges, opera houses, halls, theatres, 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."

Sec. 1032. "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, General Code, provides that 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 any structure affected by any order made by the Department of Industrial Relations, as provided for in sections 1031 and 1032, General Code, above quoted, may appeal from such order to the court of common pleas of the county in which such structure is situated, by filing an appeal with the clerk of such court within twenty days after the publication of a copy of the order complained of. This section of the General Code further provides for the necessary proceedings to be had in the hearing of said appeal. Section 1033 and other sections of the General Code immediately following provide for the enforcement of the order so made by the Department of

Industrial Relations with regard to such building or structure if no appeal is taken from the order of the Department of Industrial Relations or if the court, upon the hearing of said appeal, sustains such order.

The provisions of sections 1031 and 1032, General Code, and, I assume, those of the ordinance of the city of Cincinnati here in question as well, are general in their terms, and make no specific reference to buildings owned by the state of Ohio. Applying the general principle that the state is not bound by the terms of a general statute, unless it be so expressly enacted, it may be doubted whether the provisions either of the sections of the General Code above noted or of the ordinance of the city of Cincinnati have any application to buildings and structures owned by the state of Ohio; although as to this I am advised that the Department of Industrial Relations acting through the Chief of the Division of Workshops and Factories has been exercising jurisdiction with respect to the alteration and repair of armories and other buildings owned by the state. However this may be, the facts here presented, in their application to the question presented in your communication, quite clearly require the application of a familiar principle of law which has been well stated in the decision and opinion of the court in the case of *Kentucky Institution for Education of the Blind vs. the City of Louisville*, 123 Ky. 767, 8 L. R. A. (N. S.) 553. In this case the court held that the general police power conferred upon a municipality does not include power to compel the placing of fire escapes on an eleemosynary institution for the blind which belongs to, and is entirely under the control and management of the state. Among other things, the court, in its opinion in this case, speaking through O'Rear, J., said:

"The principle is that the state, when creating municipal governments, does not cede to them any control of the state's property situated within them, nor over any property which the state has authorized another body or power to control. The municipal government is but an agent of the state, not an independent body. It governs in the limited manner and territory that is expressly, or by necessary implication, granted to it by the state. It is competent for the state to retain to itself some part of the government even within the municipality which it will exercise directly or through the medium of other selected and more suitable instrumentalities. How can the city ever have a superior authority to the state over the latter's own property, or in its control and management? From the nature of things it can not be."

In recognition of this principle, it has been held in previous opinions of this office that an ordinance of a municipality requiring the owner or agent of property to obtain a permit for the construction of a building is not applicable with respect to the construction of state buildings located in such municipality. Annual Report, Attorney General, 1914, Vol. II, p. 1307; Opinions of the Attorney General, 1929, Vol. III, p. 1880.

For the reason above stated I am of the opinion, by way of specific answer to the first question presented in your communication, that the jurisdiction of the city of Cincinnati and of its officers and agents does not extend to the armory building here in question, which you state is owned by the state of Ohio.

The conclusion reached by me with respect to the first question presented by you makes unnecessary any discussion of the second question stated in your communication.

Respectfully,

GILBERT BETTMAN,

Attorney General.