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OHIO TURNPIKE COMMISSION—BOARD OF COUNTY COMMISSIONERS—WITHOUT AUTHORITY TO IMPOSE BUILDING INSPECTION OR TO EXACT INSPECTION FEE UNDER COUNTY REGULATIONS—BUILDINGS CONSTRUCTED BY OHIO TURNPIKE COMMISSION—OWNED BY STATE OF OHIO.

SYLLABUS:

A board of county commissioners is without authority to impose a building inspection or to exact an inspection fee under county regulations for the inspection of buildings constructed by the Ohio Turnpike Commission and owned by the State of Ohio.

Columbus, Ohio, April 26, 1955

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

Dear Sir:

I have your request for my opinion which reads as follows:

"A question arose in our county concerning the necessity for compliance with the Lucas County Building Code Regulations for buildings in unincorporated areas of our county. As you know, the Ohio Turnpike has acquired considerable right-of-way in our county and is now proceeding with the construction of that facility. In connection with the construction of the turnpike proper, a number of service buildings are being erected in the center lane of the turnpike along the right-of-way. The Beacon Construction Company has one contract to erect two buildings on this turnpike property and their contract is with the Ohio Turnpike Com-

mission. These buildings when completed are to be leased for operation as restaurants.

"The question we now have is: Can the county building inspection department levy the customary building inspection fee and conduct the building inspection investigation on these structures as they do on other buildings being erected in the county, or does the fact that the contract is with the Ohio Turnpike Commission obviate the necessity of their complying with these regulations?

"I have a letter from the law firm representing the Beacon Construction Company, wherein they cite Attorney General's Opinion No. 3528, 1931. However, in that decision the building department involved was that of the City of Cincinnati, and not a county building department.

"Two other opinions cited, No. 1268, 1929, and No. 1181, 1914, both pertain to municipalities. One opinion cited, No. 1983, rendered in 1950, held that the Board of County Commissioners had no authority to adopt regulations restricting the location of places of business where the businesses have been properly licensed by the state (in this instance, the Ohio Board of Liquor Control.) I do not believe that this is the same question presented by this company in this case.

"Inasmuch as there is going to be an increased amount of this type of building activity in our county as the turnpike progresses, we felt that we would like to have an Attorney General's opinion to clarify the situation once and for all so that we can guard ourselves accordingly in the future."

The Ohio Turnpike Commission is a body corporate and governmental agency of the State of Ohio, established under Section 5537.02, Revised Code, which provides:

"There is hereby created a commission to be known as the 'Ohio turnpike commission.' Such commission is a body both corporate and politic in this state, and the exercise by it of the powers conferred by sections 5537.01 to 5537.23, inclusive, of the Revised Code, in the construction, operation, and maintenance of turnpike projects shall be held to be essential governmental functions of the state, but the commission shall not be immune from liability by reason thereof."

Section 5537.04, Revised Code, authorizes and empowers the commission to "Construct, maintain; repair, police, and operate turnpike projects, and establish rules and regulations for the use of any such turnpike project; * * * Acquire, in the name of the state, by purchase or otherwise,

on such terms and in such manner as it deems proper * * * public or private lands, including public parks, playgrounds, or reservations, or parts thereof or rights therein, * * *."

Section 5537.01(B) Revised Code, defines the words "project" or "turnpike project" as "including all bridges, tunnels, overpasses, underpasses, interchanges, entrance plazas, approaches, tollhouses, *service stations* and administration, storage, and other buildings and facilities which the commission deems necessary for the operation of the project. * * *"

The question here is whether the county, as a political subdivision of the state, may exact a fee under county regulations for the inspection of buildings constructed by the state in connection with the operation of a turnpike project. In answering that question, I base my conclusions first upon my opinion that a turnpike project is a state project. A reading of the turnpike act can leave no doubt that, despite the use of the device of revenue bonds issued by the commission for financing purposes, a turnpike project is undertaken and operated under state authority, and its property is state property. I held in my Opinion No. 3245, Opinions of Attorney General for 1953, page 605, that a turnpike project constituted "public road work" and "a public highway" within the purview of certain statutes employing those terms. So I turn immediately to the problem of whether a county may regulate the construction of state buildings.

There are some very cogent reasons why a county may not subject state buildings to county regulations. Such action is inconsistent with state sovereignty. There is no specific statutory provision whereby a county may make such regulations applicable to the state.

Section 307.37, Revised Code, confers upon the board of county commissioners the power to "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," and provides that "*no person* shall violate any such regulation." And for the purpose of administering and enforcing such regulations, the board of county commissioners, under the provisions of Section 307.38, is authorized to "create, establish, fill and fix the compensation of the position of county building inspector."

The statute also provides for remedial relief against any "person" violating the county regulations. Section 307.40, Revised Code, provides:

> "*No person* shall erect, construct, alter repair, or maintain any residential building, office, mercantile building, workshop, or factory, including a public or private garage, within the unincorporated portion of any county, wherein the board of county commissioners has enacted building regulations as provided in section 307.37 of the Revised Code, unless such building regulations are fully complied with. In the event any building is being erected * * * or maintained in violation of the regulations adopted by resolution under the authority granted by such section, the board, the prosecuting attorney, or the county building inspector of such county or any adjacent, contiguous or neighboring property owner who would be especially damaged by such violation * * * may institute suit for inspection, abatement, or other appropriate action to prevent such violation of the regulations. * * *"
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> (Emphasis added.)

It will be noted that while the statute establishes the position of a county building inspector, it contains no provision which authorizes the county to collect an inspection fee. It is also evident that the statute envisaged its applicability to private property owners, but not to the state or to buildings owned by the state. The reason is obvious. The remedies provided by the statute for the enforcement of the county regulations could not be invoked against a sovereign state; also, the word "person" in a statute or ordinance, in the absence of an express provision contrariwise, does not include a state or a state agency, or a public corporation. State ex rel. Rich v. Page, 20 Ohio Op., 155; People v. Centr-O-Mart, Cal. App., 208 Pac. (2), 400; Charlestown v. Southeastern Construction Company, 164 W. Va., 666, 64 S. E. (2), 643. The United States Supreme Court, construing the words "any person" similarly used in the Sherman Anti-Trust Act, held them not to include the United States, since in common usage the term "person" does not include the sovereign, and statutes employing that term are ordinarily construed to exclude it. United States v. Cooper Corp., 312 U. S., 600, 85 L. Ed., 1071.

It is a well established principle of constitutional law that the police power is an attribute of sovereignty and local political subdivisions of the state, including counties, possess only such powers as have been delegated to them. 10 Ohio Jurisprudence (2), page 423. An illustration of this principle will be found in Opinion No. 1983, Opinions of Attorney General for 1950, page 473, referred to in your request, where a county was held to be without authority to adopt regulations which prohibited the carrying on of the plumbing business by unlicensed plumbers, or which excluded

licensees under the provisions of the Ohio Liquor Control Act from areas in close proximity to schools. The writer of the opinion followed the decision of the Supreme Court in State ex rel. Ranz v. Youngstown, 140 Ohio St., 477, holding a county which has not adopted a charter or alternative form of government is wholly a subordinate political subdivision or instrumentality for serving the state. In other words, the county as a political subdivision may not fix standards in conflict with the state law, or exact inspection fees not authorized by statute.

The same line of reasoning was followed in several opinions by my predecessors. In Opinion No. 1191, Opinions of Attorney General for 1914, page 1307, it was held that a city ordinance requiring a permit for the construction of a building involving sanitary plumbing, was not applicable to such work performed at the Ohio State University. It was there stated, at page 1313:

> "The owner of the building at the Ohio State University is the State of Ohio or the board of trustees having the custody and management of the state's property. The ordinance being penal, it might be asserted against its application to state officers, that phraseology appropriate to that end has not been incorporated in the ordinance. Not being certain, however, that the ordinance is to be given a strict interpretation, I pass this question with the remark that there is in my opinion grave doubt as to whether or not the ordinance on its face even attempts to apply to officers having the management and custody of state buildings and the duty to provide for their construction."

What the then Attorney General said speculatively in Opinion No. 1181, was later restated by the Supreme Court in unmistakable terms. In Niehaus v. State ex rel. Board of Education, 1924, 111 Ohio St., 47, at page 55, the court said:

> "The legislature is authorized to invest the inspector of workshops and factories, or any other state official within municipalities, as well as without, with power to approve plans and specifications for any public school building. It has the power to require the payment of a fee to such official for the performance of such duty, and it has the power to vest such power in any official of a municipality within the jurisdiction of such municipality, and to provide for the payment of a fee to such official; but it has not so provided.

Later, in Opinion No. 1268, Opinions of Attorney General for 1929, page 1880, it was again held that a municipality may not exact a building

permit fee, or a fee for inspection of elevators in buildings belonging to the state which are located in a municipality. Likewise, in Opinion 3528, Opinions of Attorney General for 1931, page 1111, the syllabus reads:

> "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."

In the light of these opinions by my predecessors and similar rulings by the Supreme Court on the question, I fail to see any distinction in principle between county and municipality with respect to the right of either to exact building inspection fees from the state not authorized by statute.

Accordingly, in specific answer to your question it is my opinion that a board of county commissioners is without authority to impose a building inspection or to exact an inspection fee under county regulations for the inspection of buildings constructed by the Ohio Turnpike Commission and owned by the State of Ohio.

Respectfully,
C. WILLIAM O'NEILL
Attorney General