

1831.

MUNICIPALITIES—AUTHORITY OF COUNCIL TO ENACT AN ORDINANCE FOR A LIMITED BUILDING CODE DISCUSSED.

SYLLABUS:

An ordinance of a village, creating a zone covering the business area of said municipality, intending to control the construction of buildings therein for protection against loss of property and life from fire and fire hazards alone, comes within the local police regulations a village may adopt and enforce when the same is not in conflict with general laws on that subject.

COLUMBUS, OHIO, October 14, 1924.

HON. LOUIS F. MILLER, *State Fire Marshal, Columbus, Ohio.*

Dear Sir:—

Your request for the opinion of this Department is stated as follows:

“This Department frequently recommends to City Councils, the adoption of a limited building code for small municipalities, establishing fire zones embracing the principal mercantile district.

It is claimed by some of the Village officials and attorneys that a Village has no authority to enact an ordinance of that kind, though it is admitted that a City has such power.

We would appreciate it very much if you would send us an opinion on this question.”

Your letter does not point out what is claimed by village officials and others why there is no authority for the enactment of the ordinance of which you speak, nor do you point out specifically what you mean by a limited building code establishing fire zones, embracing the principal mercantile district.

By the adoption of a limited building code establishing fire zones for fire protection purposes alone covering the business section of a village, I assume you mean an ordinance regulating the material to be used, the manner of construction and the number of stories of business structures that may be erected in the future in a defined area without intending to disturb existing business structures.

Your office is invested with authority to examine and inspect buildings and other structures, and finding them

“for want of proper repair, etc.; poorly installed electric wiring, etc., or for other cause of reason especially liable to fire and so situated as to endanger other buildings or property,”

order them repaired, remodeled, torn down, etc., remedying all dangerous conditions. (Section 835, General Code).

The authority thus provided and given to your Department rests upon the police power of the state.

“The laws of this state have conferred upon its municipal corporations power to establish and organize fire companies, etc., * * * * and preserve the buildings and property within their limits from conflagration;

* * *. But the powers thus conferred are in their nature legislative and governmental; * * *."

Wheeler vs. Cincinnati, 19 O. S. 19.

Some of these statutes to which the above quotation may refer that may now be found in the General Code are the following:

Under Section 3617, General Code, municipalities may organize and maintain police and fire departments and under Section 3636, General Code, may regulate the erection of buildings, etc., and provide for the removal and repair of insecure buildings, etc., and provide for the construction of fire escapes, etc.

Section 4393, General Code, provides that

"Council may establish all necessary regulations to guard against the occurrence of fires, protect the property and lives of the citizens against dangers and accidents resulting therefrom * * *."

From these sections it is evident that municipalities may also exercise through legislation of council powers similar to that given the fire marshal's office respecting fires and fire hazards within their corporate limits.

Section 3 of Article XVIII of the Constitution provides:

"Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations as are not in conflict with general laws."

The power of a village to adopt regulations looking to protection against loss of property and life through fire and fire hazards is a power coming within local police regulation which it may adopt and enforce when such regulations are not in conflict with general laws on the same subject.

In *Village of Perrysburg vs. Ridgway*, 108 O. S., 245, the syllabus says:

"1. Since the Constitution of 1912 became operative, all municipalities derive all their powers of local self-government from the Constitution direct, by virtue of Section 3, Article XVIII, thereof .

5. The grant of power in Section 3, Article XVIII, is equally to municipalities that do adopt a charter, as well as those that do not adopt a charter * * * *"

The syllabus in the above case further states that the constitutional power found in Section 3 of Article XVIII, is "self-executing in the sense that no legislative action is necessary in order to make it available to the municipality."

It is, therefore, safe to assume that a village may make such regulations for the protection of the property and lives of its citizens in respect to fires as are not in conflict with general laws on that subject.

In *Village of Struthers vs. Sokol*, 108 O. S., 263 a test for conflict between general laws and ordinances is provided. The syllabus says:

"2. In determining whether an ordinance is in conflict with general laws, the test is whether the ordinance permits or licenses that which the statute forbids and prohibits and vice versa."

If then the ordinance for a limited building code covering the business area establishes a zone for the protection of property and life against fire alone, is so

drawn as not to be in conflict with some general laws on that subject I am of the opinion and you are so advised that such an ordinance is a valid exercise of power allowed to all villages.

Respectfully,
C. C. CRABBE,
Attorney General.

1832.

APPROVAL, BONDS OF MARION TOWNSHIP RURAL SCHOOL DISTRICT, HOCKING COUNTY, \$2,000.00, TO PURCHASE A HEATING AND VENTILATING PLANT.

COLUMBUS, OHIO, October 14, 1924.

Retirement Board, State Teachers' Retirement System, Columbus, Ohio.

1833.

APPROVAL, BONDS OF VILLAGE OF PARMA HEIGHTS, CUYAHOGA COUNTY, \$94,059.37, FOR WATERWORKS IMPROVEMENTS.

COLUMBUS, OHIO, October 14, 1924.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.

1834.

APPROVAL, BONDS OF VILLAGE OF NEW STRAITSVILLE, PERRY COUNTY, \$4,500.00, FOR PURCHASING CERTAIN EQUIPMENT FOR FIRE DEPARTMENT.

COLUMBUS, OHIO, October 14, 1924.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.