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HEALTH COUNCIL, PUBLIC—REGULATION—AUTHORITY—CHAPTER 3373 RC, SECTIONS 1235-1 TO 1235-5 GC—PURPORTS TO GUARANTEE RIGHT OF OCCUPANCY OF TRAILER IN TRAILER CAMP OR PARK—PERIOD OF TIME IN EXCESS OF THAT PERMITTED BY MUNICIPAL ORDINANCE—LIMITATIONS AND RESTRICTIONS—OCCUPANCY ESTABLISHED BY ORDINANCE NOT UNENFORCEABLE.

SYLLABUS:

A regulation of the public health council promulgated pursuant to the authority of Chapter 3733, Revised Code, Sections 1235-1 to 1235-5, General Code, which purports to guarantee the right of occupancy of a trailer in a trailer camp or park for a period of time in excess of that permitted by a municipal ordinance does not render unenforceable the limitations and restrictions as to occupancy established by such ordinance.

Columbus, Ohio, November 29, 1954

Dr. Ralph E. Dwork, Director of Health
Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"The Public Health Council, pursuant to authority granted by Section 3733.02, Revised Code, adopted a number of regulations, effective December 17, 1951, pertaining to the location, layout, construction, drainage, sanitation, safety and operation of house trailer parks. The council did not adopt a regulation governing the length of time that a trailer may remain at a trailer park.

"On July 8, 1940, the City of Brooklyn, then the Village of Brooklyn, enacted the following ordinance:

'It shall be unlawful for any person to park or occupy a trailer in a trailer camp for more than sixty days, and no trailer camp licensee shall permit a trailer or occupants thereof to remain in a trailer camp for more than sixty days; nor shall a trailer licensee permit a trailer or the occupants thereof to reenter the trailer camp for ninety days after the expiration date of a former occupancy; and it shall be unlawful for the occupants of a trailer park to occupy a trailer

in any trailer camp for ninety days after the expiration date of a former occupancy in any other trailer camp within the village limits.'

"In the recent case of Stary et al. v. City of Brooklyn et al., 162 O. S. 120, the court held in part that:

'1. Sections 1235-1 to 1235-5, General Code, constitute laws of general application, but, by the enactment of those statutes the General Assembly of Ohio did not preempt the field of legislation with respect to regulation of trailer camps or trailer parks so as to bar enactment of municipal legislation on the same subject.'

'2. A municipal ordinance which provides for a 60-day maximum period of occupancy of a trailer camp or park with a 90-day minimum period of withdrawal before again occupying any such camp or park within the municipality is not an unconstitutional exercise of legislative power.'

"The regulation in effect pertaining to licensing reads as follows:

'Reg. 261. On and after January 1, 1952, no person, firm or corporation shall maintain or operate a house trailer park in this state without a license issued by the board of health of the district in which the house trailer park is located. The license shall be issued for a period of not to exceed one year and may be suspended or revoked at any time for failure to comply with these regulations or Sections 3733.02 through 3733.05 (1235-1 through 1235-5 G. C.).'

"In view of the recent Supreme Court decision, I respectfully request your formal opinion as to whether the Public Health Council is authorized to adopt an amendment to the above stated regulation, which amendment would read as follows:

'Upon a license being issued hereunder, any park operator shall have the right to rent or use each trailer lot or space for the parking of house trailers to be used for human habitation, without interruption for any period coextensive with any license or consecutive licenses issued hereunder.' "

Any attempt to answer the questions propounded in your inquiry must necessarily involve a consideration of the case of Stary v. The City of Brooklyn, 162 Ohio St., 120, to which you have referred in your request for my opinion. It would, therefore, be appropriate to preliminarily restate some of the fundamental principles enunciated by the Supreme Court in that case, as follows:

(1) That the specific ordinance of the City of Brooklyn to which you have referred in your request for my opinion is a valid and constitutional exercise of the police power of the municipality, and

(2) That the enactment of Sections 1235-1 to 1235-5, General Code, now Chapter 3733, Revised Code, did not pre-empt the field of legislation with respect to regulation of trailer camps or trailer parks so as to bar the enactment of municipal legislation on the same subject.

It is also apparent from a reading of the Stary case, supra, that the ordinance in question was passed by the municipality pursuant to the constitutional authorization of Article XVIII, Section 3, Ohio State Constitution, providing:

> "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 Stary case, supra, likewise established the criterion whereby an ordinance may be considered to be in conflict with general law as that circumstance in which the ordinance prohibits an act which the general law permits, or permits an act which the general law prohibits.

An examination of the municipal ordinance here involved, in apposition to the proposed regulation as set forth in your opinion request, discloses a manifest conflict between ordinance and regulation when subjected to the foregoing test, in that the ordinance clearly prohibits an occupancy in excess of 60 days, with a minimum 90 day period of withdrawal by an occupant of a trailer camp, whereas the proposed regulation is strongly susceptible of the interpretation that an occupancy in excess of that 60 day period of time, and for the licensed period or consecutive licensed periods, is authorized and permitted.

Given, then, the foregoing postulates established by the Stary case, supra, the question is squarely presented as to whether a regulation passed pursuant to a general statutory authorization constitutes a "general law" within the constitutional limitation of Article XVIII, Section 3, Ohio Constitution, supra, limiting the power of municipalites to enact local regulations of a police or sanitary nature, where the highest judicial authority in this state has already determined that the statute to which the regulation owes its existence, is not in conflict with the ordinance, and does not pre-empt the legislative field so as to bar such an ordinance.

It would appear that a regulation passed pursuant to statute does not constitute a "general law" within the purview of Article XVIII, Section 3, Ohio Constitution. In this connection the pronouncement by the Supreme Court, in the case of Leis v. Cleveland, 101 Ohio St., 162, is worthy of note. In that case the court stated, in part, on page 166:

> "The history of the adoption of this amendment and the cases in which it has been considered are recent and familiar. We think it clear that the words 'general law,' in that section do not refer to rules of the common law, but to laws passed by the general assembly. The term 'general law,' as used in other parts of the same article of the Constitution, obviously refer to statutes. * * *"

While it may readily be conceded as a general proposition that a rule or regulation of a public administrative body or agency, if properly adopted, has the force of law, it is just as readily apparent that the framers of the constitution in referring to "general law" intended this phrase to apply only to those statutes passed by the state legislature in the exercise of its constitutional authority, which authority has been repeatedly held to be nondelegable. Belden v. Union C. L. Ins. Co., 143 Ohio St., 329; Weber v. Board of Health, 148 Ohio St., 389; State ex rel Godfrey v. O'Brien, 95 Ohio St., 166.

In so concluding, I am not unmindful of the case of Neil House Hotel Co. v. City of Columbus, 144 Ohio St., 248, which, in my opinion, is clearly distinguishable from the situation here presented, even on grounds other than the readily apparent one that the municipal ordinance, there involved, had not withstood a previous test of its constitutionality by our Supreme Court. In that case the Board of Liquor Control, by regulation, prohibited the sale and consumption of beer and intoxicating liquors on the premises of a D-3a permit holder between the hours of 2:30 A. M. and 5:30 A. M., and, by necessary implication, permitted such sales up until 2:30 A. M. The statute, however, Section 6064-15, General Code, in describing the various classes of permits of which the plaintiff was a holder, expressly provided that the permits authorized the permittees or licensees to sell beer and intoxicating liquors after the hour of 1:00 A. M. with the exception of Sunday sales, not here applicable. The city ordinance, which was held to be conflicting and invalid, prohibited the sale of such liquors after midnight. Manifestly, even if there had been no regulation by the Board of Liquor Control on the subject, there would

have been an irreconcilable conflict between the statute and the municipal ordinance. The effect of the regulation was, in fact, to restrict the operation of the broader statutory franchise granted by the permit, without which regulation the permit holder would have been entitled by the permit, *pursuant to the statute,* to sell intoxicating liquors 24 hours a day, with the exception, as I have noted, of Sunday sales. Thus, it is apparent that it was the statute, further restricted but not expanded by the regulation, which was in conflict with the municipal ordinance. This holding of the court is apparent from the third syllabus of the opinion, which is quoted as follows:

> "3. Sections 6064-15 and 6064-22, General Code, a part of the Liquor Control Act, and Regulation No. 30 of the Board of Liquor Control validly adopted and promulgated under the express provision of Section 6064-3, General Code, permit the sale and consumption of beer and intoxicating liquors on the premises of designated permit holders after the hour of midnight, and a municipal ordinance which fixes midnight as the time when the sale and consumption of such beverages must cease, is in conflict therewith and invalid in that respect."

Contrariwise, in the situation which you have outlined in your letter of inquiry, the Supreme Court of this state has already ruled as a matter of law that there is no conflict between the statute or "general law" and the municipal ordinance on the same subject. Having in mind, as a necessary premise the judicial pronouncement of harmony between the statute on the one hand and the municipal ordinance on the other, and the consequent constitutionality of that ordinance, I am unable to perceive how a regulation authority for the promulgation of which is derived from that same statute, can serve to vitiate the constitutionality of such ordinance, or deprive it of its full force and effect.

Accordingly, in specific answer to your inquiry, it is my opinion that:

A regulation of the public health council promulgated pursuant to the authority of Chapter 3733, Revised Code, Sections 1235-1 to 1235-5, General Code, which purports to guarantee the right of occupancy of a trailer in a trailer camp or park for a period of time in excess of that permitted by a municipal ordinance does not render unenforceable the limitations and restrictions as to occupancy established by such ordinance.

Respectfully,
C. WILLIAM O'NEILL
Attorney General