

shall be elected for a four year term and one township trustee for a two year term. As to the compensation payable to incumbents for such short terms, the opinion hereinabove expressed an answer to your first two questions is dispositive of this point.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

1022.

CHIEF OF DIVISION OF WORKSHOPS AND FACTORIES—
DUTY TO EXAMINE PLAN, DRAWINGS, SPECIFICATIONS
AND DATA—COMPLIANCE WITH OHIO BUILDING
CODE AND RULINGS AND REGULATIONS OF
BOARD OF BUILDING STANDARDS—DISAPPROVAL,
WHEN.

SYLLABUS:

1. *When plans, drawings, specifications and data are submitted to the Chief of the Division of Workshops and Factories under Section 12600-296, General Code, it is the duty of that official to examine said plans, drawings, specifications and data to ascertain whether they comply with the provisions of the Ohio Building Code and the rulings and regulations of the Board of Building standards.*

2. *If in the opinion of the Chief of the Division of Workshops and Factories, plans submitted to him under authority of Section 12600-296, General Code, do not come within the provisions of the Ohio Building Code and the rulings and regulations of the Board of Building Standards, he may refuse to approve said plans.*

COLUMBUS, OHIO, August 18, 1937.

HON. O. B. CHAPMAN, *Director, Department of Industrial Relations,
Columbus, Ohio.*

DEAR SIR: This will acknowledge receipt of your request for my opinion as follows:

“Recently plans and specifications for a new theatre were submitted to the Division of Factory and Building Inspection, this department, for examination and approval, pursuant

to Section 12600-296 of the General Code of Ohio. These plans specified a new type of construction to be used for the exterior walls of the building. This construction is known as the 'McKay System.'

The Division of Factory and Building Inspection has ruled that the construction, in question, could not be approved for the following reasons: It is not congruent with either standard recognized methods of construction or requirements covering standard fire division walls, Section 12600-78. It has always been the opinion of the above Division that the authority to use any new type or method of construction would require favorable legislative action or an approval from the Ohio Board of Building Standards (Section 12600-288, subsection 3).

The past practice of the above Division has always considered standard construction as of the following: Masonry building units laid in rows with the sides parallel and continuing upward with additional courses until the specified height has been attained, where more than one row of units is required each row is properly bonded together and all spaces between them are slushed-in with mortar in such a manner so as to make practically one integral mass of masonry.

The 'McKay System,' or the construction in question, consists of the entire inside framework of steel supporting the floor, attic and roof leads, thereby relieving the masonry walls of any burden. The outside walls are reinforced brick facing. The inside walls are hollow clay tile. The tile units are staggered so that the hollow interiors form individual dead air cells. These inside walls are separated from the exterior wall by a three inch dead air space. The supporting steel passes through this air space and ties the wall on either side to the flange of the steel by means of steel clips bedded into the joints of the masonry. As the walls are built up, they are reinforced for lateral strength with $\frac{1}{4}$ -inch pencil rods imbedded in the mortar joints. These rods are also tied to the steel clips just mentioned.

Has the Division of Factory and Building Inspection violated its authority in rejecting the 'McKay System,' as mentioned above?"

Section 12600-296, General Code, provides that drawings, specifications and data prepared for the construction, erection or alteration of any public building be submitted to the Chief of the Division of Workshops and Factories for his approval. Your question resolves down

to the determination of the duties of said Chief of the Division of Workshops and Factories, in connection with the exercise of his right to approve or disapprove.

This section was enacted as Section 13 of House Bill No. 539 of the 85th General Assembly. That Act, now known as Sections 12600-284 to 12600-299, General Code, created a Board of Building Standards. Section 12600-288, General Code, which outlines the powers and duties of the Board of Building Standards provides in sub-section (3) that the Board shall have power to determine by rule or regulation that any fixture, device, material, system or method of construction is equivalent to that described in any section of the General Code, wherever an equivalent is permitted by law. This sub-section further provides as follows:

“No department, officer, board or commission of the state government other than the board of building standards hereby created shall have power to determine such equivalents in any case, nor to permit the use of any fixture, device, material, system or method of construction at variance with what is described in any such section of the General Code. (Italics ours)”

The only purpose for the submission of plans and specifications to the Chief of the Division of Workshops and Factories, would seem to have that officer determine whether or not the said plans and specifications conform to the Building Code and the rules and regulations of the Board of Building Standards. This statement is in accordance with an opinion to be found in Opinions of the Attorney General for 1931, Vol. I, page 587, wherein it is stated in the second branch of the syllabus as follows:

“* * * It is the duty of the Chief of the workshops and factories, in order to approve or disapprove such plans or drawings and specifications submitted to him, to decide whether or not the construction equipment or alteration, material or devices to be used, will meet the requirements of the building code.”

In your letter you refer to Section 12600-78, General Code, which is part of the Ohio Building Code and which contains certain specifications for fire division walls and fireproof floors and ceilings. Inasmuch as I am not equipped to render an engineering opinion, I assume there is some question as to whether or not the “McKay System” meets the requirements of this particular section. If it does not come within the specific language of the Building Code, the only other authority for approving it would be the rulings or regulations

of the Board of Building Standards, for it is provided in that part of Section 12600-288, General Code, above quoted, that the Board should be the sole authority as to equivalents.

In my opinion when plans and specifications are submitted to the Division of Workshops and Factories, as provided for in Section 1600-296, General Code, it is the duty of the Chief of said Division to examine same to ascertain whether they conform to the Ohio Building Code and the rules and regulations of the Board of Building Standards. If they do not then he is well within his authority in refusing to approve them.

In specific answer to your question therefore, it is my opinion that the Division of Workshops and Factories did not violate its authority in rejecting the "McKay System" if said system did not come squarely within the provisions of the Ohio Building Code and had not been approved by the Board of Building Standards.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

1023.

BOARD OF EDUCATION—MAY NOT EXPEND PUBLIC FUNDS TO PAY PREMIUM FOR INSURANCE POLICY WHERE COMPANY RESERVES CERTAIN DEFENSES—SCHOOL BUS.

SYLLABUS:

Under the provisions of Section 7731-5, General Code, a board of education of a school district may not expend public funds to pay the premium for a policy of insurance which reserves to the insurance company the right to take advantage of any defense that would be valid and legal if the insured were an individual or a private corporation.

COLUMBUS, OHIO, August 18, 1937.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN: This will acknowledge receipt of your recent communication, which reads as follows:

"We are submitting herewith a liability insurance policy, with certain endorsements attached, which policy has been purchased by a board of education.