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ELEVATOR INSPECTION WITHIN CORPORATE LIMITS—WHERE MUNICIPALITY ADOPTED REGULATIONS FOR INSPECTION AT PERIODS AS FREQUENT AS REQUIRED BY SECTION 1038-12 G. C.—DEPARTMENT OF INDUSTRIAL RELATIONS WITHOUT AUTHORITY TO MAKE INSPECTION OR CHARGE OR COLLECT CERTIFICATES, OR ISSUE CERTIFICATES OF OPERATION WITHIN SUCH MUNICIPALITY AS PROVIDED BY SECTION 1038-1 ET SEQ., G. C.

SYLLABUS:

Where a municipality has adopted regulations providing for regular inspection of elevators within its corporate limits, at periods at least as frequent as required by Section 1038-12, General Code, the department of industrial relations is without authority to make inspection of elevators in such municipality or to charge or collect certificate fees, or to issue certificates of operation within such municipality, as provided by Section 1038-1, et seq., of the General Code.

Columbus, Ohio, November 27, 1943.

Hon. George A. Strain, Director, Department of Industrial Relations,
Columbus, Ohio.

Dear Sir:

I acknowledge receipt of a communication from your department requesting my opinion, and reading in part as follows:

“May we be privileged to be the recipient of your formal opinion as it refers and relates to the collection of certificate fees, and the issuance of certificates of operation on elevator units in operation in the metropolitan areas.

Under Section 1038-1 to Section 1038-24 of the General Code, both inclusive, known as the Elevator Act, the law provides for the collection of certificate fee and for the issuance of certificates of operation.

The question and problem which the Division of Elevator Inspection is confronted with is, whether the elevator division, a division in the department of industrial relations, is mandated under the law to collect the certificate fees, and issue certificates of operation in the metropolitan areas, who are authorized by Article 18, Section 3, of the Constitution of Ohio, to adopt police regulations.”

Your letter also contains an analysis of the statutes relating to the inspection of elevators, as contained in Sections 1038-1 to 1038-24 of the General Code. To a number of these sections I will make reference. These statutes confer powers and impose certain duties upon the department of industrial relations as to the construction, installation and operation of elevators throughout the state.

Section 1038-3 provides :

“To carry out the provisions and the intent and purpose of this act, the department of industrial relations shall have the power, and its duty shall be, to make, alter, amend and repeal rules and regulations exclusively for the inspection of elevators used in this state, and in no way relating to construction, maintenance and repair of such elevators.”

Section 1038-4 provides for the issuance by said department of certificates of competency to general and special inspectors of elevators and prohibits anyone acting as such inspector unless he holds such certificate.

Section 1038-5 provides :

“The chief of the division of factory and building inspection, with the consent of the director of industrial relations, and in compliance with the civil service laws of Ohio, may appoint and hire from the holders of certificates of competency, not to exceed eight general inspectors of elevators for the state of Ohio.”

Section 1038-6 reads as follows :

“From the holders of certificates of competency in the inspection of elevators, any company, which is authorized to insure elevators in the state of Ohio, may designate persons to inspect elevators covered by such company’s policies, and the department of safety of any city and the clerk of any village may designate persons to inspect elevators in such city or village. Such persons shall, upon the payment of a fee of one dollar, have issued to them annually by the division of factory and building inspection, commissions to serve as special inspectors of elevators in the state of Ohio.

Special inspectors shall not be compensated by the state.”

Section 1038-12 requires that every elevator be inspected once every six months.

Sections 1038-13 to 1038-16 relate to the powers of the department

in reference to installation and alterations and repairs required for safety of elevators.

Section 1038-15 reads as follows:

“The fee for the certificate of operation for all elevators insured and uninsured, shall be one dollar.

When an elevator is inspected by a general inspector, there shall be charged for each elevator a fee of three dollars for each inspection, up to the number of inspections required under section 12 (G. C. sec. 1038-12) of this act.

An additional fee of five dollars shall be charged for each inspection by a general inspector made on request of the owner or user of the elevator, whether or not the required number of inspections of the elevator in question have already been made. The final inspection before operation, of a permanent, new or repaired elevator, under section 16 (G. C. sec. 1038-16) of this act, shall be classed as a special inspection. Such final inspection shall be made by a general inspector, but the chief of the division of factory and building inspection may designate a special inspector of a municipality to make such final inspection of any permanent elevator located in his municipality.”

These provisions of law would seem to confer upon the department of industrial relations very broad powers to inspect and control the installation and maintenance of elevators throughout the state, including those located in municipalities. But the Legislature saw fit to limit the power thus conferred in so far as municipal regulations might conflict. Section 1038-23, being a part of the original act, provides:

“All acts or parts of acts inconsistent with the provisions of this act are hereby repealed; provided, however, that nothing in this act shall be construed to affect the rights of municipalities under section 3636 of the General Code of Ohio, except specifically provided in this act.”

Section 3636, General Code, here referred to, outlines one of the many general powers of municipalities and reads in part as follows:

“* * * to provide for the construction, erection, operation of and placing of elevators, stairways and fire escapes in and upon buildings.”

Here, then, is a declaration by the Legislature that the functions and powers of the department of industrial relations set forth in the act should not affect the right given to a municipality by Section 3636 of the General

Code, though it would appear that since both the municipality and the department in question have received their power from the same source, to-wit, the Legislature, these powers might be exercised concurrently, giving preference, however, to the municipal regulations, if any.

The Legislature, however, did not stop with the provision last above noted. Section 1038-24, in its original form, provided:

“The provisions of this act shall not apply to municipalities authorized by article 18, section 3 of the constitution of Ohio, to adopt police regulations which have provided for the regular inspection of elevators as provided in this act.”

The 93rd General Assembly evidently thought this provision should be strengthened and broadened, as it amended the section to read:

“*The provisions of law* relating to inspection of elevators shall not apply to municipalities authorized by article 18, section 3 of the constitution of Ohio, to adopt police regulations which have provided *or may hereafter provide* for the regular inspection of elevators as provided by law.” (Emphasis added.)

So that neither the provisions of the elevator inspection act nor any other provisions of law relating to inspection of elevators shall apply to municipalities who exercise their constitutional power, recognized by the Legislature, by enacting regulations of their own relative to such inspection. It is true that the Legislature in the last sentence of the section last quoted, throws in a vague qualification in the words “as provided by law.” I cannot read into those words a stipulation that the municipal regulations must be identical with those contained in the state code, but rather that they must cover in general the same ground. The state code (Section 1038-12), however, does require inspection of elevators at certain specified intervals and a municipal regulation would not be “as provided by law” unless it is at least as exacting in its requirement in this respect.

It is to be noted, however, that by the terms of both Sections 1038-23 and 1038-24, your department is only precluded from exercising within a municipality the powers committed to the department when the municipality has exercised its power by enacting regulations of its own for the inspection of elevators.

I call attention to an opinion rendered by one of my predecessors, found in Opinions of Attorney General for 1935, page 927, where it was held that ordinances of a city, passed as contemplated by Section 1038-24

and under the home rule power of the Constitution, could have effect only within the territorial limits of the city, and that as to property owned by the city but located outside its corporate limits, the city was subject to the provisions of Section 1038-1, et seq., General Code. That opinion has no direct bearing on the question here under consideration except as it clearly implies a recognition of the right of a municipality to enact and enforce its own regulations within its own territory.

As further evidence of the intention of the Legislature to yield to municipalities which have established elevator inspection departments, I call attention to Section 1038-16, which requires specifications to be submitted to the division of factory and building inspection and the issuance of a permit before any installation of a new elevator or radical alteration or repair may be made, but further provides:

“except in those municipalities which maintain their own elevator inspection departments, in which event, such specifications shall be submitted to the elevator department of such municipality for its approval”, etc.

Specifically answering your question, I am of the opinion that where a municipality has adopted regulations providing for regular inspection of elevators within its corporate limits at periods at least as frequent as required by Section 1038-12, General Code, the department of industrial relations is without authority to make inspection of elevators in such municipality or to charge or collect certificate fees, or to issue certificates of operation within such municipality, as provided by Section 1038-1 et seq., of the General Code.

Respectfully,

THOMAS J. HERBERT,
Attorney General.