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FIRE MARSHAL, STATE—NO AUTHORITY TO PROHIBIT  
PARKING OF AUTOMOBILES AT CURBS OPPOSITE  
THEATRE EXITS—SECTION 835 G. C.

SYLLABUS:

The State Fire Marshal has no authority under Section 835 of the General Code, to prohibit the parking of automobiles at curbs opposite theatre exits.

Columbus, Ohio, August 16, 1949

Mr. Harry J. Callan, State Fire Marshal  
Columbus, Ohio

Dear Sir:

Your request for my opinion is as follows:

“I have a matter concerning one of the sections of the Ohio Code, namely, Section 835, which is administered by the Fire Marshal’s Office and would seem to require an opinion from the Attorney General. The Chief of the Fire Department of the city of Toronto has written to me as follows:

“The City is installing parking meters and we have one theatre that is in the district where meters are to be installed. We have two exits onto the sidewalk, which is nine feet wide. Is there any state law prohibiting the installation of meters in front of exits?”

“If the theatre were crowded and an emergency arose requiring the use of these exits, the automobiles parked along the curb could create a rather bad situation.

"I would like to have your opinion as to whether Section 835 contains authority by the Fire Marshal's office and the chiefs of fire departments to prohibit the parking of automobile at the curb opposite these exits."

Section 835, General Code, concerning which inquiry is made in your letter above quoted, reads as follows:

"If the state fire marshal, a deputy state fire marshal, or assistant fire marshal, or any officer mentioned in the preceding section, upon an examination or inspection finds a building or other structure, which for want of proper repair by reason of age and dilapidated condition, defective or poorly installed electrical wiring and equipment, defective chimneys, defective gas connections, defective heating apparatus, or for any other cause or reason is especially liable to fire or endangers life or other buildings or property, such officer shall order such building or buildings to be repaired, torn down, demolished, materials removed and all dangerous conditions remedied. If such officer finds in a building or upon any premises any combustible or explosive material, rubbish, rags, waste, oils, gasoline or inflammable conditions of any kind, dangerous to the safety of such buildings or premises, buildings or property, he shall order such materials removed or conditions remedied. If such officer finds that any building, structure, tank, container or vehicle used for the storage, handling or transportation of petroleum liquids, or of liquefied petroleum gases, or the pumps, piping, valves, wiring and materials used in connection therewith does not comply with the standards or orders of the state fire marshal, he shall make such order as may be reasonably necessary to insure such compliance. Such order shall be made against and served personally or by registered letter upon the owner, lessee, agent, operator or occupant of such building or premises, and thereupon such order shall be complied with by the owner, lessee, agent, operator or occupant and within the time fixed in said order."

It will be noted that this section refers only to buildings or other structures and not to areas located outside of a building or other structure. In the first sentence it states that if such building or other structure is especially liable to fire by reason of age, dilapidated condition, defective or poorly installed electrical wiring and equipment, defective chimneys, defective gas connections, defective heating apparatus, or for any other reason, then such officer shall order it torn down or repaired. The words "for any other reason" refer to the building itself and not to the area surrounding the building.

The second sentence of said section refers to materials and conditions existing in buildings or upon premises which might result in combustion or explosion.

The third sentence refers to the storage, handling and transportation of petroleum products.

The last sentence directs the method and manner of the issuance and compliance with the orders of the State Fire Marshal issued under said section.

It appears to be reasonably clear that said section was intended to invest the enforcement officers with the authority to make such orders as are necessary to eliminate conditions in buildings or upon premises which might result in fires or explosions and not to the elimination of the hazards incidental to a fire. Since neither the existence of parking meters nor the parking of automobiles in front of a building could be considered as a condition which might result in a fire or explosion I am of the opinion that Section 835, General Code, does not grant authority to prohibit the parking of automobiles at the curb opposite theatre exits.

You ask whether there is any state law prohibiting the installation of parking meters in front of theatre exits. I know of no such law. In my opinion this is essentially a local matter and is subject to the police power of the municipality under Article XVIII, Section 3 of the Ohio Constitution. The acquiring of parking meters by a municipality is incidental to the authority to regulate traffic and is a municipal purpose within the provisions of Section 3615, General Code. See 28 O. Jur. 602.

Respectfully,

HERBERT S. DUFFY,  
Attorney General.