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GARAGE USED IN CONNECTION WITH HOME—DETACHED FROM HOUSE—NOT A “RESIDENTIAL BUILDING”—SECTION 2480 G. C.

SYLLABUS:

A garage used in connection with a home, but detached from the house, is not a “residential building” within the meaning of the term as used in Section 2480 of the General Code of Ohio.

Columbus, Ohio, December 27, 1946

Hon. Lester W. Donaldson, Prosecuting Attorney
Painesville, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“Section 2480 of the General Code, provides in part as follows:

‘Regulation of construction, etc., of buildings in unincorporated portion of county.

The board of county commissioners of any county, in addition to the powers already granted by law, may adopt, administer and enforce regulations pertaining to the erection, construction, repair, alteration and maintenance of residential buildings within the unincorporated portion of any county. In no case shall said regulations go beyond the scope of regulating the safety, health and sanitary conditions of such residential buildings.’

In the enforcement of the building code of this county the question arises as to whether or not a garage used in connection with a home, but detached from the house, is a residential building within the meaning of the term used in Section 2480.

By way of further explanation, the house and lot in question are situated on an ordinary city lot and the garage is approximately 35 feet from the house.”

In the absence of specific statutory definition of the term “residential buildings” it is necessary to apply rules of construction in order to determine the proper meaning to be ascribed to such words. In *Sutherland*

Statutory Construction, 3rd Edition, Section 4919, page 429, it is said with respect to statutory terms with a common meaning, that:

“Many of the cases simply hold that words in a statute are to be given their common meaning; or when common terms are used in a statute they should be given their common meaning. Other cases hold that in determining the legislative intent words in the statute should be given their common meaning. Other cases state the converse of the latter rule and hold that words in a statute are to be given their common meaning, in the absence of a legislative intent to the contrary. As held by several cases the correct statement of the rule is that in the absence of a legislative intent to the contrary common terms in a statute are presumed to have been used in their common sense.”

Under any of the views expressed in the quotation it would appear that the term “residential buildings”, appearing in Section 2480 of the General Code of Ohio should be understood in its ordinary meaning, and therefore it is pertinent to examine a dictionary definition of the word “residential.” Websters New International Dictionary, 2nd Edition, in its definition of the word “residential” reads as follows:

- “1. Used, serving, or designed as a residence or for occupation by residents; as, a residential hotel.
2. Adapted to, or occupied by, residences; as, a residential quarter.
3. Of, pertaining to, or connected with, residence or residences; as, residential trade, quarters, or zones.”

It is apparent that a garage could not be properly described as a “residential building” under this definition.

It is pertinent to note that my immediate predecessor in office likewise had occasion to consider the meaning of the words “residential buildings,” as used in Section 2480, and while the question of the possible inclusion of garages within the purview of said section was not a subject of discussion, nevertheless, the following language from 1943 Opinions of the Attorney General, No. 6058, page 251, is significant:

“The term ‘residential buildings’, as it appears in this act, could have no other meaning than that which is obvious, to-wit, buildings which are intended as a place in which people may reside, nor does such term imply or suggest only a building designed for one or two families.”

Although I do not find any authority in the decisions of the courts of Ohio with respect to the breadth or restriction of the term "residential," common sense would seem to dictate that the words "residential buildings" as used in Section 2480 include only such buildings as are intended or used for human occupancy. Thus, in the case of *Taylor, v. State*, 134 Miss., 110, 98 So., 459, it was held that where a search warrant prescribed a place to be searched as a building occupied as a "residence" no search could be made of the grounds or an outhouse situated on the same premises with the residence.

It is my conclusion, therefore, based upon the consideration discussed hereinabove, that a garage used in connection with a home but detached from the house, is not a residential building within the meaning of the term used in Section 2480.

It should be pointed out, however, that in the exercise of granted powers to adopt, administer and enforce regulations pertaining to the erection, construction, repair, alteration and maintenance of residential buildings the board of county commissioners might properly consider factors of safety, health and sanitary conditions affecting such erection, construction, repair, alteration and maintenance of residential buildings as such factors are affected by the erection of other buildings, non-residential, but in close proximity thereto.

Respectfully,

HUGH S. JENKINS
Attorney General