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1. BUILDING—PUBLIC—PLANS FOR ERECTION SUBMITTED TO INSPECTOR OF WORKSHOPS AND FACTORIES FOR INSPECTION AND APPROVAL—SECTION 3791.04 RC—DEPARTMENT OF PUBLIC WORKS MUST PAY INSPECTION FEE PROVIDED IN SECTION 3791.07 RC.
2. BUILDING DEPARTMENT OF MUNICIPALITY—UNAUTHORIZED TO REQUIRE FEE TO BE PAID BY SCHOOL DISTRICT FOR INSPECTION AND APPROVAL OF PLANS SUBMITTED BY SCHOOL DISTRICT—ERECTION OF SCHOOL BUILDING.

SYLLABUS:

1. The Department of Public Works must pay the inspection fee provided for in Section 3791.07, Revised Code, where, pursuant to Section 3791.04, Revised Code, it has submitted plans for the erection of a public building to the Inspector of Workshops and Factories for his inspection and approval.

2. The building department of a municipality is unauthorized to require a fee to be paid by a school district for the inspection and approval of plans submitted by the school district for the erection of a school building.

Columbus, Ohio, March 1, 1956

Bureau of Inspection and Supervision of Public Offices
Columbus, Ohio

Gentlemen:

I have before me your request for my opinion which reads as follows:

“The last General Assembly enacted House Bill 580 which became effective October 5, 1955 dealing with building standards. R.C. 3791.07, a part of this enactment, provides for the fees to be charged by the Division of Workshops and Factories. The Department of Public Works has submitted to the Division of Workshops and Factories certain plans and specifications for buildings to be erected by the State. The question has arisen as to whether or not the Department of Public Works must pay the fee provided for by R.C. 3791.07 and conversely whether or not the Division of Workshops and Factories of the Department of Industrial Relations is required to make the charge.

“It would seem that the Statute is clear and unambiguous in this respect and when inquiry was made to this office as to whether or not a Finding would be made should the Division of Workshops and Factories fail to make the charge, I advised that it was my opinion that a charge should be made.

“In this connection, however, the Supreme Court of Ohio in the case of Niehaus versus State, Ex Rel., 111 Ohio State 47, denied the City of Dayton the right to charge a school district an inspection fee for reviewing the plans for certain school houses. It is significant to note, however, that in the opinion it is said:

“The Legislature is authorized to invest the inspector of Workshops and Factories, or any other state official within municipalities, as well as without, with power to approve plans and specifications for any public school building. It has the power to require the payment of a fee to such official for the performance of such duty, and it has the power to

vest such power in any official of a municipality within the jurisdiction of such municipality, and to provide for the payment of a fee to such official ; but it had not so provided. 'The limit of the power of the municipality in that respect is the power granted by the Legislature.'

"An informal opinion is requested as to whether or not :

"1. The Inspector of Workshops and Factories must charge the fee provided for in RC. 3791.07 for such buildings as come under Section RC. 3791.04.

"2. If by the enactment of House Bill 580 (RC. 3791.07) 111 Ohio State 47 is overruled so that a municipal government may charge a fee for the inspection of school buildings or any other buildings such as are provided for by Section 3781.06."

Section 3791.07, Revised Code, enacted by the 101st General Assembly, Substitute House Bill No. 580, effective October 5, 1955, reads as follows :

"The fee for the inspection of plans required to be submitted to the division of workshops and factories for approval under section 3791.04 of the Revised Code, shall be charged at the rate of ten dollars per structure, plus seventy-five cents per each one hundred square feet of floor surface, including basement, cellar, or sub-cellar floors, measuring the outside dimensions of the building at each floor level."

Section 3791.04, Revised Code, provides that before entering into contract for or beginning the construction or erection of any building to which Section 3781.06, Revised Code, is applicable, the owner thereof shall submit plans or drawings for the building to the municipal or county building department having jurisdiction, and if there is no municipal or county building department, the plans must be submitted to the chief of the division of workshops and factories for his approval.

Section 3781.06, Revised Code, describes the structures, the plans for construction of which must be submitted under Section 3791.04, Revised Code. Briefly, these include all public buildings which may be used as a place of resort, assembly, education, entertainment, lodging, dwelling, trade, manufacture, repair, storage, traffic, or occupancy by the public.

Your first question is whether the Inspector of Workshops and Factories must charge the fee provided for in Section 3791.07, Revised Code, for inspecting the plans submitted by the Department of Public Works for buildings to be erected by the State.

At the outset it is recognized that the pertinent statutes are phrased so as to exact submission of plans from "owners" of buildings. The legislature did not specifically mention a *governmental* owner. There is a line of authorities in Ohio to the effect that the State is not bound by the terms of a general statute unless such statute is expressly so enacted. See *State, ex rel. Parrott vs. Board of Public Works*, 36 Ohio St., 409; *State, ex rel. James vs. Brown*, 112 Ohio St., 590; and *State, ex rel. Nixon vs Merrell*, 126 Ohio St., 239. The underlying reason for the theory of law that the state is not bound by its own laws is based upon the presumption that the sovereign will exercise the same degree of care for the protection of its citizens as it demands of its citizens by express enactment.

Whatever force or validity there may be to this principle as a general proposition, must be tempered by the fact that two departments or agencies of the state government are involved under the facts presented. This brings into play certain statutes governing inter-agency affairs, as well as a ruling of one of my predecessors in office, found in Opinion No. 4214, Opinions of the Attorney General for 1935, page 508.

The holding in that opinion was that the Department of Public Works of the State of Ohio, as the owner or user of steam boilers and elevators, is required under the provisions of Section 280, General Code, to pay to the Department of Industrial Relations the statutory fees for the inspection of such steam boilers and certificates of operation of such elevators.

Section 1058-7, General Code, provided for a thorough inspection of "all steam boilers." Section 1058-25, General Code, exacted inspection fees from the owner or user of a boiler.

The ruling of the Attorney General was predicated upon the language of Section 280, General Code, which provided as follows:

"All service rendered and property transferred from one institution, department, improvement, or public service industry, to another, shall be paid for at its full value. No institution, department, improvement, or public service industry, shall receive financial benefit from an appropriation made or fund created for the support of another. When an appropriation account is closed, any unexpended balance shall revert to the fund from which the appropriation was made."

Section 280, General Code, was interpreted so as to require the Department of Public Works to pay the Department of Industrial Relations

the fees already mentioned. Section 280, General Code, has not been amended in the meantime, and it now bears the section number 115.45, Revised Code. The result reached in the 1935 opinion, *supra*, is dictated in the present instance, and accordingly, I must conclude that the Department of Public Works, having submitted to the Division of Workshops and Factories certain plans and specifications for buildings to be erected by the State, must pay the inspection fee provided for in Section 3791.07, Revised Code.

The second question must be viewed as a separate matter. It is asked whether the holding of the Ohio Supreme Court in *Niehaus vs. State, ex rel. Board of Education*, 111 Ohio St., 47 (1924) has been altered by the enactment of Substitute House Bill No. 580, "so that a municipal government may charge a fee for the inspection of school buildings or any other buildings such as are provided for by Section 3781.06?"

Although your letter of request refers to school buildings and "any other buildings such as are provided for by Section 3781.06, Revised Code," I have been informed by subsequent communication that the question is actually limited to the charging of an inspection fee of a *school district*, so that a discussion relative to the power of a municipality to charge an inspection fee of a non-governmental or purely private owner of a building is not called for.

The answer to this question clearly would not turn on an interpretation of Section 3791.07, Revised Code, since that section provides for a fee to be charged by the Inspector of Workshops and Factories. Plans for buildings are to be submitted to the inspector *only* if there is no county or municipal building department having jurisdiction.

It was held in *Niehaus vs. State, ex rel. Board of Education*, 111 Ohio St., 47, as disclosed by the syllabus:

* * * "2. The General Assembly of the state having enacted a general law requiring the building inspection departments of municipalities having a regularly organized building inspection department to approve plans for the construction of public school buildings erected within such municipalities, a municipality is without power to thwart the operation of such general law by the enactment of an ordinance requiring the payment of a fee as a condition precedent to compliance therewith."

The Supreme Court considered Sections 1031 and 1035, General Code, which provided that the chief inspector of workshops and factories

shall cause to be inspected all schoolhouses and other buildings used for public assemblage, with special reference to precautions for the prevention of fires and other matters relating to the health and safety of those occupying, or assembled in such structures. Section 1035, General Code, required plans to be approved by the inspector of workshops and factories, except in municipalities having regularly organized building inspection departments, in which case the plans were to be approved by such department.

The statutes did not provide for a fee to be charged for such approval of plans, whether approved by the state official or by the local building department.

The court, in denying the right of the city of Dayton to charge a fee, recognized the power of the legislature to provide for the payment of a fee to an official charged with the approval of building plans, whether the official be a state official or a municipal official. The court then emphasized the fact that the legislature had not so provided. The limit of the power of the municipality in this respect was said to be the power granted by the legislature.

Sections 1031 and 1035, General Code, which were considered in the Niehaus case, *supra*, are now Sections 4107.31 and 4107.36, Revised Code. These sections read substantially the same as their predecessor statutes. Under Section 4107.31, Revised Code, the Department of Industrial Relations is charged with the duty of inspecting all schoolhouses (among other buildings), which inspection is to be made with special reference to precautions for the prevention of fires. Plans for the erection of a schoolhouse are required to be submitted to the Department of Industrial Relations, except in municipal corporations having regularly organized building inspection departments, in which case the plans shall be approved by such building department. There is still no statutory authorization for a fee to be charged by the state or municipal authority, under Sections 4107.31 and 4107.36, Revised Code.

In addition to the sections already considered (which were the code provisions discussed in the Niehaus case) reference should be had to the provisions of Section 3791.04, Revised Code, in order to determine whether there is any authorization in that section for a municipality to charge a fee of a school district which submits building plans as required thereunder. Plans are required to be submitted under this section "in addition

to any other submission of plans or drawings, specifications, and data required by law.”

Section 3791.04, Revised Code, requires submission of plans for the erection of a public building (which, under Section 3781.06, Revised Code, includes a building to be used as a place of education.) The purpose underlying this requirement is to insure that such buildings shall be so constructed that they shall be safe and sanitary for their intended use and occupancy. This part of the “building code” is directed at dangers arising from methods or material of construction, as well as dangers arising from unsanitary conditions. The purpose of Section 4107.31, Revised Code, on the other hand, is to make buildings safe for their occupants in the event of fire or other disaster. See *State, ex rel. Department of Industrial Relations vs. Russell*, 48 Ohio Opinions, 286.

The 101st General Assembly did amend Section 3791.04, Revised Code, relative to submission of plans to a municipal or county building department having jurisdiction. The amendment provides in material part:

“The board of building standards or *the legislative authority of a municipal corporation* or county may by rule, regulate the requirements for the submission of such plans and specifications to the respective enforcing departments and for the processing of the same by such departments * * *.” (Emphasis added.)

Does the authority granted to a municipal corporation to regulate the requirements for the submission of plans to the enforcing department, include the authority to establish a fee schedule for inspection and approval of plans?

Initially, it must be recognized that Section 3791.04, governs the submission of plans for construction of buildings which may be used as places of assembly, lodging, trade, manufacture, entertainment and other purposes, as well as plans for the construction of buildings to be used as a *place of education*. With respect to buildings proposed to be constructed by an owner other than a school district or governmental agency, undoubtedly a municipality already possesses the power to exact fees for the inspection and approval of plans, without reference to any statutory authorization other than by *municipal* ordinance. My opinion, however, is requested with respect to charging a fee for a school district. Hence, it is necessary, under the reasoning of the Niehaus case, to find authority in the *state* code for the exacting of a fee.

While the language of the amendment quoted above, standing alone, might possibly be construed to permit the council of a municipality to require a fee for the submission of school building plans to the local building department, I do not believe such a construction is warranted if resort is had to the entire act of which that language is but a part. Section 3791.07, Revised Code, is part of the same enactment, Substitute House Bill No. 580, and, as has already been noted, that section makes *express and specific* provision for the charging of a fee when plans are submitted for inspection and approval to the division of workshops and factories.

It seems but reasonable to conclude that had it been the intention of the legislature to authorize municipalities and counties to exact fees for inspection and approval of school building plans, in the event there is local jurisdiction over this subject matter, the legislature could and would have expressly so provided.

Section 3791.07, *supra*, specifies a fee of ten dollars per structure, plus seventy-five cents per each one hundred square feet of floor space. It would have been a simple matter to write into that section words which would authorize the same or similar charge for the inspection of plans to a local building department having jurisdiction. Or such an intention could have been enunciated in Section 3791.04, Revised Code, merely by supplying the words "including fees" in the sentence granting the power to the local authorities to "regulate the requirements for the submission of such plans."

Instead, the legislature employed general language, which, to my way of thinking, does not manifest an intention to alter the law as stated in the Niehaus case, *supra*.

It is said in Crawford on Statutory Construction, Section 245, at page 478:

"Legislative grants—whether they be of property, rights, or privileges, or to municipal or private corporations, or individuals—must be strictly construed against the grantee and in favor of the public. Nothing, therefore, will pass by virtue of the grant except what is given in clear and explicit terms."

In view of the foregoing considerations, I am unable to find any tangible indication that the legislature intended to grant municipalities the power to charge building plan fees of school districts.

The school districts, whether city, village or rural, are the agencies of the state, established by the state in carrying out the state public school system provided for in the state constitution. The school system, being a matter of general and state-wide concern, is beyond the powers of local self-government made available to municipalities in Article XVIII of the Constitution.

While your question is prompted by the enactment of Substitute House Bill No. 580, it should be observed that a former Attorney General arrived at the same conclusion that I have reached. Thus, in Opinion No. 3065, Opinions of the Attorney General for 1922, page 1103, it was held that the building department of a municipality governed by city charter or otherwise is without authority to require permit fees to be paid by the school district of which the municipality is a part when new school buildings are erected or additions made to school buildings.

Accordingly, it is my opinion that :

1. The Department of Public Works must pay the inspection fee provided for in Section 3791.07, Revised Code, where, pursuant to Section 3791.04, Revised Code, it has submitted plans for the erection of a public building to the Inspector of Workshops and Factories for his inspection and approval.

2. The building department of a municipality is unauthorized to require a fee to be paid by a school district for the inspection and approval of plans submitted by the school district for the erection of a school building.

Respectfully,

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