

Interoffice Memorandum
Office of the Attorney General

To: Ralph Balsly, Chairman, E.B.S., Personnel Committee
From: Rodney B. Teague, Assistant Attorney General *RBT*
Date: Sept. 12, 1978
Subject: Request For Informal Opinion, May 7, 1978



Your first question is does the certification of a building department provide that said building department is limited to enforcement in its jurisdiction only.

The answer to that question is yes. The reasons for that answer are found in R. C. Section 3781.10 of the Revised Code and 4101:2-3-01(C).

Revised Code Section 3781.10 states in pertinent part:

(E) Certify municipal, township, and county building departments to exercise enforcement authority and to accept and approve plans and specifications, and make inspections pursuant to sections 3781.03 and 3791.04 of the Revised Code. . . .

(3) Municipal, township, and county building departments shall have jurisdiction within the meaning of sections 3781.03 and 3791.04 of the Revised Code, only with respect to the types of buildings and subject matters as to which they have been certified under this section and as to which such certification remains in effect. . . .

This section permits the Board to certify municipal corporations to enforce the Ohio Building Code as to specific subject matters. Such power of certification also permits the Board to determine the area of jurisdiction of a certified building department.

A certified building department is defined by the Ohio Building Code in 4101:2-3-01(C) as follows:

"Building department" means a department or division of the government of a municipal corporation or county,

which department or division has been created in conformity with law for the purpose of enforcing a building code which is applicable to public buildings located within the boundaries of said municipal corporation or county and which building code is equivalent to and not in conflict with OBC.

By Board rule all certifications of city building departments are jurisdictional only to the corporate limits of the municipality unless under contract to provide services for some other political subdivision which has also been certified by the Board.

The second question is whether city building departments can enforce more stringent regulations outside the city limits. The answer to that question in general is "no", because cities generally lose all jurisdiction outside of their corporate limits.

However, this request involves a city public utility operating outside of its corporate limits. The principal question is whether a city can regulate plumbing in structures covered by Revised Code Section 3781.06 outside of its corporate limits when such plumbing is connected to its water system outside of its public limits.

The determination of this question rises from the Home Rule Amendment to the Ohio Constitution. Article XVIII, Section 3 states:

Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws.

Notice this constitutional provision gives municipal corporations only police power within their corporate limits.

Article XVIII, Section 4 states:

Any municipality may acquire, construct, own, lease, and operate within or without its corporate limits, any public utility the product or service of which is or is to be supplied to the municipality or its inhabitants, and may contract with others for any such product or service... .

This constitutional provision allows a municipality to operate a public utility without its corporate limits, but contains no reference to police power.

Revised Code Section 743.14 states:

All ordinances, except those relative to taxation or assessment, resolutions, rules, and regulations relative to the construction, maintenance, and operation of water works, mains, hydrants, and service pipes and connections, and the protection thereof, shall operate in a similar manner in the territory outside the municipal corporation when the extensions mentioned in sections 743.12 and 743.13 of the Revised Code have been made, and for the enforcement thereof the jurisdiction of the mayor and police shall extend into and over such territory. (Emphasis added).

Since the regulation of buildings and their plumbing components outside the territory of the municipal corporate limits has not been granted to municipalities in their ownership and operation of public utilities by Article XVIII, Section 4, Ohio Constitution, the above cited statute is an effective limitation on municipalities. See, Columbus v. Teater (1978) 53 Ohio St. 2d 253; Canton v. Whitman (1975) 44 Ohio St. 2d 62, syllabus 4; Britt v. Columbus (1971) 38 Ohio St. 1; and The Cleveland Telephone Co. v. Cleveland (1918) 98 Ohio St. 358.

The municipal corporation by ownership of a water system extending outside of its corporate limits does not gain police power to regulation of the plumbing in buildings located outside of such corporation limits.

The answer to the second question is "no".