

however, as the time within which abutting property owners had a preferred right to purchase the several parcels of surplus Miami and Erie Canal Lands from the State has long since past, no question can now be raised with respect to your right to sell this property to the grantee named in said deed.

Upon examination of said deed form, I find that the same corresponds in every respect with the requirements of said act; and said deed is approved by me as to legality and form as is evidenced by my endorsed approval thereon.

Respectfully,

GILBERT BETTMAN,
Attorney General.

3527.

APPROVAL, LEASE TO STATE RESERVOIR LANDS AT PORTAGE
LAKES—WM. A. BLANK—H. D. STEVENS.

COLUMBUS, OHIO, August 28, 1931.

HON. I. S. GUTHERY, *Director, Department of Agriculture, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge the receipt of recent communication from the Division of Conservation in your Department submitting for my examination and approval two certain reservoir land leases in triplicate, by which there are leased to Wm. A. Blank and H. D. Stevens, the respective lessees therein named, and for terms of fifteen years each, two certain parcels of State reservoir lands at the Portage Lakes. One of these parcels, which has an appraised valuation of \$100.00, is described as being the water front and State land in the rear thereof, that lies immediately in front of Lot No. 9, of the Lakeview Terraces Addition, Portage Lakes. The other parcel of land, above referred to, has likewise an appraised valuation of \$100.00 and is described as being a water front and State land in the rear thereof, that lies immediately in front of Lot No. 2 of the Sawyer and Haynes Shore Acres, Portage Lakes.

Upon examination of these leases, each of which call for an annual rental of \$6.00, payable semi-annually, I find that the same have been properly executed and that the terms and provisions thereof are in conformity with the requirements of section 471, General Code, as amended in the enactment of the Conservation Act, and with other statutory provisions relating to leases of this kind.

I am accordingly approving said leases as is evidenced by my approval endorsed thereon and upon the triplicate copies thereof.

Respectfully,

GILBERT BETTMAN,
Attorney General.

3528.

MUNICIPALITY—BUILDING DEPARTMENT OF CITY HAS NO JURISDICTION OVER STATE BUILDING LOCATED IN MUNICIPALITY

SYLLABUS:

The jurisdiction of the officers and other employes of the building department of a municipal corporation in this state, acting under the assumed authority of an ordinance passed by the council of such municipality, does not extend to a building owned by the state in the municipality, with respect to alterations and repairs which the public safety requires to be made in such buildings.

COLUMBUS, OHIO, August 31, 1931.

HON. FRANK D. HENDERSON, *Adjutant General, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge the receipt of a communication from you enclosing a communication from the Department of Buildings of the city of Cincinnati, in which an order is made directing certain alterations and repairs to an armory owned by the state of Ohio at Cincinnati. The order of the Director of Buildings of said city here referred to is as follows:

"O. N. G. Cavalry Armory,
326 Helen St.,
Cincinnati, Ohio.
Gentlemen:—

You are hereby notified that the building or structure located in the City of Cincinnati known as 326 Helen St., being a 2 story brick and frame building, does not conform to the requirements of Ordinance No. 2585, Title 3, Building Code. In order to comply with said Building Code, you will be required to make the following changes, viz.:

No. 1—Provide new stair treads for stairs leading to basement of 2 story brick building.

No. 2—Remove wood lath and loose plaster in shower room and provide metal lath and cement plaster, coated with water proof paint.

No. 3—Take down and rebuild East stone foundation wall of Riding ring building. Also, plumb frame construction above wall and replace all rotted sills, posts and metal siding with sound material.

No. 4—Take down all of frame building, north of Riding ring, as same is in an unsafe and dangerous condition.

This department expects you to give this notice your immediate attention.

Respectfully,

C. M. STEGNER,

Director of Buildings.

By F. H. Kiekmeier

Supervising Bldg. Inspector."

In your communication to me my opinion is requested on two questions stated by you therein as follows:

"(a) Whether or not the jurisdiction of the city of Cincinnati extends to include the said property, owned by the state of Ohio.

(b) What method of enforcement may be used by the city, in obtaining compliance with their requirements."

I do not have before me a copy of the ordinance of the council of the city of Cincinnati, under the assumed authority of which the order above quoted was made. In this connection, it is noted, however, that aside from the general power and authority granted by section 3 of article XVIII of the state constitution to municipal corporations to adopt and enforce within their limits such local police, sanitary and other similar regulations as are not in conflict with the general laws, the legislature in the enactment of section 3636, General Code, has conferred express power upon municipal corporations to regulate the erection, operation and repair of buildings in the municipalities. This section reads as follows:

"To regulate the erection of buildings and the sanitary condition thereof, the repair of, alteration in and addition to buildings, and to

3529.

APPROVAL, TWO CONTRACTS FOR ROAD IMPROVEMENT IN FRANKLIN COUNTY AND ONE IN PERRY COUNTY.

COLUMBUS, OHIO, August 31, 1931.

HON. O. W. MERRELL, *Director of Highways, Columbus, Ohio.*

3530.

APPROVAL, BONDS OF WOOD COUNTY, OHIO—\$68,339.92.

COLUMBUS, OHIO, August 31, 1931.

Industrial Commission of Ohio, Columbus, Ohio.

3531.

APPROVAL, BONDS OF WOOD COUNTY, OHIO—\$278,000.00.

COLUMBUS, OHIO, August 31, 1931.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

3532.

APPROVAL, NOTES OF MILES HEIGHTS VILLAGE SCHOOL DISTRICT, CUYAHOGA COUNTY, OHIO—\$15,000.00.

COLUMBUS, OHIO, September 1, 1931.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

3533.

APPROVAL, BONDS OF CITY OF AKRON, SUMMIT COUNTY, OHIO—\$51,000.00.

COLUMBUS, OHIO, September 2, 1931.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

3534.

APPROVAL, BONDS OF CITY OF AKRON, SUMMIT COUNTY, OHIO—\$49,000.00.

COLUMBUS, OHIO, September 2, 1931.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

Industrial Relations with regard to such building or structure if no appeal taken from the order of the Department of Industrial Relations or if the court upon the hearing of said appeal, sustains such order.

The provisions of sections 1031 and 1032, General Code, and, I assume, those of the ordinance of the city of Cincinnati here in question as well, are general in their terms, and make no specific reference to buildings owned by the state of Ohio. Applying the general principle that the state is not bound by the terms of a general statute, unless it be so expressly enacted, it may be doubted whether the provisions either of the sections of the General Code above noted or of the ordinance of the city of Cincinnati have any application to buildings and structures owned by the state of Ohio; although as to this I am advised that the Department of Industrial Relations acting through the Chief of the Division of Workshops and Factories has been exercising jurisdiction with respect to the alteration and repair of armories and other buildings owned by the state. However this may be, the facts here presented, in their application to the question presented in your communication, quite clearly require the application of a familiar principle of law which has been well stated in the decision and opinion of the court in the case of *Kentucky Institution for Education of the Blind v. the City of Louisville*, 123 Ky. 767, 8 L. R. A. (N. S.) 553. In this case the court held that the general police power conferred upon a municipality does not include power to compel the placing of fire escapes on an eleemosynary institution for the blind which belongs to, and is entirely under the control and management of, the state. Among other things, the court, in its opinion in this case, speaking through O'Rear, J., said:

"The principle is that the state, when creating municipal governments, does not cede to them any control of the state's property situated within them, nor over any property which the state has authorized another body or power to control. The municipal government is but an agent of the state, not an independent body. It governs in the limited manner and territory that is expressly, or by necessary implication, granted to it by the state. It is competent for the state to retain to itself some part of the government even within the municipality which it will exercise directly or through the medium of other selected and more suitable instrumentalities. How can the city ever have a superior authority to the state over the latter's own property, or in its control and management? From the nature of things it can not be."

In recognition of this principle, it has been held in previous opinions of this office that an ordinance of a municipality requiring the owner or agent of property to obtain a permit for the construction of a building is not applicable in respect to the construction of state buildings located in such municipality. An Report, Attorney General, 1914, Vol. II, p. 1307; Opinions of the Attorney General, 1929, Vol. III, p. 1880.

For the reason above stated I am of the opinion, by way of specific answer to the first question presented in your communication, that the jurisdiction of the city of Cincinnati and of its officers and agents does not extend to the armory building here in question, which you state is owned by the state of Ohio.

The conclusion reached by me with respect to the first question presented by you makes unnecessary any discussion of the second question stated in your communication.

Respectfully,
GILBERT BETTMAN,
Attorney General.