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1. BUILDINGS—"RESIDENTIAL BUILDINGS"—ALL BUILDINGS DESIGNED FOR OCCUPANCY AS RESIDENCES—APARTMENT HOUSES INCLUDED.

2. JURISDICTION—BOARD OF COUNTY COMMISSIONERS—COUNTY WHERE BUILDING REGULATIONS ADOPTED—CONCURRENT JURISDICTION—CHIEF INSPECTOR OF WORKSHOPS AND FACTORIES—TENEMENT AND APARTMENT HOUSES—ALTERATIONS OR ADDITIONS—SECTIONS 2480, 989, 996, 1000, 1002-1, 1028-1, G. C.

3. "PUBLIC BUILDING"—DOES NOT INCLUDE TENEMENT HOUSES OR APARTMENT HOUSES—SECTION 12600-296, G. C.

4. OWNER — RESIDENTIAL BUILDING, TENEMENT OR APARTMENT HOUSE—PLANS, SPECIFICATIONS—CHIEF, DIVISION WORKSHOPS, FACTORIES, PUBLIC BUILDINGS —NO JURISDICTION OVER CONSTRUCTION OF SUCH BUILDINGS—SECTION 12600-296, G. C.

SYLLABUS:

1. Under Section 2480, General Code, the words "residential buildings" embrace all buildings designed for occupancy as residences and include apartment houses.

2. The jurisdiction of the board of county commissioners of any county where building regulations have been adopted, pursuant to Section 2480, General Code, covers all residential buildings as above defined, but does not exclude the concurrent jurisdiction of the chief inspector of workshops and factories in the inspection of tenement and apartment houses under Sections 989, 996, 1000, 1002-1 and 1028-1, General Code, nor does it affect or limit his power to require such alterations or additions in said buildings as are contemplated by the statutes aforesaid.

3. The term "public building", as used in Section 12600-296, General Code, does not include tenement houses or apartment houses.

4. An owner proposing to erect a residential building, including a tenement or apartment house, is not required to submit plans and specifications for the same to the chief of the division of workshops, factories and public buildings, and such officer has no jurisdiction, under Section 12600-296, General Code, over the construction of such buildings.

Columbus, Ohio, May 7, 1943.

Hon. George A. Strain, Director, Department of Industrial Relations, Columbus, Ohio.

Dear Sir:

I have your communication in which you request my opinion relative to the jurisdiction respectively of your department and the County Commissioners in reference to building regulations as affecting residential buildings. Your communication, after setting out an analysis of the statutes which appear to be involved, reads as follows:

"In view of the foregoing cited sections of the General Code of the State of Ohio, I desire a formal, official opinion on the following questions:

First. Under Section 2480 of the General Code, what is meant by residential buildings and under such section do the words 'residential buildings' include apartment houses?

Second. If a residential building is not an apartment house, then, under Section 2480, when does a building cease to be a residential one and become an apartment building?

Third. If the jurisdiction of the Board of County Commissioners of any county, where building regulations have been adopted by virtue of Section 2480, does include apartment houses, then what is the jurisdiction of the District Inspectors of Workshops and Factories, in the inspection of apartment houses, under Sections 989 and 1002 of the General Code, and what is the jurisdiction of the Chief Inspector of Workshops and Factories, under Sections 1002-1 and 1028-1?

Fourth. If the jurisdiction of the Board of County Commissioners of any county, where building regulations have been adopted, includes residential buildings in excess of two-family dwelling houses, then what is the jurisdiction of the Chief of the Division of Workshops and Factories, under the Ohio Building Code Act, which relates to and provides for the construction, erection or alteration of dwelling houses which accommodate, or will accommodate, more than two families?

Fifth. If the jurisdiction of the Board of County Commissioners of any county, where building regulations have been adopted, includes buildings used for residential purposes in excess of two-family dwellings, is it necessary to submit plans and speci-

fications for approval by the Chief of Workshops and Factories, under the provisions of Section 12600-296, General Code?"

Chapter 12 of Division 2, Title 2, General Code, comprising Sections 980 to 1038-24, inclusive, relates mainly to the regulation of workshops and factories and to the duties of the Chief Inspector of Workshops and Factories and Deputy Inspectors in the enforcement of such regulations.

An examination of these sections makes it evident that in the main they are directed toward safe and sanitary conditions of employment in those establishments commonly known as workshops and factories. However, the Legislature has seen fit in Section 1002, General Code, to extend the definition of these words as used in the chapter. That section reads as follows:

> "The term 'shops and factories' as used in this chapter shall include the following: manufacturing, mechanical, electrical, mercantile, art and laundering establishments, printing, telegraph and telephone offices, railroad depots, hotels, memorial buildings, tenement and department houses."

The word "department" is manifestly an error that crept in when the statutes were codified in 1910. The word as previously enacted by the Legislature was "apartment."

This section was first enacted in 1891 (88 O. L., p. 64), and the words "railroad depots," "memorial buildings," "tenement and apartment houses" were not included. By an amendment passed in 1892 and found in 89 O. L. p. 113, the words "tenement and apartment houses" were added, and by a subsequent amendment the section was made to include railroad depots and memorial buildings. Here, then, is a positive indication that the Legislature, in its several enactments and amendments thereto relating to workshops and factories, intended to make the provisions of that chapter applicable as well to tenement and apartment houses.

Section 980 requires the chief inspector to enforce all the laws relative to workshops, factories and public buildings. Section 989 provides for district inspectors who are required to inspect shops and factories as to sanitary conditions, system of sewerage, heating, lighting and ventilating, and means of exit in case of fire or other disaster.

Sections 996 and 1000 give the chief inspector power to issue orders requiring the owner of a "shop or factory" to correct defects or dangerous conditions in his building. Section 1006 requires hand rails on all stairways in the buildings listed therein, including tenement and apartment houses. Penalties are prescribed for the failure of the owner of the build-

ings referred to above to comply with the order of the inspector. Section 1002-1 outlines the procedure to be followed by the inspector in case his orders are disregarded.

Here then are certain powers which are expressly conferred upon the chief inspector and certain requirements that the owner of a tenement or apartment house, located anywhere in the county, would have to comply with or suffer the penalties prescribed.

Sections 12600-284 to 12600-299, General Code, were enacted in 1923 (110 O. L., p. 350), the title of the act being as follows:

> "To regulate the construction, alteration and repair of buildings and structures, to establish a board of building standards, to define its powers and duties, and to amend Section 12600-277 of the General Code, relating to building regulations."

The scope and purpose of this act is defined in Section 12600-284 as follows:

> "The purpose of this act (General Code Sections 12600-284 to 12600-299) is that all public buildings or parts and appurtenances thereof, wheresoever erected, that are to be used or that may be used as a place of resort, assembly, education, entertainment, lodging, trade, manufacture or repair, storage, traffic or occupancy by the public, and all other buildings or parts and appurtenances thereof erected within the limits of any city or in any territory laid out in town lots within three miles of the corporate limits of any city, whether within a village or not, shall be so constructed, erected, equipped and maintained that they shall be safe and sanitary, for their intended use and occupancy, except that this act (General Code Sections 12600-284 to 12600-299) shall not apply to single and two-family dwelling houses."

Section 12600-296, General Code, being a part of the same act, reads as follows:

> "Before entering into contract for the construction or erection of *any public building* to be used or that may be used as a place of resort, assembly, education, entertainment, lodging, trade, manufacture or repair, storage, traffic or *occupancy by the public,* the owner or owners thereof shall, in addition to any other submission of plans or drawings, specifications and data required by law, submit the plans or drawings, specifications and data prepared for the construction, erection and equipment thereof, or the alteration thereof or addition thereto to the municipal building department having jurisdiction, if such there be; otherwise to the Chief of the Division of Workshops, Factories and Public Buildings, for its or his approval. No owner or owners shall

> proceed with the construction, erection, alteration or equipment of any such building until said plans or drawings, specifications and data have been so approved." (Emphasis mine.)

Section 12600-297 reads as follows:

> "Whoever being the owner * * * of a public building to be used or that may be used as a place of resort, assembly, education, entertainment, lodging, trade, manufacture or repair, storage, traffic or occupancy by the public, violates the provision of Section 13 (General Code Section 12600-296) of this act, shall be deemed guilty of a misdemeanor * * *."

An examination of Section 12600-284, above quoted, discloses that it was the declared purpose of the act to make safe and sanitary, for their intended use, two classes of buildings, viz., "public buildings," which are to be used for the purposes enumerated, and "all other buildings" located within certain territory in or adjacent to a city. Single and two-family dwellings were expressly excepted from the provisions of the act.

A further examination of the act shows no positive regulation as to the construction of any building except that found in Section 12600-296, and here the reference is to "any public building," followed by precisely the same words of description used in Section 12600-284, in describing public buildings. It would be difficult to so construe Section 12600-296 as to include dwelling houses of any character within the purview of that section. Nor can we draw on the purpose of the act, as stated in its title or in the preamble, to supply what the act itself fails to cover.

The difficulty becomes most acute when we consider the language of Section 12600-297, prescribing the penalty for violation of the preceding section. Here again we find the identical words used in both Sections 12600-284 and 12600-296, in describing "public buildings." Even if it were possible, by a very broad construction, to hold that Section 12600-296, considered in the light of the declared purpose of the act, included multiple dwelling houses such as tenement and apartment houses, it would hardly be possible, in view of the principle of strict construction that must be applied to criminal statutes, to ascribe such broad meaning to Section 12600-297.

I am therefore forced to conclude that the Chief of the Division of Workshops, Factories and Public Buildings derives no authority from Section 12600-296, General Code, to require the submission to him of plans and specifications for proposed tenement or apartment houses.

We come now to consider Section 2480, General Code. This section is part of an act found in 119 O. L., p. 673, passed in 1941, and codified as Sections 2480 to 2483, inclusive, providing for the regulation and construction of buildings in the unincorporated portion of the county. Section 2480 reads as follows:

> "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.
>
> Regulations adopted by resolution of the County Commissioners shall not affect existing buildings or those being built until one year after said regulations take effect."

Section 2481 provides for the establishment of the position of county building inspector, it being provided that in lieu of the creation of such position the County Commissioners may assign the duties of the position to an existing county officer, the duties of such inspector being the administration and enforcement of the building regulations as adopted by the County Commissioners.

Section 2483 makes it unlawful to erect, alter or repair any residential building within the unincorporated portion of any county where such building regulations have been enacted, without compliance therewith, but provides no penalty except the right to injunction and other civil remedies to be invoked either by the county authorities or by a property owner who would be especially damaged by such violation. This section further purports to exempt buildings owned, used or occupied by farmers from the operation of the act.

The term "residentiai 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. There would seem to be no possible reason why an apartment house or tenement house, which is designed to house a number of families, would not be regarded as a residential building just as well as one which is intended to house but one family.

In the case of Brandenburg v. Country Club Corporation, 332 Ill., 136, 163 N. E., 440, it was held:

> "The erection and operation of an apartment building is not a breach of a covenant restricting the use of the premises to residential purposes and forbidding their use for business, factory or warehouse purposes."

The apartment building in question in that case was a nine-story building and had 175 apartments, and included, as incidental thereto, a dining room, cigar and news stand and office, which the court said did not change its character as a residential building.

To like effect see Satterthwait v. Gibbs, 288 Pa., 428.

In the case of Hunt v. Held, 90 O. S., 280, it was held:

> "A clause in a conveyance restricting the use of the property conveyed 'for residence purposes only' does not prohibit the erection of a double or two-family house on the premises."

At page 283 of the opinion the court, by Judge Newman, said:

> "But is there any doubt as to the meaning of the words? The word 'residence,' as we view it, is equivalent to 'residential' and was used in contradistinction to 'business.' If a building is used as a place of abode and no business carried on it would be used for residence purposes only whether occupied by *one family or a number of families.*" (Emphasis mine.)

In the light of these authorities, there can be no question but that the scope of this act in the use of the words "residential buildings" includes multiple dwellings such as apartment and tenement houses, as well as single or double houses.

We have, therefore, an obvious overlapping of authority so far as multiple houses, or houses containing more than two-family dwellings, are concerned. As to single and two-family dwellings, there seems to be no possible conflict or duplication. They are expressly omitted from the scope of the act relative to the Board of Building Standards, and the provisions contained in the chapter pertaining to workshops and factories, to which reference has been made, specifically include tenement and apartment houses, and would seem clearly to exclude single and double houses.

I find no precise definition in the Ohio laws of "apartment houses" or "tenement houses." The two terms, while originally having a somewhat different meaning, have come to be regarded as practically synonymous.

3 Corp. Jur., p. 251

Grimmer v. Tenement House Dept., 119 N. Y. S. 812, 138 App. Div. 896

Bancroft v. Bldg. Com'n, 257 Miss. 82

Kitching v. Brown, 180 N. Y. 414

By statute in the State of New York, a tenement house is defined as a building divided into separate suites of rooms intended for residence of three or more families living independently. I think it would be fair to draw from the exception already noted in Section 12600-284 that the Legislature regarded that as a proper dividing line in that it excluded from the operation of that and the following sections "single and two-family dwelling houses."

It might be argued that the enactment of Section 2480, et seq., authorizing counties to establish building regulations and requiring permits for residential buildings generally, because later in time of enactment, would operate as an implied repeal of those provisions to which reference has been made, giving the State Department of Industrial Relations, through the Inspector of Workshops and Factories, jurisdiction to require alterations and the correction of defects or dangerous conditions in that class of residential buildings known as apartment and tenement houses. I do not consider there is such necessary conflict as would cause the later act to constitute a repeal of the former merely because it is later. It would be competent for the Legislature, if it saw fit, to require a building permit or a compliance with regulations emanating from two different authorities. There is an implication in the language of Section 12600-296 that the Legislature may have had such intention. It is there stated that the owner of a building coming within the purview of the act shall, "in addition to any other submission of plans or drawings * * * required by law, submit the plans * * * to the Chief of the Division of Workshops and Factories and Public Buildings for his approval."

The Legislature, in enacting the county building regulation law, did not see fit to amend or eliminate the provisions of Chapter 12 to which I have made reference, and we are bound to conclude, therefore, that it is intended to subject certain buildings which have been constructed in accordance with the rules adopted by the County Commissioners to the further orders of the Chief Inspector of Workshops and Factories. This situation may lead to confusion and conflict, but that is a matter solely

within the discretion of the Legislature and cannot affect my conclusion as to the extent and applicability of the statutes as they stand.

There is one more act of the 94th General Assembly which enacted the county building law, to which I would call attention as having some bearing on the legislative intent. At the same session it passed an amendment to Section 1028-1, which is a part of said Chapter 12, defining the powers and duties of the Inspector of Workshops and Factories. That section as it stood prior to the last amendment provided for two separate means of egress at opposite ends of the buildings coming within the purview of the chapter but making no specific mention of apartment houses. By the amendment adopted by the Legislature and which became effective August 6, 1941, there was added to the act the following words:

> "provided that apartment houses not exceeding three stories in height of fireproof or principally fireproof construction, as determined by the Chief Inspector of Workshops and Factories, shall not be required to have more than one means of egress"

thereby indicating that the Legislature still regarded apartment houses as being within the jurisdiction of the Inspector of Workshops and Factories and subject to the regulations contained in that chapter. It is true that the county building act passed by the same General Assembly became effective a little later, to-wit, September 5, 1941, but I see no evidence of any express or implied repeal of the former statute.

Specifically answering your questions, I am of the opinion:

1. Under Section 2480, General Code, the words "residential buildings" embrace all buildings designed for occupancy as residences and include apartment houses.

2. In view of the answer to the foregoing question, no answer is necessary to your second question.

3. The jurisdiction of the Board of County Commissioners of any county where building regulations have been adopted, pursuant to Section 2480, General Code, covers all residential buildings as above defined, but does not exclude the concurrent jurisdiction of the Chief Inspector of Workshops and Factories in the inspection of tenement and apartment houses under Sections 989, 996, 1000, 1002-1 and 1028-1, General Code, nor does it affect or limit his power to require such alterations or additions in said buildings as are contemplated by the statutes aforesaid.

4. The term "public building", as used in Section 12600-296, General Code, does not include tenement houses or apartment houses.

5. An owner proposing to erect a residential building, including a tenement or apartment house, is not required to submit plans and specifications for the same to the Chief of the Division of Workshops, Factories and Public Buildings, and such officer has no jurisdiction, under Section 12600-296, General Code, over the construction of such buildings.

Respectfully,

THOMAS J. HERBERT,
Attorney General.