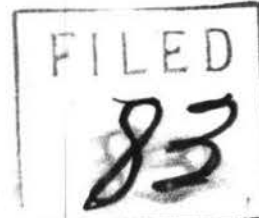


CITIES AND STATE BUILDINGS: Construction of State Buildings not subject to city ordinances.

March 21st, 1939.



Mr. B. Hugh Smith,
City Attorney,
Cape Girardeau, Missouri.

Dear Sir:

We have your letter of recent date in which you ask the opinion of this office as to whether or not the construction of state buildings is subject to city ordinances governing the securing of permits to build, payment of inspection fees and other similar city regulations contained in a city building code.

The identical question submitted in your letter was passed on in the case of City of Milwaukee v. McGregor, 121 N. W. 642. In this case the Supreme Court of Wisconsin said:

"So the question comes down to whether the ordinary charter and ordinance regulations of a city requiring submission to local supervision, as regards the manner of constructing, altering and repairing buildings, have any application to state buildings. That must be answered in the negative. It is plainly so ruled by the familiar principle that statutes, in general terms, do not apply to acts of the state. Moreover, express authority to a state agency to do a particular thing in a particular way supersedes any local or general regulation conflicting therewith. Sandberg v. State, 113 Wis. 578, 89 N. W. 504; Dollar Savings Bank v. United States, 86 U. S. 227-239, 22 L. Ed. 80;

United States v. Verdier, 164
U. S. 213-219, 17 Sup. Ct. 42,
41 L. Ed. 407; District of
Columbia v. Johnson, 165 U. S.
330, 17 Sup. Ct. 362, 41 L. Ed.
734.

"The infirmity of appellant's position has been, from the first, in supposing that the state, in respect to constructing a building in the city of Milwaukee, has no more free hand than a private person or corporation, while the fact is that the people of the state in their sovereign capacity, except as restrained by some constitutional limitation, and there is none in this case, is as exempt from mere general or local laws as the king was of old in the exercise of his sovereign prerogatives as "universal trustee" for his people. So it has been said, "The most general words that can be devised (for example, any person or persons, bodies politic or corporate) affect not" the sovereign "in the least, if they may tend to restrain or diminish any of his rights and interests." So general prohibitions, either express or implied, apply to all private parties but "are not rules for the conduct of the state." Dollar Savings Bank v. United States, supra. That has been applied in many ways."

In the foregoing case the building which was being constructed by the Board of Normal School Regents, was a Normal school building.

Mr. B. Hugh Smith

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March 21st, 1939.

CONCLUSION

It is, therefore, the opinion of this department that in the construction of state buildings in municipalities, the state does not have to comply with building codes or ordinances of the municipalities.

Yours very truly,

HARRY H. KAY,
Assistant Attorney General.

HHK:RV

APPROVED

J. E. TAYLOR
(Acting) Attorney General.