

THE STATE:
MUNICIPAL CORPORATIONS:

Arms of the state government are
not bound by ordinances of municipalities
pertaining to zoning districts.

February 6, 1940

Mr. Roy Ellis, President
Southwest Missouri State
Teachers College
Springfield, Missouri



Dear Sir:

This is in reply to yours of February 1, 1940, wherein you submit the question of whether or not zoning ordinances of the City of Springfield apply to structures erected on the college campus of the State Teachers College.

The question involved here is whether or not a city may, by ordinance, regulate the construction of buildings in that city by an arm of the state government. There is no question but that the State Teachers College is a branch of the state government of the State of Missouri, and that the same rule applies to buildings of that college as to any other state building.

In our research on this question, we find in Volume 59 Corpus Juris, page 166, paragraph 278, the rule is stated as follows:

"The legislature has power to provide for the acquisition of public buildings for the use of the state. Thus it may authorize the construction of a state house or other public building, subject to any limitation placed by the constitution on this power, or it may buy or rent buildings for the use of the state, or place its public buildings in the custody of trustees for it."

"* * * On the construction of a

building for state purposes, under state authority, the state is not required to obtain a permit in accordance with the city ordinances."

We do not find where such a question has been before our courts, but in the case of City of Milwaukee v. McGregor, 121 N. W. 642, the Supreme Court of Wisconsin, in a case in which a similar question was involved, the court said:

"* * * The building in question is to be for public use as state property. The situation is the same as if the structure was to be used for the care of the insane or for any other of the many state purposes which might be named. The fact that the board is made a state agency to take and hold title to property for state purposes does not cut any figure in the matter. The building is not designed to be, in any proper sense, the property of the board, except as representing the state.

"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. * * * * *

"Applying the foregoing, it is plain

that the assumption by the building inspector of the city of Milwaukee of authority over the state agent in the execution of the statutory command to build the structure in question according to plans approved by the Governor, was an unwarranted interference--a pure, but not intentional, of course, usurpation. The state was not only not expressly included in the charter power of regulation, but the general law of the state passed subsequently to the enactment of the charter quite plainly commanded the Board of Regents to erect the building without regard to the judgment of any one outside of its own members, except as to approval of the plans by the Governor."

CONCLUSION.

Applying the foregoing rules, it is the opinion of this department that the zoning ordinances of the City of Springfield in regard to erection of buildings on the college campus of the Springfield State Teachers College do not apply to such buildings.

Respectfully submitted

TYRE W. BURTON
Assistant Attorney General

APPROVED:

W. J. BURKE
(Acting) Attorney General

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