OPINION No. 149 (Burch)
ANSWERED BY LETTER

March 22, 1965

FILED
149

Honorable John B. McMullin
State Representative, Butler County
Capitol Building, Room 304
Jefferson City, Missouri

Dear Representative McMullin:

Your opinion request of February 24, 1965, reads as follows:

> "Senator Tinnin and I have a request from the mayor of the City of Poplar Bluff, Mo. to introduce a Bill that would give the City the right to prosecute people for failing to repair dilapidated and burned out buildings. Also give the Cities the right to remove undesirable buildings when the owners refuse to do so. In my opinion the Legislature does not have the power to give Cities this broad coverage. We would appreciate your opinion. When it is convenient please advise me."

As we understand your inquiry, you desire to know whether the legislature has the power to grant cities authority to effectively regulate dilapidated or undesirable buildings. We believe that this will depend upon the wording of the proposed statute and the fact situation to which it is applied by the city to whom the authority is granted. If the condition complained of constitutes a nuisance within the meaning of Section 71.780, RSMo 1959, then that existing statute may be applicable. Such section provides:

> "The legislative or governing bodies of cities organized under the general statutes or special charters shall have, and they are hereby granted, the power to suppress all nuisances which are, or may be, injurious to the health and welfare

> of the inhabitants of said cities, or prejudicial to the morals thereof, within the boundaries of said cities and within one-half mile of the boundaries thereof. Such nuisances may be suppressed by the ordinances of said cities, or by such act or order as the charters of said cities authorize them to adopt. If the nuisance is suppressed within the city limits, the expense for abating the same may be assessed against the owner or occupant of the property, and against the property on which said nuisance is committed, and a special tax bill may be issued against said property for said expenses."

As to the authority of the legislature to empower cities to regulate dilapidated or dangerous buildings, we call your attention to the fact that a comparable authority has in the past been delegated to the cities of St. Louis and Kansas City, respectively, by their city charters.

As to this delegation of authority, the Missouri Supreme Court in City of St. Louis v. J. E. Kaime & Bro. Real Estate Co., 180 Mo. 309, 79 SW 140, 142, said:

> " * * * The purposes of the provision of the charter in respect to the removal and repair of dangerous buildings, doubtless, was to avoid any injury to the citizens which might result from such conditions. The limitations of the exercise of the power over this subject to the owners of the property is a reasonable one, and is sufficient to accomplish fully the purposes sought by the charter provisions. And we are unwilling to give our sanction to this ordinance, which undertakes to impose a penalty upon those who have no substantial interests in the property, and to compel them, at their own expense, to remove the dangerous buildings of their principal, for the benefit of the city, without any remedy for any loss they may sustain, when the city has full and ample power to accomplish the same result, with an adequate remedy for the recovery of the cost of such work, against the only party who, upon principles of common fairness and justice, should be made to pay it --

> that is the owner. While it may be convenient, in the exercise of the power granted by the provisions of the charter, to extend the application of the term 'owners' to agents of the owners, it is not a reasonably necessary incident to the express power granted, which confines it to the owners. The rule is that it must not only be 'reasonably incident to the express power granted, or convenient for the exercise of such power,' but it must be essential and indispensable to the purposes to be accomplished by the corporation.
>
> "It is argued that the city would be helpless over this subject, unless this ordinance can be enforced. It is said that the owner may be a nonresident, and cannot be reached. His property can be reached, and there is full authority for reaching it. It is also urged that the agent should suffer this penalty, for the reason that he could have surrendered the property whenever it was ascertained to be unsafe or dangerous. That may be true, but, if the agent surrenders the property, it certainly lessens the force of the contention that the city would be helpless without an agent upon whom to operate. The charter provisions fully meet this condition. The city has a full and complete remedy in either case--agent or no agent. The only difference is that, if this ordinance can be maintained, the city can compel the agent who may have charge of the property to do for it at his own expense that which, in the absence of any agent, it would be required to do for itself at the expense of the owner of the property. If buildings are unsafe or dangerous, the city has full power to remove them or put them in a safe or secure condition, and make the owners of the property pay for them. This sufficiently answers the complaint that the respondent would be without remedy."

Likewise, in Lux v. Milwaukee Mechanics' Ins. Co., 15 SW2d 343, 346, our Supreme Court said:

> "We are not holding that a city may not provide by ordinance the circumstances and

> conditions which would create an emergency justifying the summary destruction of property in order to protect the lives and property of citizens from an imminent and threatening danger. We recognize that this may be done by a valid ordinance. What we do hold is that the determination of what conditions and circumstances would create such an emergency is a legislative function, to be exercised by the council and not delegated to an administrative officer."

The general principles and limitations involved are set out in McQuillin on Municipal Corporations, Vol. 8, Section 24.505, as follows:

> "Generally municipal corporations are empowered to adopt and enforce reasonable ordinances and regulations governing buildings within the municipality: their erection, removal, repair, alteration and reconstruction, and also their use. They may enact and enforce building codes and ordinances and tenement and rooming-house legislation, and they may enact at least <u>under specific statutory authorization</u>, measures relative to housing projects, slum clearance and trailer courts, tourist camps and other unsettled housing of people. But any such municipal measure constitutes an exercise of the police power and to be valid, particularly where it restricts the use of private property, must be reasonably necessary to promote or protect the public health, safety, morals or general welfare. Moveover, not only is it true that the only possible basis to enact and enforce building and housing regulations under the police power is a proper object for exercise of that police power, but it is recognized that such regulation, while it may be broad in scope, is subject to other limitations; it must comply with law, be reasonable, certain, and not arbitrary, oppressive or discriminatory. Nevertheless, it is realized that it is necessary to vest in municipal authorities ample power to regulate the erection, repair and use of buildings. On the one hand, such regulation may often work hardship on owners of property, <u>compelling improvements they do not wish to make or restricting them from improvements they desire to make.</u>" (Emphasis added.)

Honorable John B. McMullin

We have issued two previous opinions in regard to the authority to, regulate junkyards (issued to Honorable Clyde Portell on June 13, 1962), and the establishment of minimum housing standards (issued to Honorable E. J. Cantrell on December 31, 1964). We are enclosing copies of these opinions for your convenience.

We are unable to conclusively indicate the effect of your proposed statute since it is not available, but we suggest that the legislature would be limited only to the concept that the legislation must be constitutional and must bear a reasonable relationship to the public health, safety, morals, or other proper object, of the police power of the State.

Yours very truly,

NORMAN H. ANDERSON
Attorney General

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Enclosures (2)