SCHOOL OF LAW
CASE WESTERN RESERVE UNIVERSITY

Case Western Reserve Law Review

Volume 10 | Issue 2

1959

# Search and Seizure--Right of Inspection without a Search Warrant

Sheldon I. Berns

# *Recent Decisions*

## SEARCH AND SEIZURE — RIGHT OF INSPECTION WITHOUT A SEARCH WARRANT

In *State ex rel. Eaton v. Price*,[1] relator was arrested for violation of an ordinance of the city of Dayton which authorizes housing inspection for the purpose of safeguarding the public health and safety, and directs that an owner or occupant shall give a housing inspector free access at any reasonable hour upon presentation of appropriate identification. The specific charge leading to relator's arrest was his unlawful refusal to permit a housing inspector to enter his premises.[2] On three separate occasions relator had turned the inspectors away, each time contending that he was not bound to admit them unless they produced a search warrant.

On March 26, 1957, relator appeared in Dayton Municipal Court, entered a plea of not guilty, and was incarcerated in city jail pending trial. On the same day a writ of habeas corpus was sought in the court of common pleas and on May 26, the writ was granted, the court having determined that the ordinance was unconstitutional with respect to the fourth amendment to the Constitution of the United States and to Article One, Section Fourteen of the Constitution of the State of Ohio, each of which prohibits unreasonable searches and seizures.[3]

An appeal was taken to the court of appeals, which court reversed the judgment of the court of common pleas,[4] and an appeal as of right was taken to the Ohio Supreme Court.

---

1. 168 Ohio St. 123, 151 N.E.2d 523 (1958).

2. DAYTON, OHIO CODE OF GENERAL ORDINANCES, ORDINANCE 18099, § 806-30 provides in part: "The Housing Inspector is hereby authorized and directed to make inspections to determine the condition of dwellings, dwelling units, rooming houses, rooming units and premises located within the city of Dayton in order that he may perform his duty of safeguarding the health and safety of the occupants of dwellings and of the general public. For the purpose of making such inspections and upon showing appropriate identification the Housing Inspector is hereby authorized to enter, examine and survey at any reasonable hour all dwellings, dwelling units, rooming houses, rooming units, and premises. The owner or occupant of every dwelling, dwelling unit, rooming house, and rooming unit or the person in charge thereof, shall give the Housing Inspector free access to such dwelling, dwelling unit, rooming house or rooming unit and its premises at any reasonable hour for the purpose of such inspection, examination and survey." Section 806-83 provides a penalty of not more than 200 dollars fine or not more than 30 days imprisonment, or both for any violation of ORDINANCE 18099.

3. U.S. CONST. amend. IV is almost identical to OHIO CONST. art. 1, § 14 which states: "The right of the people to be secure in their persons, houses, papers, and possessions, against unreasonable searches and seizures shall not be violated; and no warrant shall issue, but upon probable cause, supported by oath or affirmation, particularly describing the place to be reached, and the person and things to be seized."

4. State *ex rel.* Eaton v. Price, 105 Ohio App. 376 (1958).

The supreme court discarded quickly the contention that the ordinance was repugnant to the Constitution of the United States on the authority of the court's previous decision in *State v. Lindway*,[5] which held that "the Fourth and Fifth Amendments to the Constitution of the United States, prohibiting unreasonable searches and seizures and compulsory self-incrimination, are directed exclusively against the activities of the federal government and have no application to the various states and their agencies."

As to the alleged repugnancy of the Dayton ordinance to the Ohio Constitution, the court was faced with a question of first impression in Ohio. Relying upon the authority of cases decided in other jurisdictions and upon public policy considerations, the court held that an ordinance directing free access to a housing inspector without a search warrant for the purpose of protecting the public health and welfare is not the authorization of an unreasonable search within the meaning of Article One, Section Fourteen of the Ohio Constitution.

In interpreting the search and seizure clause in the Ohio Constitution, the court considered closely the only three cases decided in other jurisdictions which interpreted similar constitutional provisions.

The first of these cases was *District of Columbia v. Little*,[6] wherein the United States Court of Appeals for the District of Columbia interpreted the search and seizure clause of the Constitution of the United States as prohibiting to a health inspector without a search warrant the right of access to a private dwelling over the protest of the occupant. In holding unconstitutional a District of Columbia ordinance providing for such access, the majority opinion held broadly that no search was reasonable if not performed under authority of a search warrant except under conditions of emergency. The dissenting opinion in the *Little* case, which was cited with approval by the Ohio Supreme Court, held that the search and seizure clause was historically intended to apply only to attempts to gain evidence for the purpose of criminal convictions, and that it was never intended to apply to inspections for the protection of the public health and welfare.

Upon appeal to the United States Supreme Court,[7] the *Little* case was affirmed on other grounds, but the Ohio Supreme Court favored the opinion of the dissent, which stated that an inspection "of such a reasonable, general, routine, accepted and important character, in protection of the

5. 131 Ohio St. 166 2 N.E.2d 490 (1936).

6. 178 F.2d 13 (D.C. Cir. 1949), *aff'd on other grounds*, 339 U.S. 1 (1950).

7. District of Columbia v. Little, 339 U.S. 1 (1950).

public health and safety" is lawful though performed without a search warrant.[8]

Following the *Little* case, the Supreme Court of South Carolina in *Richards v. City of Columbia,*[9] upheld in an *obiter dictum* the validity of that portion of a city ordinance relating to inspections without a search warrant.

The third case the Ohio Supreme Court considered was *Givner v. State,*[10] a Maryland Court of Appeals case squarely in point which determined that an ordinance directing occupants to give inspectors free access during daylight hours did not constitute the authorization of an unreasonable search. The Maryland court held that inspections of a routine nature made at reasonable hours and for primarily protective, not punitive, purposes are reasonable searches.

Although the major part of the Ohio Supreme Court's opinion is devoted to a discussion of supporting case precedent, the true basis for the court's decision seems to be one of public policy. The policy at issue is the right to personal privacy as against the protection of the health and safety of the community. The court stated its determination of this issue succinctly: "The right of a home owner to the inviolability of his 'castle' should be subordinate to the general health and safety of the community where he lives."[11]

In its reasoning, the Ohio Supreme Court considered briefly a situation not directly before it, but one more closely related in fact to traditional search and seizure cases. The court raised the question of whether it would be unconstitutional to require access of an inspector without a search warrant over the protest of the occupant where a first inspection had disclosed a violation of an ordinance, and the sole purpose of the present inspection is to determine whether compliance with the ordinance has now been made when failure to comply requires the imposition of criminal sanctions. Here, the purpose of the inspection is not the protection of the public health and safety, but rather, the collection of evidence to be used against the occupant in a criminal proceeding. It is doubtful that any of the courts cited above would hold such an ordinance to be constitutional as applied to this set of facts. Yet none of the municipal ordinances at issue before these courts distinguish between an inspection, the purpose of which is the protection of the public health and

8. *Id.* at 7.

9. 227 S.C. 538, 88 S.E.2d 683 (1955).

10. 210 Md. 484, 124 A.2d 764 (1956).

11. State *ex rel.* Eaton v. Price, 168 Ohio St. 123, 138, 151 N.E.2d 523, 532 (1958).