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1. HOUSING AUTHORITY, FEDERAL PUBLIC—MUNICIPALITY MAY ACQUIRE SUCH PUBLIC HOUSING PROJECT BY PURCHASE OR BY GIFT—MAY RENT AND OPERATE PROJECT TO PROVIDE SAFE AND SANITARY HOUSING FOR FAMILIES OF LOW INCOME—STATUS AS TO METROPOLITAN HOUSING AUTHORITY — SECTION 3735.27 ET SEQ., RC.

2. METROPOLITAN HOUSING AUTHORITY—REQUIRED TO LIMIT OCCUPANCY OF LOW RENT TENEMENTS TO FAMILIES OF INSUFFICIENT INCOME TO MAINTAIN SAFE DWELLINGS—ELIGIBILITY OF TENANTS AND RENTAL CHANGES WITHIN SOUND DISCRETION OF HOUSING AUTHORITY—SECTIONS 3735.41, 3735.43 RC.

3. METROPOLITAN HOUSING AUTHORITY—AUTHORITY TO ADJUST RENTAL OF TENANT FAMILY AS INCOME VARIES—WHEN COMBINED NET INCOME OF FAMILY EXCEEDS AMOUNTS SPECIFIED IN SECTION 3735.43 RC, FAMILY REQUIRED TO VACATE WITHIN SIX MONTHS.

SYLLABUS:

1. Under the powers granted by Section 3 of Article XVIII of the Constitution of Ohio, a municipality may acquire a public housing project, by purchase of by gift from the Federal Public Housing Authority, and may rent and operate the same for the purpose of providing safe and sanitary housing for families which by reason of low income are not able to procure such habitations. The fact that such project is located in a municipality which is within the area of a Metropolitan Housing Authority organized under Section 3735.27 et seq., Revised Code, will not prevent such municipality from acquiring and operating the same.

2. A Metropolitan Housing Authority organized under the provisions of Section 3735.27 et seq. Revised Code, is required by Sections 3735.41 and 3735.43 Revised Code, to limit the occupancy of low rent tenements under its control to families whose income is insufficient to enable them to provide safe, sanitary and uncongested dwellings, but the procedure for determining the eligibility of tenants, and changes in rental, is within the sound discretion of such Housing Authority.

3. A Metropolitan Housing Authority has authority to adjust the rental of a tenant family from time to time as the family income varies; but when the authority determines that the combined net income of such family exceeds the amounts specified in Section 3735.43 Revised Code, such tenant family is required to vacate within six months thereafter.

Columbus, Ohio, June 30, 1955

Bureau of Inspection and Supervision of Public Offices
Columbus, Ohio

Gentlemen:

I have before me your request for my opinion reading as follows:

"We are in receipt of two letters from our examiner in charge of the examination of the accounts and records, in which he asks the following questions:

"(1) Can a village or a city acquire a public housing project, by purchase or by gift from the Federal Public Housing Authority, and operate same within the area or territorial limits which have been established by the State Board of Housing for a Metropolitan Housing Authority?

"(2) Can a Metropolitan Housing Authority, created and existing under the Housing Authority Law of Ohio (Sec. 3735.27 to 3735.57 Revised Code) effect a policy that permits them to find a tenant is over income for the purpose of establishing or increasing the amount of rent, and at the same time find that said tenant is not over income for continued occupancy? * * *."

The two questions presented, while both dealing with the same general subject, to wit, elimination of slum dwellings and housing for families with limited means, yet relate to wholly unrelated powers, of a municipality on the one hand, and a metropolitan housing authority on the other.

1. You raise the question whether a village or city as such, may acquire a public housing project by purchase or gift, from the Federal Public Housing Authority, and operate the same within the territorial area of a duly organized metropolitan housing authority. The territorial area of a metropolitan housing authority is defined by Section 3735.27, Revised Code, which authorizes the state board of housing to organize a local metropolitan housing authority, "in any portion of any county which comprises two or more political subdivisions or portions thereof, but is less than all the territory within the county, * * *." From the correspondence attached to your letter, it appears that the Dayton Metropolitan Housing Authority was organized with territorial jurisdiction of all of Montgomery County except the Village of Verona. It appears further that a housing development in said county, known as Moraine Fields, consisting of an administration building and two hundred dwelling units which belonged to the public housing administration of the United States, and had been leased to the Dayton Metropolitan Housing Authority, was, upon the termination of that lease, conveyed by said public housing administration to the Village of Kettering, Montgomery County, in which village the development in question is located.

The two questions, therefore, with which we have to deal in answer to your first inquiry, are: (a) whether a municipality has authority to own and operate a housing project consisting of tenements to be rented to people of limited means who are unable to pay normal commercial rentals; and (b) whether the fact that the project in question is located within the territorial area of a regularly constituted metropolitan housing authority, would be a bar to such ownership and operation.

(A) As to the first proposition, it appears to me that we must look to the powers of a municipality under the grant of home rule given it by Section 3, of Article XVIII of the Constitution, adopted in 1912. That section reads as follows:

> "Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws."

From the first, the courts have had great difficulty in determining the scope of the words "all powers of local self-government." Prior to the adoption of that amendment in 1912, it was the well settled rule in Ohio, as it still is in most of the states, that a municipality was a creature of the legislature, and that it had no powers except such as the legislature had seen fit to grant it. Ravenna v. Pennsylvania Co., 45 Ohio St., 118. In the very first case that arose under this amendment, Toledo v. Lynch, 88 Ohio St., 71, the court held that a municipality could exercise these powers of self-government only by adopting a charter, a proposition which was expressly overruled in Perrysburg v. Ridgeway, 108 Ohio St., 245. But Judge Shauck in deciding the Lynch case, used this significant language:

> "Consciousness of inadequate provision forbids an attempt at a conceptual definition of the phrase 'all powers of local self-government' to be applied to all cases that might arise. But an obviously correct descriptive definition is sufficient for the case in hand. They are such powers of government as, in view of their nature and the field of their operation, are local and municipal in character."

In the concurring opinion by Judge Wilkin, it was said:

> "The purpose of the home-rule amendment (Article XVIII) is to pass the sovereign power of municipal government (within certain subjective limitations) directly from the people of the state to the people of the city, if the latter choose to exercise it."

In the case of Fitzgerald v. Cleveland, 88 Ohio St., 338, the court called attention to the fact that the effect of this amendment was to relieve the municipality from domination by the legislature and from all limitations on its power in local matters, except as specifically reserved to the legislature, and to give it in full measure what the Constitution provided, to wit, "all powers of local self-government." The court, by Johnson, J., said among other things:

> "Not alone this, but in connection with the comprehensive grant they disclose the intention to confer on municipalities all other powers of local self-government which are not included in the limitations specified. Expressio unius exclusio alterius est."

Accordingly, we may consider that the proposition that any action which fairly relates to the government of a municipality, or the health, safety, convenience or welfare of its citizens is within the power of such

municipality, unless it conflicts with one of the lines of authority that were reserved by the Constitution to the legislature, to wit, the power of levying taxes and incurring indebtedness, as provided in Section 13 of Article XVIII.

It will be observed that in addition to the comprehensive grant of *all powers* of local self-government, municipalities were by the same Section 3, authorized to enact any regulations relating to *police, sanitary and other similar regulations not in conflict with general laws.*

If, therefore, the acquisition and operation of buildings designed to afford decent and healthful living quarters for people who are unable to rent the same in the ordinary market, have some relation to the health and welfare of the people, it would seem clear that such ownership and operation should be within the reasonable scope of the power granted by the Constitution to municipalities.

Long before the adoption of the home rule amendment, the legislature considered and the courts conceded that it had a right to endow municipalities with a large variety of powers designed not only for the public health and welfare but also for the public convenience. Under this theory, laws have been passed authorizing municipalities to provide *and operate* among other things, municipal waterworks, electric light plants, gas works, street railways, docks and wharves, railroad terminals, air ports, play grounds, golf courses, band concerts, and many other enterprises designed partly for public health and partly purely for the convenience, comfort and pleasure of the citizens. In addition to the powers above enumerated, I may call attention to Section 717.01 of the Revised Code, whereby municipalities are authorized to establish and operate municipal ice plants, and to Section 717.05, Revised Code, in which the legislature has seen fit to give municipalities power to obtain and operate off-street parking facilities. It may be noted in passing that the legislature as well as the public, have apparently never realized that a large part of the powers which it still undertakes to grant to municipalities would unquestionably fall within their powers without legislation, by virtue of the constitutional provision aforesaid.

The General Assembly has rather recently enacted a series of statutes comprising Chapter 725 of the Revised Code, Sections 3941 to 3951, General Code, known as the Urban Redevelopment Act, relating to rehabilitation of blighted areas. These sections undertake to authorize a municipality to acquire by purchase, gift, or appropriation, residence

property which by reason of age or condition, is detrimental to the health, safety or welfare of the occupants; and to clear off, rearrange and rehabilitate such property and to resell the same subject to conditions and reservations imposed by it. How superfluous that legislation is, is shown by the case of State ex rel. Bruestle v. Rich, 159 Ohio St., 13, decided February 18, 1953. The case appears to have arisen by reason of an action by the city council of Cincinnati, whereby that city undertook to do practically all the things that are set forth in the chapter just referred to, but without reliance thereon. It appears that the city council having found that a certain area in the city was in such condition that a majority of the structures were detrimental to the public health, safety and welfare, determined to acquire and rehabilitate such area, and authorized the city manager to contract with the Federal Government for a loan, the proceeds to be used in carrying out the project, and that such contract was duly executed.

The action was brought as a test suit for a writ of mandamus to require the city officials to execute a note for the funds to be advanced by the United States. The court held, as indicated by certain portions of its syllabus:

> "2. Under Section 19 of Article I of the Ohio Constitution property taken for 'the public welfare' is regarded as property 'taken for public use.' * * *
>
> "4. If the primary purpose for the exercise of the power of eminent domain is to acquire the property for the public welfare within the meaning of Section 19 of Article 1 of the Ohio Constitution, the power may be exercised even where there may be an incidental nonpublic use of the property or benefit from its taking.
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> "5. The elimination of slum and other conditions of blight and provisions against their recurrence are ordinarily conducive to 'the public welfare' as those words are used in Section 19 of Article I of the Ohio Constitution. * * *
>
> "7. 'All powers of * * * self-government' as set forth in Section 3 of Article XVIII of the Ohio Constitution include the power of eminent domain.
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> "8. Where a redevelopment project is within the lawful purposes of a government, then such redevelopment project with respect to a slum area in a city is within the lawful purposes of the city government. * * *."

Section 19 of Article I of the Constitution reads in part:

> "Private property shall ever be held inviolate but subservient to the public welfare * * *."

In the course of the opinion, Judge Taft, speaking for the court said:

> "The principal contention of respondents and of the intervening petitioners is that urban redevelopment is not a public use or purpose for which public funds can be expended and the power of eminent domain exercised. * * *
>
> "We do not believe that anyone will seriously contend that the elimination of slum and other conditions of blight and provisions against their recurrence would not be conducive to the public welfare and a public purpose, and that the use of property in doing that would not be a use for a public purpose."

Further on in the opinion at page 31, the court mentions for the first time the Urban Redevelopment Act. The court says that it is contended that "the ordinances passed by the council are invalid because they do not comply with certain provisions of the State Redevelopment Act." After very brief discussion, but without even giving the substance of that act, the court brushes it aside with these words:

> "It follows that the questions, whether the provisions of the Urban Redevelopment Act have been complied with and whether that act is constitutional, are not pertinent to a consideration of this case."

Inasmuch, therefore, as it appears very clear that the acquisition of the property in question, by the Village of Kettering, was of the character referred to in the Rich case, and that the purpose of its retention *and operation* would be clearly conducive to the health and welfare of the citizens of the community, I feel justified in holding that it is within the power of the municipality to receive and operate the same, and by the same token to acquire it in any other way. I do not overlook the fact that it has been held repeatedly that a municipality may not even under its powers of local self-government operate purely business operations in competition with private business yet limiting the purpose of the ownership and use of this property to the salutary and unselfish purposes above referred to, I do not feel that there is any room for doubt as to the power of the municipality to acquire, own and operate the same.

(b) The second proposition involving the fact that the village of Kettering is located within the area of the Dayton Metropolitan Housing Authority calls for an examination of the powers and prerogatives of a metropolitan housing authority. Such organization is strictly a creature of the General Assembly, and has only the powers which are delegated to it

by the statutes creating it. Its general purpose and the key to its authority are found in Section 3735.31 Revised Code, which reads in part, as follows:

> "A metropolitan housing authority created under sections 3735.27 to 3735.50, inclusive, of the Revised Code, constitutes a body corporate and politic. To clear, plan, and rebuild slum areas within the district wherein the authority is created, or to provide safe and sanitary housing accommodations to families of low income within such district, or to accomplish any combination of the foregoing purposes, such authority may: * * *."

Here follows general authority to determine what areas constitute slums, to prepare plans, to purchase or otherwise acquire property and construct housing projects, to borrow money upon mortgage or otherwise, and accept grants or other financial assistance from the Federal Government.

Neither the above nor any other provisions of the statute so far as I can find, would have the effect of preventing a municipality located within the area of a housing authority from owning and operating such a project as is mentioned in your letter, or as was involved in the Rich case supra, or bring it within the restriction contained in Section 3 of Article XVIII supra, limiting the powers of municipalities to such local "police, sanitary or other regulations as are not in conflict with general laws." As a matter of fact, the housing law does not lay down any sanitary or police regulations. It merely set up an organization which is authorized to replace unsanitary dwellings with decent homes for people of low incomes.

Section 3735.44 Revised Code, evidences an intention on the part of the legislature that the operations of the housing authority should be entirely in harmony with the regulations of the local subdivisions. It is provided:

> "The planning, zoning, and sanitary laws of the state and of any political subdivision or agency thereof in which a housing project is located shall apply to housing projects of a metropolitan housing authority to the same extent as if said projects were planned, constructed, owned, or operated by private persons. All powers granted in said laws or in any municipal charter to or over privately owned land, buildings, or structures are hereby granted over and in relation to housing projects or authorities. * * *."

There appears to be no reason why the housing authority might not carry out a project within the limits of a municipality at the same time

that the municipality is acting on its own authority with a project designed for similar purposes.

Accordingly, it is my opinion that in the situation you present there is no reason, growing out of the fact that the village of Kettering is located in the area of the Dayton Housing Authority, why the village should not receive the housing development mentioned in your letter, by purchase or gift from the United States Public Housing Authority.

2. Coming to your second question as to the powers of a metropolitan housing authority in determining the income of a tenant which will disqualify him from remaining as a tenant, Section 3735.41 Revised Code, reads in part:

> "(A) It shall not accept any person as a tenant in any dwelling in a housing project if the persons who would occupy the dwelling have an aggregate annual income which equals or exceeds the amount which the authority determines, which determination shall be conclusive, to be necessary in order to enable such persons to secure safe, sanitary, and uncongested dwelling accommodations within the area of operation of the authority and to provide an adequate standard of living for themselves. * * *."

Note that the determination of the housing authority as to that question is to be conclusive. Section 3735.43 Revised Code, provides in part, as follows:

> "No tenant family shall be accepted as tenant of a dwelling unit of a housing project if the combined net annual income of the members thereof exceeds twenty-four hundred dollars. 'Combined net annual income' means the gross income received by all members of the family, less such deductions therefrom as are authorized by law *and the regulations established by public housing administration.* However, in case of tenant families with one or more minor dependents, the net annual income shall not exceed twenty-four hundred dollars plus two hundred dollars for each minor dependent. If the net annual income of such tenant family exceeds twenty-four hundred dollars plus two hundred dollars for each such minor dependent by the sum of six hundred and sixty dollars, such tenant family shall be required to vacate within six months thereafter. The income of minor dependents under eighteen years of age of tenant families, earned during the school year, and while such minors are maintaining full attendance at public or parochial schools shall not be included in computing the net annual income of the tenant family. * * *."
>
> (Emphasis added.)

The precise question which you have raised appears to involve the matter of timing, as to when it is proper to determine the net annual income of a tenant family, for the purpose of either raising or lowering the rent or of requiring the tenant to give up the apartment. The central idea is to retain such balance that the tenant will receive the benefit of the assistance which the law contemplates, and at the same time not get into a position where he will take advantage of the benevolent purpose of the law. The statute above quoted does not lay down any positive rule as to procedure or timing.

A letter from the Assistant Director for Management of the Public Housing Administration to the Toledo Metropolitan Housing Authority is attached to the correspondence submitted. There reference is made to certain regulations which are emboidied in the contract by the federal authorities with the local housing authority upon which financial assistance is granted, and I quote from the "low-rent housing manual, the following paragraphs, which indicate the general idea of the public housing administration:

> "5. *Establishment of Reexamination and Interim Adjustment Procedures by the Local Authority.* Each Local Authority, pursuant to these Contract Requirements, must establish the specific procedures which it will follow in making periodic reexaminations of tenant eligibility, and interim redeterminations of Net Family Income, if any, including forms on which to record information provided by the tenant, and for obtaining and recording verification relating thereto.
>
> "6. *Interim Redetermination of Net Family Income and Rent Adjustments.*
>
> "a. Each Local Authority must decide whether, in the event of a substantial change in income, it will make redeterminations of Net Family Income and corresponding adjustments in rents other than at the time of periodic reexamination."

The letter of the assistant director indicates that in the judgment of that Bureau a large degree of discretion is to be left to the local housing authority to determine the precise basis for its finding, either that the tenant should pay an increased or decreased rental, or that he should give up his tenancy entirely. That letter advises the Toledo authority to consult with its own attorney and with the managers of other authorities in the state, particularly Columbus, and closes with the following paragraph:

> "We will be very interested to learn what advice your attorney offers to you and suggest you acquaint him with the facts contained in this letter. In any case if your attorney feels that you are not complying with Ohio State Law, we suggest you do not follow the permissive policy set forth in Manual Release 410.1. On the other hand if your attorney agrees with the opinion rendered by the attorney for the Columbus Metropolitan Housing Authority it would seem you can follow the Manual in this respect."

Upon inquiry of the managers and attorneys for the Columbus authority, I am informed that the practice has been to require every tenant, as one of the stipulations in his lease, to keep the authority constantly informed of any changes in the compensation of the tenant individually, and that based on such changes, his monthly rental may be increased or decreased. Furthermore, an annual audit is made of the income of the tenants for the year preceding, and if it appears to the board that the individual income has increased to such a degree as to make that family clearly ineligible for continuance in the benefits of the law, then he is required to vacate within six months, as provided by the statute.

It is further the practice that if by reason of a complete change in the tenant's position occurring any time during the year he should be advanced forthwith to a salary basis which would clearly make him ineligible, he is required to give up his tenement immediately. This procedure appears to me to be entirely equitable and within the fair intention of the law, and since the statute itself does not lay down a sufficiently precise rule to make it arbitrary, it is my opinion that that procedure is full compliance with the spirit of the law.

In specific answer to the questions submitted, it is my opinion:

1. Under the powers granted by Section 3 of Article XVIII of the Constitution of Ohio, a municipality may acquire a public housing project, by purchase or by gift from the Federal Public Housing Authority, and may rent and operate the same for the purpose of providing safe and sanitary housing for families which by reason of low income, are not able to procure such habitations. The fact that such project is located in a municipality which is within the area of a Metropolitan Housing Authority organized under Section 3735.27 et seq. Revised Code, will not prevent such municipality from acquiring and operating the same.

2. A Metropolitan Housing Authority organized under the provisions of Section 3735.27 et seq. Revised Code, is required by Sections

3735.41 and 3735.43 Revised Code, to limit the occupancy of low rent tenements under its control to families whose income is insufficient to enable them to provide safe, sanitary and uncongested dwellings, but the procedure for determining the eligibility of tenants, and changes in rental, is within the sound discretion of such Housing Authority.

3. A Metropolitan Housing Authority has authority to adjust the rental of a tenant family from time to time as the family income varies; but when the authority determines that the combined net income of such family exceeds the amounts specified in Section 3735.43 Revised Code, such tenant family is required to vacate within six months thereafter.

Respectfully,
C. WILLIAM O'NEILL
Attorney General