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HOUSING PROJECT FOR VETERANS — WORLD WAR II — EMERGENCY HOUSING FOR VETERANS ACT—SECTIONS 1078-62 THROUGH 1078-70 GC—BOARD OF COUNTY COMMISSIONERS WITHOUT POWER TO OPERATE HOUSING PROJECT—NO POWER TO ACCEPT FROM FEDERAL GOVERNMENT GIFT OF FEDERAL HOUSING DEVELOPMENT—NOT LIMITED TO EMERGENCY HOUSING FOR VETERANS OF WORLD WAR II—OPERATED AND MAINTAINED BY COUNTY COMMISSIONERS.

SYLLABUS:

Except for the authority to operate a housing project for veterans of World War II, as provided in the Emergency Housing for Veterans Act, Sections 1078-62 to 1078-70, General Code, a board of county commissioners is without power to operate a housing project and, therefore, has no power to accept from the Federal Government a gift of a federal housing development, not limited to emergency housing for veterans of World War II, to be operated and maintained by the county commissioners.

Columbus, Ohio, April 15, 1953

Hon. J. H. DeWeese, Prosecuting Attorney
Miami County, Troy, Ohio

Dear Sir:

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

“Do the county commissioners have authority on behalf of the county to accept a Federal housing development from the United States government, and thereafter to operate and maintain the same?”

“I have done some investigation of this matter and it is my opinion that the county commissioners do not have such authority, especially in view of the holdings that the authority of county commissioners is strictly construed since they do not have the broad powers available to municipalities under the so-called ‘Home Rule’ provisions of law. The only authority that I can find under which the county might possibly accept this housing would be G. C. 1078-66, but in that case the use of the premises would be confined strictly to honorably discharged veterans of World War II.”

We may start with the proposition, which I consider to be well founded

and too familiar to require extensive discussion, to-wit, that counties are political organizations created by the Legislature through which a portion of the sovereignty of the state is represented and exercised, that they possess only such powers as may be delegated or conferred upon them by statute, together with such implied powers as are necessary to carry into effect the powers specifically granted. 11 Ohio Jurisprudence, 244; Lake County v. Ashtabula County, 24 Ohio St., 393; Portage County v. Gates, 83 Ohio St., 19.

As indicated in your letter, the only specific statutory authority for the Board of County Commissioners to operate a housing project is that contained in the Emergency Housing for Veterans Act, Sections 1078-62 to 1078-70, General Code. However, as you have stated, such act is confined to an authorization to the county commissioners to operate only emergency housing for veterans of World War II, and you have informed me that the contemplated operation would not be limited to such purpose. Your question, therefore, in effect, is whether there is any authority for the county commissioners to operate any sort of a housing project other than that authorized by the Emergency Housing for Veterans Act.

While the General Assembly has chosen to authorize the creation of metropolitan housing authorities to operate housing projects not limited to veterans of World War II under the Housing Authority Law, Section 1078-29, et seq., General Code, and while by the provisions of Section 1078-33, the county commissioners are authorized to loan to such housing authority a sum not to exceed \$20,000 for the purpose of paying expenses of organization and supervision during the period of initial construction, no statute has been enacted which would authorize the county commissioners themselves to perform those functions authorized to be performed by a metropolitan housing authority. Bearing in mind that we must find such authority in the statutes, I must conclude that no such authority exists.

In expressing the above view, I am fully cognizant of the provisions of Section 18, General Code, which, inter alia, authorizes the county to receive, by gift, moneys, lands or other properties "for their benefit or the benefit of any of those under their charge, and hold and apply the same according to the terms and condition of the gift."

While counties, as well as other public bodies, may unquestionably receive gifts of property, it appears to me that the uses they make of such

gifts must be limited to those powers which they are authorized by law to exercise. They may receive property or money, the use and purpose of which is not limited by the terms of the gift and, as indicated by the statute, they may receive gifts to be used for such lawful purposes as indicated by the donor. However, if the gift carries with it an obligation to establish and maintain an enterprise wholly foreign to the powers and purposes that are within the provisions of the law and may involve the expenditure of additional public funds, it is my opinion that they reach a point where a gift so conditioned can not be legally accepted by them.

I can conceive of an unconditional gift to a county, of a hotel or apartment house which it is free to dispose of, and of the right of the county, in such case, to use the proceeds for any legitimate county purposes; but if a gift of such building were offered to a county under any condition which obligated it to continue its operation and maintain it at county expense, then it would appear to me that the county would be entering upon a project in which it has no authority to engage, and that the expenditure of public money which might be required from time to time to keep the property in condition, and the payment of the costs and expenses of operation, would be without legal sanction.

In conclusion, it is my opinion that except for the authority to operate a housing project for veterans of World War II, as provided in the Emergency Housing for Veterans Act, Sections 1078-62 to 1078-70, General Code, a board of county commissioners is without power to operate a housing project and, therefore, has no power to accept from the Federal Government a gift of a federal housing development, not limited to emergency housing for veterans of World War II, to be operated and maintained by the county commissioners.

Respectfully,

C. WILLIAM O'NEILL
Attorney General