

1315

1. METROPOLITAN HOUSING AUTHORITY--CAN NOT USE RENTAL INCOME TO EMPLOY ENGINEERS TO SURVEY LAND IT OWNS--IN PREPARATION TO HIRING ARCHITECTS--PRELIMINARY STUDIES OR SURVEYS.
2. INCOME FROM HOUSING UNITS CAN NOT BE USED BY AUTHORITY TO PAY FLAT FEE PER MONTH TO PLANNING COMMISSION TO FINANCE PUBLIC HOUSING PORTION OF CITY'S OVER-ALL PLANNING PROGRAM.
3. AUTHORITY CAN NOT USE RENTAL INCOME TO EMPLOY ENGINEERS, CLERKS OR OTHER TYPES OF EMPLOYEES FOR ASSIGNMENT TO WORK WITH CITY PLANNING COMMISSION AS AUTHORITY'S CONTRIBUTION TOWARDS PUBLIC HOUSING PORTION OF CITY'S OVER-ALL PLAN.

SYLLABUS:

1. A Metropolitan Housing Authority cannot use rental income to employ engineers to survey land owned by the Authority in preparation to hiring architects to design future housing projects or use such funds to hire architects to make preliminary studies or surveys of such projects.

2. Income from housing units cannot be used by a Metropolitan Housing Authority to pay a flat fee per month to a Planning Commission as a method of financing the Public Housing portion of a city's over-all planning program.

3. A Metropolitan Housing Authority cannot use rental income to employ engineers, clerks or other types of employees and assign them to work with a City Planning Commission as the Metropolitan Housing Authority's contribution towards the Public Housing portion of a city's over-all plan.

Columbus, Ohio, December 22, 1949

Bureau of Inspection and Supervision of Public Offices
Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"A question has arisen in connection with the use of certain funds received by Metropolitan Housing Authorities in Ohio as rentals from temporary housing units, title to which was received by transfer from the Federal Government pursuant to provisions of the Independent Offices Appropriation Act, 1950; and subsections 505 (a) and (b) of the Lanham Act.

"Inasmuch as the question of lawful authority to use such funds in cooperation with municipal corporations to improve housing conditions under state and local housing laws is one of state-wide interest, we respectfully request that you give consideration to the following questions based upon letters received by this Bureau, copies of which are enclosed herewith, and give us your formal Opinion in answer thereto:

"1. Can a Metropolitan Housing Authority, under the provisions of the General Statute of Ohio, hire engineers, clerks, or other type of employes and assign them to work with a City Planning Commission or Board as the Local Metropolitan Housing Authority's contribution towards the Public Housing portion of any city's over-all plan?

"2. Can a Housing Authority pay a flat fee per month to a Planning Commission as a method of financing the Public Housing portion of the city's over-all planning program?

"3. Can a Housing Authority use these funds to employ engineers to survey land owned by the Authority in preparation to hiring architects to design future housing projects?

"4. Can a Housing Authority use these funds to hire architects to make preliminary studies, sketches, and surveys?

"Thanking you for your consideration of, and reply to the foregoing questions, we remain"

I assume from your letter that the funds in question are the moneys received as rentals from the housing units described in your request.

The legislature of Ohio has established definite rules as to the disposition of moneys received by the local Housing Authorities. Section 1078-38, General Code, states as follows:

“Said authority shall keep an accurate account of all its activities and of all receipts and expenditures and make an annual report thereof to the state board of housing. All moneys received in excess of operating expenditures shall be devoted to the payment of interest and sinking fund charges for the retirement of indebtedness, whether secured by mortgage or otherwise, and from the excess there shall be set aside such fund as the authority may deem proper for the purpose of covering repairs, depreciation and reserves. Whatever balance then remains shall be applied to the reduction of rentals thereafter falling due.”

It can be seen from the use of the mandatory word “shall” throughout the statute that the legislature intended that the local Housing Authorities must follow its direction and that there was to be no discretion upon the part of the Authority. Thus, all income in excess of the operating expenses *must* be used for the reduction of debts. In the absence of any debts, the excess *must* be used to reduce rentals of the housing units.

The only question left is to determine whether or not the expenditures designated in your request are “operating expenditures.”

Expenditures may be classified generally into two categories. One category is operating expenditures and the other is capital expenditures. It is generally accepted that if moneys are used for physical maintenance, they may be classified as operating expenses. Such things as the cost of administration, labor, interest, taxes and rents may be included as operating expenses. See *Powell v. City and County of San Francisco*, 144 Pa. 617, 621; 62 Cal. App. 2d 291. The entire tenor of the term “operating expenditures” would suggest the day-to-day expenses necessary to maintain the operation of the organization.

On the other hand, the term “capital expenditures” suggests the funds which are necessary to increase the output of an organization as distinguished from the maintenance of the output. On page 24 of the Supplement of Volume 6 of Words and Phrases, the following definition is given under the title “Capital Expenditure”:

“An expenditure made to acquire income-producing asset is ‘capital expenditure’ and not ‘ordinary and necessary expense’ deductible from current income. * * * *Willcuts v. Minnesota Tribune Co.*, C.C.A. Minn., 103 F. 2d 947, 950, 951.”

On page 555 of Volume 29 of Words and Phrases, it states as follows:

“Where, in determining the net earnings of a street railway company for the assessment of a special franchise tax, a deduction for depreciation is allowed, the amount spent for *renewals* and *replacements* should be excluded and not charged as an ‘operating expense.’ People ex rel. Joline v. State Board of Tax Com’rs, 145 N. Y. S. 226, 229.” (Emphasis added.)

The four purposes you set forth in your request all have one thing in common. They all deal with the planning of new units rather than the expenses necessary to maintain the present units. Since money used for these purposes cannot be classified as “operating expenditures,” the rental income must go in accordance with Section 1078-38, General Code. Therefore, it is my opinion that a Metropolitan Housing Authority cannot use rental income to hire engineers, clerks or other types of employees and assign them to work with a City Planning Commission as the Metropolitan Housing Authority’s contribution towards the Public Housing portion of a city’s over-all plan. Further, it is my opinion that income from housing units cannot be used by a Metropolitan Housing Authority to pay a flat fee per month to a Planning Commission as a method of financing the Public Housing portion of a city’s over-all planning program. It is also my opinion that a Metropolitan Housing Authority cannot use rental income to employ engineers to survey land owned by the Authority in preparation to hiring architects to design future housing projects or use such funds to hire architects to make preliminary studies or surveys of such projects.

Respectfully,

HERBERT S. DUFFY,
Attorney General.