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HOUSING SHORTAGE—MUNICIPALITY MAY ENTER INTO AGREEMENT WITH FEDERAL GOVERNMENT WHEREBY FEDERAL GOVERNMENT IS TO PROVIDE AND CONSTRUCT TEMPORARY DWELLINGS FOR WAR VETERANS—MUNICIPALITY TO FURNISH CERTAIN FACILITIES AND TO MANAGE DWELLINGS—METROPOLITAN HOUSING AUTHORITY —ARTICLE XVIII, SECTION 3, CONSTITUTION OF OHIO.

SYLLABUS:

Under the authority of Section 3 of Article XVIII of the Constitution of Ohio, granting to municipalities "all powers of local self government," a municipality may enter into an agreement, with the Federal Government whereby in order to relieve the acute housing shortage resulting from the war, the Federal Government is to provide and construct temporary dwellings for returning veterans and the municipality is to furnish certain facilities therefor and to manage such dwellings.

Columbus, Ohio, May 11, 1946

Bureau of Inspection and Supervision of Public Offices
Columbus, Ohio

Gentlemen:

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

"The inclosed letter and form of contract with the Federal Government for temporary housing units, are typical of a number of inquiries we have received from other cities, of recent dates.

In view of the apparent necessity for the establishment of such temporary housing and the desire of city officials to execute contracts with the Federal Government for same, whether or not Metropolitan Housing Authorities are existent in such cities, may we request your opinion in answer to the following question:

May cities of this state legally enter into contracts for temporary housing units, that will involve the expenditure of certain amounts of the public money from the city treasuries?"

Attached to your communication is a letter from the City Solicitor of Lima, stating that it is proposed that that city enter into a contract with the National Housing Agency of the Federal Public Housing Authority

to provide temporary housing pursuant to title B "as amended" of the Lanham Act. He further calls attention to the acute housing shortage present in that city and encloses a copy of the proposed contract.

I understand that in many cities of the State there are serious housing shortages and that it is particularly desired to provide temporary dwelling accommodations for returned veterans and their families. The contract submitted is designed exclusively for the accommodation of such veterans.

The form of contract submitted and apparently required by the Federal Public Housing Authority is quite long and I do not consider it necessary to go into an analysis of all of the provisions. It is sufficient to say that the FPHA proposes to furnish and erect certain temporary dwellings on lands to be furnished either pursuant to ownership or lease by the municipality. Among other financial obligations undertaken by the municipality are the construction of adequate streets and sidewalks within the boundaries of the site; extension of all necessary utilities, including sanitary and storm sewers, water, electricity and/or gas in and along the streets within the boundaries of the site.

In addition, the municipality is required to provide such furniture as may be necessary in addition to the partial furniture which the FPHA will furnish.

By way of management, a schedule of rentals is to be worked out which appears to be calculated to absorb and cover practically all costs. However, the capital cost involved in the acquisition and improvement of the site is to be covered by a ground rental charge of a stated amount per annum for each dwelling unit, which charge is to be reflected in the rental basis.

After the buildings are no longer needed, and within two years after the President shall have declared the emergency due to the war ended, the buildings are to be removed and all material and furniture sold, the salvage to become the property of and be retained by the municipality.

From an examination of the contract, it appears that it was probably contemplated that the costs to the municipality will, in the end, be absorbed and repaid, but manifestly there is no certainty as to this and it may be assumed that some moneys will have to be advanced by the municipality and some expense will ultimately have to be borne.

If we look to the statutes of Ohio relative to the powers of municipalities, as conferred by the Legislature, we will probably find no statute by which powers are explicitly conferred for the making of a contract such as the one under consideration. We do find some evidence of the attitude of the Legislature toward local expenditures for providing needed housing in certain sections of the "Housing Cooperation Law" enacted in 1937. While this act related primarily to slum elimination projects and low rental housing for low income families, yet its provisions seem broad enough possibly to include the present project of temporary emergency housing. Section 1078-53, General Code, provides in part:

> "For the purpose of aiding and cooperating in the planning, undertaking, construction or operation of housing projects located within the area in which it is authorized to act, any state public body may upon such terms, with or without consideration, as it may determine:
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> a. Dedicate, sell, convey or lease any of its property to a housing authority or the federal government;
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> b. Cause parks, playgrounds, recreational, community, educational, water, sewer or drainage facilities or any other works which it is otherwise empowered to undertake, to be furnished adjacent to or in connection with housing projects;
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> c. Furnish, dedicate, close, pave, install, grade, regrade, plan or replan streets, roads, alleys, roadways, sidewalks or other places which it is otherwise empowered to undertake; * * *
>
> e. Enter into agreements (which may extend over any period, notwithstanding any provision or rule of law to the contrary) with a housing authority or the federal government respecting action to be taken by such state public body pursuant to any of the powers herein granted;
>
> f. Do any and all things, necessary or convenient to aid and cooperate in the planning, undertaking, construction or operation of such housing projects; and * * *
>
> i. In connection with any public improvements made by a state public body in exercising the powers herein granted, such state public body may incur the entire expense thereof. Any law or statute to the contrary notwithstanding, any sale, conveyance, lease or agreement provided for in this section may be made by a state public body without appraisal, public notice, advertisement or public bidding."

Section 1078-55, General Code, provides:

> "Any city, village or county located in whole or in part within the territorial limits of a housing authority shall have the power from time to time to lend or donate money to the authority or agree to take such action. The housing authority, when it has money available therefor, shall make reimbursements for all such loans made to it."

In most of the cities of the State there is no established housing authority and we must therefore consider what, if any, power there is in such municipal corporations to enter into the proposed arrangement. For reasons which I shall state, I do not consider that reliance need be placed wholly on statutory grants.

It was so long the rule in measuring the powers of municipalities to look to the acts of the General Assembly for grant of power to do anything, and if that power had not been conferred then to conclude that it did not exist, that we find the courts, even in recent cases where a question of municipal power is raised, searching the statutes for legislative authority. The old rule, as stated in Ravenna v. Pennsylvania Railroad Company 45 O. S. 118, was as follows:

> "Municipal corporations, in their public capacity, possess such powers and such only, as are expressly granted by statute, and such as may be implied as essential to carry into effect those which are expressly granted."

That rule, however, has been completely destroyed by the adoption of Article XVIII of the Constitution, particularly Section 3 of that article, which reads:

> "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."

In Billings v. Railway Company, 92 O. S., 478, the court after referring to the Ravenna case, said:

> "The manifest purpose of the amendment in 1912 was to alter this situation and to add to the governmental status of the municipalities. The people made a new distribution of governmental power. The charter of a city which has been adopted in conformity with the provisions of Article XVIII, and which

> does not disregard the limitations imposed in that article or other provisions of the constitution, finds its validity and its vitality in the constitution itself and not in the enactments of the general assembly. *The source of authority* and *the measure of its extent is the constitution.* The powers conferred by such a charter, adopted within the limitations stated, are not affected by the general statutes of the state." (Emphasis added.)

In the earlier case of Fitzgerald v. Cleveland, 88 O. S., 338, where the Court had under consideration the right of a city under Home Rule to decide what officers it should have and how they should be chosen, the Court said at page 348 of the opinion:

> "The very idea of local self-government, the generating spirit which caused the adoption of what was called the home-rule amendment to the constitution, was the desire of the people to confer upon the cities of the state the authority to exercise this *and kindred powers without any outside interference.*" (Emphasis added.)

By subssequent decisions, the power thus granted municipalities has been held by the Courts to include the manner and time of publication of ordinances (State ex rel. v. Cleveland, 26 O. App., 265); the construction of public improvements (Mulcahy v. Akron, 27 O. App., 442); the expenditure of municipal funds for public purposes (Cleveland v. Coughlin, 16 O. N. P. N. S., 468); fixing the salaries or other compensation of municipal officers (Mansfield v. Endly, 38 O. App., 528); prescribing a standard of time, (State ex rel. v. Cincinnati, 101 O. S., 354); the regulation of the bulk, area, and use of buildings (Pritz v. Messer, 112 O. S. 628.)

The regulation of civil service of a municipality differing from the statutory provisions was held to be peculiarly a matter of local concern in State ex rel. v Edwards, 90 O. S., 305, and Hile v. Cleveland, 118 O. S., 99. Likewise, the right to confer suffrage on women, State ex rel. v. French, 96 O. S. 172, and the control of streets, Billings v. Cleveland, 92 O. S. 478.

The basis of all of these decisions is that the municipality does not need to look to the General Assembly in order to exercise all powers of local self-government, but gets such powers direct from the Constitution.

For some years the Supreme Court held to the idea that a municipal corporation could not exercise these powers given by the constitution until and unless it adopted a charter. Toledo v. Lynch, 88 O. S., 71. However, the Court in the case of Perrysburg v. Ridgeway, 108 O. S., 245, expressly overruled its former holding in this respect, and held:

> "Since the Constitution of 1912 became operative, all municipalities derive all their 'powers of local self-government' from the Constitution direct, by virtue of Section 3, Article XVIII, thereof.
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> The grant of power in Section 3, Article XVIII, is equally to municipalities that do adopt a charter as well as those that do not adopt a charter, the charter being only the mode provided by the Constitution for a new delegation or distribution of the powers already granted in the Constitution."

The power to levy taxes for municipal purposes is included within the powers of local self-government conferred upon municipalities by Section 3 of the Home Rule Amendment. State ex rel. v. Carroll, 99 O. S. 220. In this case the right to levy excise taxes, particularly an occupational tax was held to have been conferred on municipalities by the Constitution wholly independent of any action by the Legislature.

I, therefore, reach the conclusion that if provisions for relieving an acute housing shortage in a city are matters of local concern and fall within the scope of local self-government, then a municipality has power under the Constitution, and without any resort to legislation by the General Assembly, to appropriate and expend money to meet that situation. I am not unmindful of the attitude of our courts in denying the right of a city to go into strictly private enterprises with the purpose of competing with private business. It was held in Cleveland v. Ruple, 130 O. S., 465, that a city could not establish and operate a garage business in competition with other like business privately owned. The proposition here under consideration bears no resemblance to the facts in that case. What the city proposes to do is necessitated by a real emergency affecting the health, welfare and possibly the life of some of its citizens. It is not intended as a source of profit. It competes with no private business, and by the terms of the contract it is strictly temporary.

Nor do I overlook the fact that the Constitution in granting home rule to municipalities, expressly reserved to the General Assembly cer-

tain powers relative to municipal finances. Section 13 of Article XVIII of the Constitution provides:

> "Laws may be passed *to limit* the power of municipalities to *levy taxes* and *incur debts* for local purposes, and may require reports from municipalities as to their financial condition and transactions, in such form as may be provided by law, and may provide for the examination of the vouchers, books and accounts of all municipal authorities, or of public undertakings conducted by such authorities." (Emphasis added.)

Note that here is reserved to the Legislature power to *limit* but not to *prescribe.* The provisions of law relative to the procedure in letting contracts for improvements, requiring competitive bidding in certain cases must be observed. The *limitations* of the law as to the amount of general taxes that may be levied apply to all municipalities. But these provisions do not make the General Assembly the arbiter of the enterprise in which the municipality shall or shall not engage. All that a municipality must do is to conform to the limitations imposed by the Legislature on the amount of its tax levies and the manner by which it incurs debts. Within these limitations and subject to the law as to the method of contracting, the determination of the projects which the municipality will undertake in carrying out the powers of local self-government is for its own determination.

Nor do I doubt that providing emergency temporary housing for returning veterans is within the proper scope of government. In a concurring opinion by Judge Donahue in the case of State, ex rel. v. Lynch, 88 O. S., 71, he says:

> "As an index to what has been generally understood to be comprehended in the term 'governmental powers,' it is interesting to note that the general assembly of the state has heretofore conferred upon municipalities by statute the power to own and operate municipal lighting, power and heating plants; to provide for water supply, public grounds, parks and recreation centers; to hold property for charitable purposes; to establish municipal lodging houses, public baths and bath houses; to prevent the sale and distribution of vicious literature; to provide public libraries and reading rooms, to purchase books, papers, maps and manuscripts therefor, and to receive gifts and bequests of money for that purpose; and to maintain and regulate public band concerts. In addition to this, authority has been granted to municipalities to construct railroads; also to fill and improve lands for

terminal facilities, to empower municipalities to erect machine shops and issue bonds to pay for them; also to construct glass works."

To these might be added numerous other enterprises, such as golf courses, air fields, artificial ice plants and many others. Can anyone argue that emergency housing is less needed or less appropriate than many of the matters above mentioned?

If there were a statute enacted by the General Assembly, expressly authorizing municipalities to provide temporary housing for veterans or others of its citizens, or to contract with the Federal Government relative thereto, probably no one would ever raise a question whether a municipality had such authority. Is it possible that the General Assembly has power to grant what the people of the state cannot grant through their constitution? When the constitution says "all powers of local self government" it certainly makes an unmistakable and comprehensive grant. The power here sought to be exercised certainly falls within that broad grant of power.

In specific answer to your question, it is my opinion that under the authority of Section 3 of Article XVIII of the Constitution of Ohio, granting to municipalities "all powers of local self-government," a municipality may enter into an agreement with the Federal Government whereby in order to relieve the acute housing shortage resulting from the war, the Federal Government is to provide and construct temporary dwellings for returning veterans and the municipality is to furnish certain facilities therefor and to manage such dwellings.

Respectfully

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