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COUNTY COMMISSIONERS:

1. EMERGENCY HOUSING, IMMEDIATE, FOR VETERANS—VETERANS HOUSING FUND—APPROPRIATED FOR USE OF SEVERAL COUNTIES—MAY NOT BE USED TO ACQUIRE AND CONSTRUCT PERMANENT HOMES—HOUSE BILL 508, 96 GENERAL ASSEMBLY.
2. COMMISSIONERS—AUTHORIZED TO LEASE OR ACQUIRE BUILDINGS, PERMANENT OR TEMPORARY—PROVISO, BUILDINGS IMMEDIATELY SUITABLE OR SPEEDILY ADAPTABLE TO RELIEVE TEMPORARY EMERGENCY FOR VETERANS AND THEIR FAMILIES.
3. COMMISSIONERS AUTHORIZED TO USE FUND TO ERECT STRUCTURES FOR TEMPORARY EMERGENCY HOUSING—MAY RENT OR LEASE BUT NOT SELL TO VETERANS.
4. COMMISSIONERS NOT AUTHORIZED TO SELL HOUSES OR BUILDINGS TO REINVEST PROCEEDS OF SALES IN OTHER PROPERTIES TO BE USED FOR PURPOSES OF ACT.
5. AUTHORITY, SECTION 9 OF ACT, TO SELL PROPERTIES, EXERCISED ONLY FOR LIQUIDATION AFTER HOUSING SHORTAGE HAS BEEN RELIEVED AND PURPOSES OF ACT ACCOMPLISHED.
6. SECTION 2 OF ACT—PROVISIONS SHALL EXPIRE DECEMBER 31, 1949—NOTWITHSTANDING, PURPOSES OF ACT MAY BE CARRIED OUT PURSUANT TO SECTION 5 UNTIL DECEMBER 31, 1951.

SYLLABUS:

1. The sole purpose of House Bill No. 508, passed by the 96th General Assembly, Special Session, is to provide temporary emergency housing facilities for veterans of World War II, and the funds thereby appropriated to the use of the several counties may not be used for acquiring or constructing permanent homes for said veterans.

2. In carrying out the purposes of the act the county commissioners are authorized out of the veterans housing fund to lease or otherwise acquire buildings of any character, whether permanent or temporary, provided the same are immediately suitable or may be speedily adapted to relieve the temporary emergency in housing facilities for veterans and their families.

3. County commissioners are authorized to use the veterans housing fund in the erection of structures for the purpose of making temporary emergency housing available to veterans and are authorized to rent or lease but not to sell the same to such veterans.

4. County commissioners are not authorized by said act to sell the houses or buildings acquired under the provisions of said act for the purpose of reinvesting the proceeds of such sales in other properties to be used for the purposes of the act.

5. The authority given by Section 9 of said act to sell properties acquired pursuant to its provisions is to be exercised only for the purpose of liquidation after the shortage of housing for veterans has been relieved and the purposes of the act accomplished.

6. Notwithstanding the provision that Section 2 of the act shall expire on December 31, 1949, the purposes of the act may be carried out pursuant to Section 5 until December 31, 1951.

Columbus, Ohio, September 12, 1946

Hon. Ralph J. Bartlett, Prosecuting Attorney
Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"This office requests an opinion from you as to the various phases hereinafter outlined concerning the duties and obligations of the County Commissioners under the recently enacted House Bill 508, providing for 'immediate temporary emergency housing' for veterans.

(1) Are the county commissioners limited to the use of temporary structures for veterans housing under this act or may they lease or otherwise acquire permanent structures to use to tide over the housing shortage emergency. In other words, is the fund appropriated and the authorizations granted to the county commissioners for use only in temporary structures or for use in relieving the temporary emergency in housing facilities for veterans and their families?

(2) If the funds appropriated and the powers granted are for the purpose of enabling the county commissioners to relieve the housing emergency, may they

(a) lease permanent structures for assignment or sub-lease to veterans

(b) erect or cause to be erected permanent or temporary structures for lease or sale to veterans.

(c) buy for resale building materials short in supply for use in building housing facilities for veterans

(d) use from the fund created by collection of rentals designated in the act as 'county veterans housing fund' such moneys as are necessary to pay the lease rental on improved property so acquired for release to veterans?

(3) The act provides that the county commissioners 'may sell any or all of said property so acquired and deposit the proceeds of such sale in the general fund of said county.' Can this money be re-appropriated by the county commissioners from the general fund for re-use in the veterans housing program under this act?

(4) What, if any, is the distinction between the authority of the commissioners under Section 2 of the Act, which provides 'The county commissioners of each county are hereby authorized to expend all or any part of their county veterans housing fund for the purpose of providing immediate temporary emergency housing facilities for residents of their counties who' are veterans and their families; and Section 5 of the Act, which provides, 'The county commissioners of each county in order to provide housing facilities are hereby authorized to acquire by purchase, lease, gift or otherwise improved or unimproved land, structures, materials, equipment, facilities and services and to erect structures for the purpose of making such temporary emergency housing available?'

In other words, does Section 2 of the Act cover temporary structures, while Section 5 covers more permanent structures?

It will be noted that Section 2 expires December 31st, 1949 and Section 5 does not expire until December 31st, 1951. What difference will be their authority under this Act after Section 2 expires if Section 5 still remains in force?

(5) Section 9 of the Act provides: 'The county commissioners * * * may sell any or all of said property so acquired and deposit the proceeds of such sale in the general revenue fund of the county.'

Does this give the County Commissioners authority to construct housing facilities and immediately sell them on the open market to anyone that desires to purchase the same, or to veterans; or is this authority to sell such properties to be exercised only by the commissioners as the veterans housing shortage is alleviated and these properties, from time to time, become no longer necessary for the purpose of providing 'temporary emergency housing for veterans?'"

House Bill No. 508 to which you refer, was passed at the recent special session of the 96th General Assembly as an emergency measure, was approved by the Governor on August 28, 1946, and became effective immediately. The act in its entirety reads as follows:

"To provide immediate temporary emergency housing for veterans of World War II and their families, and to declare an emergency.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. There is hereby appropriated out of any moneys not heretofore appropriated or encumbered the sum of \$6,000,000 for the purpose of providing financial assistance to the political subdivisions of the state to *provide immediate temporary emergency housing for veterans of World War II, who have been discharged other than dishonorably*, and their families.

The moneys herein appropriated shall be distributed by the auditor of state to the several counties of the state upon application by the county commissioners to the treasurer of state and certification thereof by him to the auditor of state in the ratio that the total population of the county bears to the total population of the state as determined by the last federal census.

All moneys allocated to a county pursuant to the provisions of this act shall be placed in a special fund in the treasury of the county to be known as the county veterans housing fund. The moneys allocated to the county veterans housing fund shall be *expended only as provided* in this act.

Section 2. The county commissioners of each county are hereby authorized to *expend all or any part of their county veterans housing fund for the purpose of providing immediate temporary emergency housing facilities* for residents of their counties who were members of the armed forces of the United States who have served in World War II and have been discharged other than dishonorably, and for their families.

Section 3. The county commissioners of each county are authorized to accept contributions from any political subdivision within the county and from the federal government or any agency thereof and from persons, corporations and associations for the purpose of supplementing the county veterans housing fund.

Section 4. The political subdivisions of each county are hereby authorized to contribute a sum or sums to its county veterans housing fund.

Section 5. The county commissioners of each county in order to provide housing facilities are hereby *authorized to acquire by purchase, lease, gift or otherwise improved or unimproved land, structures, materials, equipment, facilities and services and to erect structures for the purpose of making such temporary emergency housing available.* The title to said property shall be in the county commissioners of the county. The county commissioners shall provide for the maintenance and management of the property acquired hereunder, shall make and publish rules governing the letting of the premises to veterans subject to this act, and shall fix and collect rents from tenants which said rents shall be fair and equitable considering the services provided, the type of housing, and its condition and location. All rents collected hereunder shall be deposited in the county veterans housing fund and not to exceed ninety per centum of such rents collected may be used for the maintenance and operation of the property.

The county commissioners shall have authority to evict tenants as provided by law.

Section 6. The county commissioners of each county shall report to the treasurer of state twice yearly on the provisions which have been made for veterans housing within the county. Such reports shall be made not more than 45 days after the last day of each half of the calendar year and shall include receipts, disbursements and balances of the funds, the number of units of housing provided, the number of veterans housed and a schedule of rentals. The first report herein provided shall be made on or before February 15, 1947, and shall cover the period ending December 31, 1946.

Section 7. Sections 2, 3 and 4 of this act shall expire on December 31, 1949.

Section 8. Sections 5 and 6 of this act shall expire on December 31, 1951.

Section 9. The county commissioners of any county which has acquired property in accordance with provisions of this act

may sell any or all of said property so acquired and deposit the proceeds of such sale in the general revenue fund of the county.

Section 10. Any sum remaining to the credit of the county veterans housing fund of a county on the thirty-first day of December, 1949 shall be paid to the treasurer of state and placed in the general revenue fund.

Section 11. This act is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety. The reason for such necessity lies in the fact that housing facilities available to discharged veterans of World War II are wholly inadequate and financial assistance must be given to the counties of the state immediately to meet this critical condition.” (Emphasis added.)

A reading of the entire act, including the title, seems to me to show very vividly that the general assembly had but one purpose in mind, to-wit, to meet in the shortest possible time and by the most direct process the critical emergency that is generally known to exist in finding lodgings and living quarters for the many thousands of returning veterans of the late war. This emergency is so serious that it has given rise to countless tales of extreme hardship suffered by many of these men and their families.

In my opinion, nothing in the act was intended to look beyond the present emergency or toward providing permanent homes for these men. The words “immediate temporary emergency housing” are used over and over. However desirable it might be to formulate and carry into effect a long range plan whereby permanent homes may be built for these men and their families, that purpose is wholly foreign to the act in question. In my opinion, any construction of it which would contemplate the use of the appropriation for any purpose except immediate temporary emergency housing would be subversive of the manifest purpose of the general assembly.

For the purpose of accomplishing what was intended, the county commissioners are given a considerable measure of discretion. They may acquire by purchase, lease, gift, or otherwise, improved or unimproved lands, structures, materials, equipment, facilities and services, and they may erect structures for the purpose of making such temporary emergency housing available. They are not compelled in purchase of existing buildings to purchase temporary structures but may purchase

any and all kinds of buildings so long as they are suitable or can be made suitable for immediate temporary occupancy. They may acquire land and erect buildings thereon in the effort to meet the emergency, but in my opinion they would defeat the purpose of the act if they undertook to build structures designed for permanency at the expense of speed. It may be argued that the best is always the cheapest and that permanent structures in the long run would be economical while temporary structures in a comparatively short time would have to be junked or extensively repaired at a total or substantial loss. In my opinion, that argument has no weight in the present situation. When one has to meet an emergency that means saving a life or alleviating suffering he does not question whether his expenditure will be a good permanent investment.

In the light of these general statements we may, I believe, arrive readily at answers to most of the questions submitted.

(1) County commissioners are not limited to the use of temporary structures but may lease or otherwise acquire permanent structures if they are suitable or can quickly be made suitable for occupancy to meet the temporary emergency.

(2) (a) The Act in Section 5 gives explicit authority to the county commissioners to lease buildings which will be suitable for relieving the temporary emergency housing shortage. There is no reason why permanent structures as well as temporary structures might not be leased if they are suitable for the purpose indicated.

(b) The county commissioners may erect or cause to be erected temporary structures for lease to veterans. For the reasons above indicated I do not believe it would be consistent with the purpose of the act to concede them the right to erect permanent structures at the sacrifice of speed in making them available. There is of course no precise definition of "temporary" and "permanent." I recognize the possibility that some buildings might be hastily thrown together which would structurally be more or less permanent; as for instance, the use of cement block for walls. My emphasis is rather on the speed with which they can be made available for use.

I do not see anything in the act that indicates that its purpose is to provide a plan for the erection of houses for sale to veterans, and it is my opinion that no such power is conferred. The entire plan, so far

as specifically outlined, is for renting. The question of sale will be referred to later herein.

(c) I do not understand what you mean by "buy for resale building materials," etc. While the commission does unquestionably have the right to buy building materials for the purposes of the act I do not see any room for the idea of buying for resale.

(d) Section 5 provides that all rentals collected shall be deposited in the county veterans housing fund and Section 2 provides that the county commissioners may "expend all or any part of their veterans housing fund for the purpose of providing immediate temporary emergency housing facilities." It appears to me therefore that they may very properly use this fund, including the rentals collected, for any of the purposes of the act, including payment of lease rental on improved property acquired for re-lease to veterans.

(3) The provision of Section 9 that the county commissioners who have "acquired property in accordance with provisions of this act may sell any and all of said property so acquired and deposit the proceeds of such sale in the general revenue fund of the county," coming as it does near the end of the act and after the provisions of Sections 7 and 8 indicating the time of expiration of the act, seems to me to contemplate liquidation after the emergency has passed. If it were otherwise or if it had been intended to establish a rotary fund for investment, sale and re-investment, the legislature would have so provided in unmistakable language. Observe that the proceeds of sale do not go back into the "veterans housing fund," but into the "general revenue fund," and there is no provision, so far as I know, either in this act or elsewhere in the law, authorizing the county to appropriate its general funds for the purpose of building or acquiring houses to rent. In this connection, it may be worth while to note the provision of Section 4, whereby "the political subdivisions of each county are hereby authorized to contribute a sum or sums to its county veterans housing fund," but no authority is given to the county itself to make such contribution. While the word "subdivision" as defined by Section 5625-1, General Code, for the purpose only of the uniform tax law, includes the county as well as its subdivisions, I do not consider that definition applicable here, and am giving to the phrase "political subdivisions of the county" what appears to be

its natural meaning, to-wit, municipalities and townships, and not the county itself.

(4) I see no distinction between the authority given the commissioners by Section 2 and that contained in Section 5 of the act, at least so far as they confer power to expend the "veterans housing fund" in providing temporary emergency housing. Both clearly contemplate the accomplishment of the same purpose, and the only difference is that the provisions of Section 5 are explicit whereas those in Section 2 are general. Certainly there is nothing in the different reading of the two sections which gives sanction to the idea that Section 2 relates to temporary structures while Section 5 authorizes permanent structures. Inasmuch however as Section 5 also makes provision for the renting and management of these buildings it would appear that the purpose in providing a different time for expiration of Sections 2 and 5 is based upon the idea that the emergency calling for the *acquisition or erection* of temporary housing facilities would be over by December 31, 1949, while it would be advisable and necessary to *continue renting* the same for two years thereafter, to-wit until December 31, 1951. The general assembly doubtless assumed, and with good reason, that the several boards of county commissioners would find ways of spending the money allotted to them within three years, but that the emergency requiring renting of the houses might continue somewhat longer. Read in the light of the whole purpose that runs through the act, as already pointed out, I do not see that there is any serious inconsistency between the two sections referred to. If there is any inconsistency, the later provision of Section 5 would prevail. Crawford on Statutory Construction, Section 166. In my opinion, it would be consistent with the act to continue the full process of acquiring and renting buildings for emergency housing until December 31, 1951, if the shortage of houses for veterans continues until that time.

(5) As I have already indicated, it appears that the authority given to sell one or more of the properties so acquired and to deposit the proceeds in the general revenue fund was intended to be exercised after the emergency calling for the acquisition and use of such properties has passed and there is no longer need for providing temporary emergency housing for the veterans. The general assembly did not, however, see fit to limit the commissioners in the exercise of their discretion, and it is conceivable that a county might use the funds allotted to it in the acquisi-

tion of lands and buildings, and immediately sell them in disregard of the trust committed to it, and to its own enrichment. If too much discretion has been committed to the county commissioners in this respect, the responsibility must rest with the general assembly.

Respectfully,

HUGH S. JENKINS
Attorney General