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METROPOLITAN HOUSING AUTHORITY:

EXPENDITURE FUNDS — INSURANCE, EMPLOYEES' AUTOMOBILES — DINNERS, EMPLOYEES WHO WORK OVERTIME — TO PURCHASE TOYS, BASEBALLS, CHECKERS, VOLLEY BALLS, TRICYCLES, ETC., USE, CHILDREN WHO LIVE IN HOUSING PROJECT — SALARY OR COMPENSATION EMPLOYEES TO INSTRUCT RESIDENTS IN PROJECT TO MEND OR REPAIR FURNITURE — TRANSPORTATION, FUNDS FROM PROJECT OFFICES TO DEPOSITORIES FOR SUCH FUNDS.

SYLLABUS:

1. *Whether or not a metropolitan housing authority may expend funds under its control for the purpose of paying the premiums on liability and property damage insurance covering employes' automobiles which such employes occasionally use in carrying out the business of such Authority, and whether or not it may expend its funds for the purpose of buying dinners for employes when working overtime, are questions of fact depending upon the contracts of employment made with such employes. Such an Authority may not expend funds under its control for the purpose of paying such premiums or for the purpose of buying dinners for employes, or for others, as a mere gratuity.*

2. *A metropolitan housing authority may not under the State Housing Act (Section 1078-1, 1078-60, G.C., inclusive) expend funds under its control for the purpose of purchasing toys, baseballs, checkers, volleyballs, tricycles, etc., to be used by children living in a housing project, nor may such an Authority expend funds under its control for the purpose of paying the salary or compensation of employes hired for the purpose of instructing the residents in a project how to mend and repair furniture.*

3. *A metropolitan housing authority may lawfully expend monies under its control for the purpose of paying the cost of transporting the funds of such Authority from its project offices to the depositories in which such funds are deposited.*

Columbus, Ohio, April 5, 1941.

Bureau of Inspection and Supervision of Public Offices,
Columbus, Ohio.

Gentlemen:

Your letter of March 31, 1941, requesting my opinion received in due course. Your communication reads:

“We are inclosing herewith a letter from our State Examiner of Metropolitan Housing Authority Accounts, in which he requests a further interpretation of the laws governing the expenditure of public funds under the control of said Authorities.

May we request that you consider the following questions contained in said letter, and give us your opinion as to the legality of expenditures for the various purposes therein enumerated.

Question 1. Liability and Property Damage Insurance on employes' automobiles which the employe occasionally uses for Authority business.

Question 2. Transportation of moneys from the project offices to the depositories.

Question 3. Toys, Baseballs, Checkers, Volleyballs, Tri-cycles, etc., used by children living in the project.

Question 4. Salary of employes to instruct the residents in a project how to mend and repair furniture, etc.

Question 5. Dinners for employes when working overtime.”

The purposes for which metropolitan housing authorities are authorized by law to be created; the legal concept of such an entity when created; the powers and duties of such an authority after its creation and the limitations thereon, were considered at length in Opinion No. 3188, rendered to your bureau, under date of December 31, 1940. In that opinion all the sections of the General Code here controlling and pertinent were either quoted or referred to, and such sections will not be quoted in this opinion, the principles of law annunciated in Opinion No. 3188, to which your attention is invited, being applied to the specific questions asked by you.

For convenience and in the interest of brevity, Questions 1 and 5

may be considered together, as may Questions 3 and 4, leaving Question 2 to be discussed alone. This three-fold grouping of the questions will be herein followed.

At the outset it might again be firmly suggested that statutory officers, boards and commissions have such powers, and *only* such powers, as are expressly granted by statute, together with such implied powers as may be necessary to carry the powers expressly granted into effect. This fundamental rule of law was discussed in paragraph (4)A, of Opinion No. 3188, supra, branch 4 of the syllabus of that opinion reading as follows:

“A metropolitan housing authority is expressly created by statute as a “body corporate and politic” for the purposes set forth in the Housing Authority Law. As such a statutory body or commission it has such powers, and only such powers, particularly with reference to the expenditure of public funds, as are expressly granted by statute, and such powers as may be necessary and convenient (Section 1078-34 G.C., par. d) to carry the powers expressly granted into effect.”

1 and 5. It seems to me quite patent that Questions 1 and 5 may not be categorically answered.

In Opinion No. 3188, supra, paragraph (4)I., Opinion No. 849, Opinions, Attorney General, 1939, Vol. II, p. 1131, was adverted to, the pertinent part of which reads:

“Furthermore, having cited this opinion (Op. No. 2711, 1938), I feel it my duty to say that I am not in accord with the conclusions that the bridge commission may not use its funds to purchase uniforms and deputy sheriff’s badges for its toll clerks. In view of the character of their work, including the fact that it is their duty to collect and safeguard moneys and that they must at all times deal with all kinds of persons, it seems to me that such an expenditure would be a proper operating charge. Be that as it may, since Section 1084-6, General Code, expressly authorizes the commission ‘to employ * * * such employes as may be necessary in its judgment, and fix their compensation,’ it would be lawful, in my opinion, *to fix the compensation of such employes in cash and uniforms and badges, if the commission in the sound exercise of the discretion conferred upon it deemed such action advisable.*” (Emphasis mine.)

In passing I deem it only fair to point out that Opinion No. 2711,

supra, was, in so far as the purchase of uniforms is concerned, overruled by Opinion No. 3501, Opinions, Attorney General, 1938, Vol. III, p. 2432, although I can in nowise concur with my predecessor that the bridge commission, or like statutory bodies, has "the general powers to conduct the operation of a bridge (or other project for which it was created to construct, acquire or conduct) in the same manner as would be possessed by a private body conducting a similar enterprise." I believe such a conception of the law to have been sufficiently refuted in paragraph (4)A., Opinion No. 3188, supra, as well as paragraph (4)G., in which Section 1078-38, General Code, is referred to. This section inter alia provides that all "property, both real and personal, acquired, owned, leased, rented or operated by the housing authority shall be deemed public property for public use."

From what has been said above and in the precedents cited, I have little difficulty in answering your Questions 1 and 5.

If it be a part of the contracts of employment, that as a part of the compensation of the employes about whom you inquire, they are to receive so much in cash and so much in monies to be paid directly as premiums on liability and property damage insurance, covering the employes' automobiles occasionally used in the Authority's business, it is my opinion that such contracts would be lawful. To paraphrase Opinion No. 849 (1939) above quoted "it would be lawful, in my opinion, to fix the compensation of such employes in cash and (automobile liability and property damage insurance premiums), if the (Authority) in the sound exercise of the discretion conferred upon it deemed such action advisable." Likewise, it is my opinion that an Authority may provide in its employment contracts, that, as a part of the compensation of its employes, employes working overtime shall be paid for such overtime by having their dinners furnished by the Authority instead of receiving cash for such overtime and buying their own dinners. In other words, the form in which compensation is paid to an Authority's employes is a matter of contract, and this applies whether the compensation be for regular time or overtime.

In this connection, your attention is invited to Opinions of Attorney General, 1927, Vol. I, p. 48, 1928, Vol. II, p. 1099, in the latter of which it was held:

"The legislative authority of a village may, as a part of the

compensation to its employes, legally authorize group indemnity insurance and pay the premium therefor from public funds.”

At the same time, a metropolitan housing authority has no more right to give away public monies than has any other public officer, board or commission, whether such officer, or the members of a board or commission be elected or appointed. As said by Judge Lloyd in his opinion in the case of *Peters, Dir. of Finance v. State, ex rel.*, 42 O.A. 307, 308, 12 Abs. 290, 182 N.E. 139 (C. of A. Lucas Co., 1932):

“ * * * Public officials, it would seem, should consider themselves rather as trustees than philanthropists, in the appropriation and disbursement of public funds.”

It is fundamental that public monies may only be disbursed for the purposes and in the manner provided by law. So elementary is this principle that the citation of authority is unnecessary. And no metropolitan housing authority or any other public body may pay insurance premiums or buy dinners for its employes or any other person as a mere gratuity.

3 and 4. The answers to Questions 3 and 4 are also contained in Opinion No. 3188, *supra*. As said in paragraph (4) B., “it is at once manifest that a metropolitan housing authority is without power to expend funds over which it has control for the purpose of conducting what you refer to as a ‘Dedication Program.’ Such authorities are authorized to *construct, lease and manage* projects for a slum clearance and not to celebrate the fact that such a project has been constructed, leased or is about to be managed by the Authority.” As was also said in Opinion No. 3188, paragraph (4)C., there is “nothing in the Housing Authority Law investing an authority of the kind under consideration with the power to educate the public along * * * promotional lines.” In fact, there is nothing in the entire act empowering a metropolitan housing authority to educate members of the public or even tenants of buildings constructed, acquired or managed by such an Authority along any lines. In this connection, your attention is invited to Section 1078-49, General Code, which in part provides as follows:

“The following terms, wherever used or referred to in this act, shall have the following respective meanings, unless a different meaning clearly appears from the context: * * *

(c) The term 'housing project' or 'project' shall mean any work or undertaking: (1) to demolish, clear or remove buildings from any slum area; such work or undertaking may embrace the adaptation of such area to public purposes, including parks or other recreational or community purposes; or (2) to provide decent, safe and sanitary urban or rural dwellings, apartments or other living accommodations for persons of low income; such work or undertaking may include buildings, land, equipment, facilities and other real or personal property for necessary, convenient or desirable appurtenances, streets, sewers, water service, parks, site preparation, gardening, administrative, community, health, recreational, educational, welfare or other purposes; or (3) to accomplish a combination of the foregoing.

The term 'housing project' also may be applied to the planning of the buildings and improvements, the acquisition of property, the demolition of existing structures, the construction, reconstruction, alteration and repair of the improvements and all other work in connection therewith; * * * ”

It has been suggested that the language of this section is broad enough to permit the purchase of any kind of property whatsoever so long as it has some connection with "health, recreational, educational, welfare or other purposes." Such a construction, however, would do violence to all fundamental canons of construction. Even a cursory reading of the section above quoted discloses that all the undertakings contemplated by the Legislature are those of a permanent character. The use of the words "dwellings, apartments, or other living accommodations" as well as the words "buildings, land, equipment, facilities and other real or personal property for necessary, convenient or desirable appurtenances, streets, sewers, water service, parks, site preparation, gardening," etc. shows conclusively that the expenditure of monies for permanent improvements only was intended. It seems unnecessary even to refer to the "noscitur a sociis" or the "ejusdem generis" rule of statutory construction for the reason that it is more than obvious that one may not carry away a building or land or appurtenances thereto or streets or sewers or parks and the other kinds of improvements mentioned in the above section. Certainly there is nothing in the State Housing Law authorizing the expenditure of public funds for the purpose of purchasing such things as toys, baseballs, checkers, volleyballs, tricycles and other like personal property which may be used for the purpose of amusing children living in a housing project constructed, acquired or managed by an Authority any more than there is authority to purchase roulette wheels, poker chips or dice for the amusement of the parents of such children.

Nor do I find anything authorizing the employment of persons to instruct residents in approved methods of repairing furniture any more than I find power to employ instructors to teach stenography, law, medicine, or any other course in which the tenants might possibly desire to receive instruction.

2. Question 2 is also covered by Opinion No. 3188, *supra*. See paragraphs (4)D., (4)E. and (4)H. As said in paragraph (4)E. of the above opinion, the "projects are constructed from the proceeds of revenue bonds and the revenue is derived from rentals paid by tenants. Any necessary or convenient method adopted by such an authority to obtain tenants is, therefore, clearly lawful." And as also said in paragraph (4)H. it "goes without saying that it is as important to guard and preserve property once it has been constructed as it is to construct the property in the first instance." Manifestly, if the revenue bonds, the proceeds from which were used to construct a project are to be retired, the income derived from the property should and must be adequately protected. There being no limitation in the State Housing Act, the methods to be used to protect such income lie within the sound discretion of the local Authority. It is not only a common practice to engage companies or organizations which specialize in the transportation of monies from bank to bank or from business to bank, but failure so to do in some instances might be said to be an act of negligence. Certain it is that this is one of the standard ways of safeguarding the transportation of cash and currency. I have no hesitation, therefore, in reaching the conclusion that a metropolitan housing authority may lawfully expend monies under its control for the purpose of paying for the transportation of funds belonging to the Authority from the project offices to the depositories.

In view of the foregoing, and in specific answer to your questions, it is my opinion that:

1. Whether or not a metropolitan housing authority may expend funds under its control for the purpose of paying the premiums on liability and property damage insurance covering employes' automobiles which such employes occasionally use in carrying out the business of such Authority, and whether or not it may expend its funds for the purpose of buying dinners for employes when working overtime, are questions of fact depending upon the contracts of employment made with such employes. Such an Authority may not expend funds under its control

for the purpose of paying such premiums or for the purpose of buying dinners for employes, or for others, as a mere gratuity.

2. A metropolitan housing authority may not under the State Housing Act (Sections 1078-1 to 1078-60, G.C., inclusive) expend funds under its control for the purpose of purchasing toys, baseballs, checkers, volleyballs, tricycles, etc., to be used by children living in a housing project, nor may such an Authority expend funds under its control for the purpose of paying the salary or compensation of employes hired for the purpose of instructing the residents in a project how to mend and repair furniture.

3. A metropolitan housing authority may lawfully expend monies under its control for the purpose of paying the cost of transporting the funds of such Authority from its project offices to the depositories in which such funds are deposited.

Respectfully,

THOMAS J. HERBERT,

Attorney General.