

forming his official duties is not in violation of any language contained in House Bill 675 as enacted by the 93rd General Assembly.

Respectfully,

THOMAS J. HERBERT,
Attorney General.

1189.

METROPOLITAN HOUSING AUTHORITY—MAY NOT EXPEND FUNDS: MEMBERSHIP FEES—ASSOCIATIONS SUCH AS NATIONAL ASSOCIATION ON HOUSING OFFICIALS—AMERICAN FEDERATION OF HOUSING AUTHORITIES.

SYLLABUS:

A Metropolitan Housing Authority may not expend its funds for the payment of membership fees in associations such as the "National Association of Housing Officials, or the "American Federation of Housing Authorities."

COLUMBUS, OHIO, September 13, 1939.

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

GENTLEMEN: I am in receipt of your request for my opinion, reading as follows:

"We are enclosing herewith a letter from our City of Columbus Examiner, together with one from the local Metropolitan Housing Authority and one from Mr. Nathan Straus, of the U. S. Housing Authority, which are largely self explanatory.

There are a number of such Housing Authorities in this State, and since the question here involved is applicable to all of them, may we request that you examine this correspondence and advise us in answer to the following question:

Ques. 1. Is the local Metropolitan Housing Authority now operating on the funds borrowed from the City of Columbus, authorized to expend the maximum amounts indicated by the Straus letter for the payment of 'dues' in associations such as the National Association of Housing Officials and the American Federation of Housing Authorities?"

Among the enclosures attached to your request is a letter from Nathan Straus, Administrator of the United States Housing Authority of the Federal Works Agency, which reads in part:

“To All Local Housing Authorities :

In these initial stages of the housing movement, many local housing authorities have written to us stating that membership in national housing associations has been of great practical value and benefit to them through the exchange of ideas and the pooling of thought on their common problems. We are also aware that some local authorities have not yet been able to make arrangements to obtain local funds which would be available for expenses such as the payment of dues to organizations of this character.

With these facts in mind we have reconsidered our former policy and have determined that for the period ending July 1, 1940, the following total charges to development costs of the low-rent housing projects undertaken by a local authority may be permitted for dues of such an authority to national housing organizations :

In cities of under		
100,000	\$ 50.00
100,000 to 250,000	100.00
250,000 to 500,000	150.00
500,000 up	200.00

This schedule contemplates only dues of the Authority itself and no individual dues of members or employees of an authority may be charged to a project.

It is believed that this scale will allow your Authority to defray from development funds the cost of membership for the next year in one or several housing organizations to which you may deem it desirable to belong. However, we feel that after the initial stages of your program such charges cannot be considered so essential to your projects as to be charged to their development cost. For that reason, other arrangements will have to be made by your Authority to care for such expenses after July 1, 1940. Undoubtedly you are already making plans to obtain local funds for future expenses of a character which do not relate to specific projects.”

A metropolitan housing authority is a quasi corporation, created for the performance of what the Legislature has deemed a public purpose, under authority of Sections 1078-29 to 1078-60, General Code. As such, they have such powers in the carrying out of the purpose of their creation as have been granted them by the act authorizing their creation.

Section 1078-60, General Code, makes them bodies corporate. Such section reads:

“Said metropolitan housing authorities are hereby constituted and declared to be bodies corporate and politic with all the powers, rights and duties set forth in the housing authorities law and any amendments thereto.”

Section 1078-34, General Code, sets forth the general powers of such authorities. This section reads:

“An authority created under this act shall constitute a body corporate and politic, and for the purposes of (1) clearing, planning and rebuilding slum areas within the district wherein the authority is created, or (2) providing safe and sanitary housing accommodations to families of low income within such district or (3) accomplishing a combination of the foregoing, shall have the following powers in addition to others herein specifically granted:

a. To sue and to be sued, to have a seal, to have corporate succession, to receive grants from state, federal or other governments, or from private sources, to conduct investigations into housing and living conditions, to enter any buildings or property in order to conduct its investigations, to conduct examinations, subpoena and require the attendance of witnesses and the production of books and papers and to issue commissions for the examination of witnesses who are out of the state or are unable to attend before the authority or excused from attendance; and in connection with these powers, any member of the authority shall have the power to administer oaths, take affidavits and issue subpoenas;

b. To determine what areas constitute slum areas and to prepare plans for housing projects in such areas, to purchase, lease, sell, exchange, transfer, assign, or mortgage any property, real or personal, or any interest therein, or acquire the same by gift, bequest or eminent domain; to own, hold, clear and improve property; to engage in, or to contract for, the construction, reconstruction, alteration, and/or repair of any housing project or part thereof; notwithstanding anything to the contrary contained in this act or in any other provision of law, to include in any contract let in connection with a project, stipulations requiring that the contractor and any subcontractors comply with requirements as to minimum wages and maximum hours of labor, and comply with any conditions which the federal government

may have attached to its financial aid of the project; to lease, and/or operate any project and establish or revise schedules of rents for any projects or part thereof; to arrange with the county and/or municipalities for the planning and replanning of streets, alleys and other public places or facilities in connection with any area or project; to borrow money upon its notes, debentures or other evidences of indebtedness, and to secure the same by mortgages upon property held or to be held by it, or by pledge of its revenues, or in any other manner; to invest any funds held in reserves or sinking funds or not required for immediate disbursements; to execute contracts and all other instruments necessary or convenient to the exercise of the powers granted herein; to make and from time to time amend and repeal by-laws, rules and regulations to carry into effect its powers and purposes under this act.

c. To borrow money or accept grants or other financial assistance from the federal government for or in aid of any housing project within its territorial limits, to take over or lease or manage any housing project or undertaking constructed or owned by the federal government, and to these ends, to comply with such conditions and enter into such mortgages, trust indentures, leases or agreements as may be necessary, convenient or desirable; and

d. To do all things necessary or convenient to carry out the powers expressly given in this act.”

Section 1078-35, General Code, grants to such quasi corporations the limited power of eminent domain. Section 1078-36 provides that all the property, real and personal, of such bodies *shall be deemed to be public property*.

Section 1078-38, General Code, reads 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 shall 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.”

While my research has not disclosed any specific court decisions or Attorney General's opinion concerning the expenditure of municipal

housing authority funds for the purpose suggested, it would seem that since Section 1078-36, General Code, makes such moneys public funds, the decisions of the courts or rulings of the Attorney General with reference to the expenditure of similar public funds by similar public corporations or quasi corporations would, by analogy, be pertinent.

It is fundamental that the public funds of a municipality or other governmental agency may be expended only for a public purpose. The difficulty arises when we seek to determine whether a particular expenditure is for a public purpose. A somewhat similar proposition to that presented by your inquiry was before the court in *State ex rel Thomas v. Semple*, 112 O. S., 559, wherein the court held that the city of Cleveland was not legally authorized to expend public funds for the payment of dues of such city as a member of the "Conference of Ohio Municipalities." Such organization maintained a bureau for the purpose of collecting and preserving information concerning litigation, legislation and other matters which might affect the interests of municipalities and the dissemination of such knowledge among its members. The Supreme Court in such case held that the expenditure of public moneys for such purpose was not an expenditure for a public purpose.

In Opinions of the Attorney General for 1930, Vol. 1, p. 172, the question was presented as to whether a municipality could expend public funds for a membership in the "Bureau of Public Personnel Administration, Washington, D. C.," in the "Civil Service Assembly of the United States and Canada" and in the "National Municipal League of New York City". In such opinion the Attorney General ruled:

"In view of the decision of the Supreme Court in the case of *State ex rel vs. Semple*, 112 O. S., 559, the council of a charter city may not authorize legally the payment from the public funds of the city of a subscription fee to the Bureau of Public Personnel Administration, Washington, D. C., or a fee for membership in the Civil Service Assembly of the United States and Canada, or sustaining membership dues in the National Municipal League of New York City unless the charter of the city expressly authorizes such expenditures or contains a general provision from which authority may be inferred to expend the funds of the city for the purposes mentioned."

In Opinions of the Attorney General for 1935, Vol. 1, at page 677, the then Attorney General ruled that a board of education might not expend its funds for a membership in "The Ohio State Association of Boards of Education" or other similar organization.

In opinions of the Attorney General for 1935, Vol. 1, p. 715, the then Attorney General ruled that a board of county commissioners might not expend public funds for a membership in the "State Dog Wardens' Association."

Again, in Opinions of the Attorney General for 1935, Vol. 2, p. 858, the then Attorney General ruled broadly that:

“A municipal corporation is without authority to expend public funds for membership dues or fees in an association of municipalities or to appropriate funds to pay for services rendered, or information furnished on municipal affairs by such association.”

My research does not disclose any language in any decision of the Supreme Court subsequent to *State ex rel Thomas v. Semple*, supra, which would indicate any change from such opinion on the part of such court.

In view of the decision of such court and the consistent opinions of the preceding Attorney General, I am persuaded that, regardless of the practical value and benefit which the exchange of ideas or the pooling of thought of the members on the problems may benefit them, the expenditure of public funds in payment of a membership in an organization for such purpose is beyond the power of a public corporation or quasi corporation.

Specifically answering your inquiry, it is my opinion that a Metropolitan Housing Authority may not expend its funds for the payment of membership fees in associations such as the “National Association of Housing Officials” or the “American Federation of Housing Authorities.”

Very truly yours,

THOMAS J. HERBERT,
Attorney General.

1190.

COUPON BOOKS TO CUSTOMERS—MERCHANTS—NOT ENGAGED IN SALE OF “SECURITIES” WHEN THEY ISSUE SUCH BOOKS—CREDIT PLAN, CONTRACT—DOWN PAYMENT—INSTALLMENT—STATUS WHEN CARRYING CHARGES MADE IN EXCESS OF 8% PER ANNUM—LICENSE—COMMISSIONER OF SECURITIES—SECTIONS 8624-2 (2), 6346-1 G. C.

SYLLABUS:

1. *Merchants are not engaged in the sale of securities, as defined in section 8624-2(2), General Code, when they issue coupon books to their customers as a part of a credit plan whereby customers seeking credit, if satisfactory credit risks, sign a contract agreeing to make a small down payment and pay the balance in installments who are thereupon given coupon books entitling them to immediately purchase any*