

3262.

TAXATION—REAL PROPERTY ACQUIRED BY CINCINNATI METROPOLITAN HOUSING AUTHORITY EXEMPT FROM TAXATION.

SYLLABUS:

Real property acquired by the Cincinnati Metropolitan Housing Authority, established and organized under the provisions of House Bill No. 19, which was enacted by the 90th General Assembly in special session August 30, 1933, and which is held and used by such housing authority in furtherance of the purposes designated in said act, has the character of public property used for public purposes, and as such is exempt from taxation.

COLUMBUS, OHIO, September 29, 1934.

The Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—This is to acknowledge the receipt of a recent communication from you enclosing a letter from the Cincinnati Metropolitan Housing Authority requesting your opinion on the question whether property hereafter acquired by the Cincinnati Metropolitan Housing Authority will be exempt from taxation. In your communication to me you ask my opinion upon this question.

The Cincinnati Metropolitan Housing Authority is, as a district, a body corporate and politic, designated as to territory by the State Board of Housing, provided for by the act of October 3, 1932, 114 O. L., Part II, page 78, and is organized under the provisions of House Bill No. 19, which was enacted by the 90th General Assembly in special session August 30, 1933, which act as an emergency law went into effect upon its approval by the Governor September 5, 1933. This act is one for the stated purpose of "authorizing (the) creation of a public authority to aid in housing families of low incomes, in eliminating unsanitary and congested housing conditions and otherwise promoting the public health, safety, morals and general welfare". This act has been carried into the General Code as sections 1078-29 to 1078-41, inclusive. Section 2 of this act (sec. 1078-30, G. C.) provides in part as follows:

"In order to make necessary provision for the preservation of the public health, and in order to facilitate proper sanitary housing conditions for families of low incomes, and to provide for the elimination of congested and unsanitary housing conditions now existing in certain areas of the state which are a menace to health, safety, morals and public welfare, it is expedient to create the public authority hereinafter named with the powers and duties hereinafter enumerated.

Whenever the state board of housing shall have determined that there is need for a housing authority in any portion of any county that comprises two or more political subdivisions but is less than all the territory within the county, a metropolitan housing authority shall be created, and the territorial limits thereof defined by said state board of housing. A certified copy of the resolution of the state board of housing creating such housing authority district shall be immediately forwarded to each appointing authority hereinafter named. Such authority shall consist of five (5) members, who shall be residents of the territory embraced in such metropolitan housing district. They shall be appointed as follows: One appointed by the probate court, one by the common

pleas court, one by the board of county commissioners, and two by the mayor of the most populous city in the territory included in said district, in accordance with the last preceding federal census; provided, that at the time of the initial appointment of the authority, the member appointed by the probate court shall be appointed for a period of four years, the appointee of the common pleas court for three years, the appointee of the board of county commissioners for two years, one appointee of the mayor for one year and one appointee of the mayor for five years. Thereafter all members of the authority shall be appointed for five year terms and vacancies for expired terms shall be filled by the same appointing powers. Members of the authority so appointed shall hold office until their successors have been appointed and qualified."

Section 6 of this act (sec. 1078-34, G. C.) provides:

"The authority created under this act shall constitute a body corporate and politic, and for the purposes of clearing, planning and re-building areas within the district wherein the authority is created, 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 corporated 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 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 are unsanitary or substandard and to prepare plans for 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 project or part thereof; 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, provided that the location and extent of the proposed public streets, ways, parks and playgrounds shall be subject to the approval of the planning commission having jurisdiction in the territory wherein the project is located, and if disapproved by such planning commission the housing authority by a four-fifths (4/5) vote of its members shall have power to overrule such disapproval; 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 article; and

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

Section 9, 10, 11 and 12 of the act (secs. 1078-37 to 1078-40, G. C.) should be considered in connection with the question presented in your communication. These sections read as follows:

"Section 9. When the housing authority shall have acquired the property necessary for any project, said authority shall proceed to make plans and specifications for carrying out such project, and shall advertise for bids for all work which said authority desires to have done by contract, such advertisements to be published once a week for two (2) consecutive weeks in a newspaper of general circulation in the political subdivision in which the project is to be developed. The contract shall be awarded to the lowest and best bidder.

Section 10. 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.

Section 11. The notes or other evidences of indebtedness executed by the housing authority shall not be a debt or charge against the county, state or any other governmental authority other than said housing authority, and no individual liability shall attach for any official act done by any member of such authority.

Section 12. Whenever the housing authority desires to discontinue its operations it shall make application to the state board of housing, for authority to dissolve. If such application be granted, the state board of housing shall take possession and dispose of all property belonging to the housing authority, and after paying the debts and liabilities of said housing authority and the expenses of administering the dissolution, the balance remaining, if any, shall be paid into the sinking fund of the county in which the housing authority had existence."

In the consideration of the question here presented, it is to be noted that aside from lands owned by the state itself which are exempt from taxation in the absence of constitutional or statutory provisions providing for the taxation of the same, no real property in this state is exempt from taxation unless such exemption is granted by the constitution itself or by statutory provisions enacted pursuant to constitutional authority. In this connection, section 2 of article XII of the state constitution authorizes the legislature to exempt by law "public property used exclusively for any public purpose." This exemption has been provided for in the provisions of section 5351, General Code, which read as follows:

"Real or personal property belonging exclusively to the state or United States, and public property used for a public purpose shall be exempt from taxation."

Touching the question of the construction to be given to constitutional and statutory provisions providing for the exemption from taxation of public property used for public purposes, Cooley in his work on Taxation (4th Ed.), Vol. II, section 625, says:

“While ownership by the public is not the sole test, it is generally held, yet in order that property be not taxable because public property it is always necessary that the property be actually owned by the public. Independent of any other consideration, property cannot escape taxation on the ground that it is public property unless it is in fact owned by the public as represented by the state or some local subdivision or representative thereof.”

In this connection, section 8 of said act (sec. 1078-36, G. C.) should be noted. This section reads as follows:

“All property, both real and personal, acquired, owned, leased, rented or operated by the housing authority shall be deemed public property for public use, and all accounting and other transactions of the authority shall be subject to the inspection and approval of the bureau of inspection and supervision of public officers of the state of Ohio, which shall transmit its report to the state board of housing.”

As will be observed, this section provides that all property, both real and personal, acquired by the housing authority set up and established in the manner provided by the act, shall be deemed to be public property for public use. If conclusive effect could be given to the provisions of this section with respect to the public character and use of property acquired and owned by such housing authority with respect to the question of the exemption of such property from taxation under the constitutional and statutory provisions above noted, the same would in themselves be effective to exempt from taxation property of this kind. Inasmuch, however, as the question of exemption of real property from taxation in a case of this kind depends basically upon the application of the pertinent provisions of the constitution above noted, it follows, with respect to the question here presented, that the General Assembly cannot by mere legislative definition give to real property acquired and owned by a housing authority established under the provisions of this act, the character of public property used exclusively for public purposes; and although the provisions of this section may and should be considered in the determination of the question, such question in this case is whether the real property acquired, owned and used by the housing authority is in fact public property used for a public purpose.

Upon examination of the provisions of this act with respect to the purposes to be accomplished by the establishment of a housing authority district under the provisions of this act and of the means to be adopted under the provisions of the act for the accomplishment of the stated purposes, I have no difficulty in reaching the conclusion that real and personal property so owned and acquired by such housing authority is, in point of law and fact, public property and the same is or will be used for a public purpose if the same is owned, held and used solely for the purposes provided for in said act. The housing authority established under the provisions of this act certainly is not a private institution. On the contrary, waiving a consideration of the question as to whether the same is for

any purpose a political subdivision, it is quite clear that such housing authority is an agency of the state so as to give real property owned by it the character of public property within the meaning of the constitutional and statutory provisions above noted. I am likewise of the view that under the principles recognized and applied in the case of *State, ex rel., vs. Kerns, Auditor*, 104 O. S. 550, and in other cases that might be cited, the use which the housing authority will make of this property will be a public use within the meaning of the constitutional and statutory provisions relating to the exemption from taxation of public property used for public purposes.

By way of specific answer to the question submitted in the communication of the Cincinnati Metropolitan Housing Authority, I am of the opinion that real property acquired, owned and held by such housing authority and used by it in furtherance of the purposes designated in the act above referred to, will have the character of public property used for public purposes and as such will be exempt from taxation.

Respectfully,
JOHN W. BRICKER,
Attorney General.

3263.

APPROVAL, BONDS OF LUCAS COUNTY, OHIO, \$137,000.00.

COLUMBUS, OHIO, October 1, 1934.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

3264.

APPROVAL, BONDS OF DAYTON CITY SCHOOL DISTRICT, MONTGOMERY COUNTY, OHIO, \$15,000.00.

COLUMBUS, OHIO, October 1, 1934.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

3265.

JUSTICE OF PEACE—UNAUTHORIZED TO APPOINT SPECIAL CONSTABLE TO PATROL HIGHWAYS AND ARREST VIOLATORS OF ORDERS OF P. U. C. O.

SYLLABUS:

A justice of the peace is unauthorized to appoint a special constable under