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1. METROPOLITAN HOUSING AUTHORITY — HOUSING AUTHORITY LAW — NOT CONTROLLED OR RESTRICTED BY UNIFORM TAX LEVY LAW — SECTIONS 1078-29 TO 1078-60, 5625-1 ET SEQ., G. C. — NOT “POLITICAL SUBDIVISION,” “TAXING AUTHORITY,” “BOND ISSUING AUTHORITY” OR “TAXING UNIT”—HAS FULL AND FINAL AUTHORITY TO PREPARE BUDGET AND EXPEND PUBLIC FUNDS — LIMITATION, CARRY INTO EFFECT POWERS AND AUTHORITY EXPRESSLY GRANTED BY STATUTE—IMPLIED POWERS.
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SYLLABUS:

1. *A metropolitan housing authority created and existing under the Housing Authority Law (Secs. 1078-29 to 1078-60, G. C., inc.), being neither a "political subdivision," "taxing authority," "bond issuing authority" or "taxing unit" as these entities are defined by Section 5625-1, General Code, is not in anywise controlled or restricted by the Uniform Tax Levy Law (Sec. 5625-1, et seq., G. C.), and, therefore, has full and final authority as to the preparation of its budget and the expenditure of public funds under its control, subject to the limitation, of course, that such funds may only be spent to carry into effect the powers and authority expressly granted by statute, and the powers and authority impliedly necessary and convenient to carry into effect the powers expressly granted.*

2. *A metropolitan housing authority is not, under the law, of Ohio, required to purchase supplies, coal, et cetera, not used in the construction of a housing project, by public bids.*

3. *Employees of a metropolitan housing authority are not made members of the Public Employees Retirement System by law; nor are they eligible voluntarily to become members of such system by application or otherwise.*

4. *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 (Sec. 1078-34, G. C., par. d) to carry the powers expressly granted into effect.

5. In order to give a statute, or any part or phrase thereof, sense and effect, or to harmonize the different parts thereof, the word "or" may be read "and", and vice versa.

6. The preamble of a statute merely sets forth the reasons for its enactment and expositis the motives of the Legislature for its passage. It is no part of the enactment and may only be resorted to in cases of doubt or ambiguity for the purpose of ascertaining the meaning of the statute. It may in no case enlarge the wording or meaning of a statute which is free from ambiguity, especially a statute conferring powers and authority upon a statutory board, commission or officer with reference to the expenditure of public funds under its or his control.

7. Under the Housing Authority Law of Ohio (Secs. 1078-29 to 1078-60, G. C., inc.), a metropolitan housing authority may not lawfully expend public funds under its control for the following purposes:

(1) Moving tenants, and paying rent for and repairing buildings into which tenants are moved from houses and buildings on a site owned by a P. W. A. Housing Division, in which such housing authority has no other interest than to have the United States Housing Authority construct a slum clearing project.

(2) A dedication program, that is, to celebrate or memorialize the construction, leasing or acquisition for management of a slum clearance project.

(3) Renting and showing motion picture films for educational or propaganda purposes, although motion pictures may be used within reasonable discretion to obtain tenants for projects constructed, leased or otherwise acquired or managed by such an authority.

(4) Employing a professional publicity man for educational purposes.

(5) Employing public accountants, certified or otherwise, to audit the books of the authority, since in Section 1078-36, General Code, the Legislature has prescribed that the books of such an authority shall be subject to the inspection and approval of the Bureau of Inspection and Supervision of Public Offices.

(6) Paying public funds to cover the traveling and other expenses of the members or employes of such an authority incurred in attending a convention.

8. *Under the Housing Authority Law (Secs. 1078-29 to 1078-60, G. C., inc.), a metropolitan housing authority may lawfully expend public funds under its control for the following purposes:*

(1) *Compensating real estate agents for appraising and purchasing land.*

(2) *Compensating real estate agents for securing tenants for stores owned, leased or managed by such authority.*

(3) *Employing a detective agency to guard property owned, leased or managed by such authority.*

(4) *Purchasing uniforms for guards or employes serving in and about such property.*

(5) *When so required by the United States Housing Authority, in contracts extending Federal aid or grants, or leases of Federal housing projects, paying the compensation and expenses of United States Housing Authority Engineers, auditors, et cetera, for time spent while lawfully engaged in performing the duties of their office or position, with such housing authority (Sec. 1078-34, G. C.).*

Columbus, Ohio, December 31, 1940.

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

Gentlemen:

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

“We are enclosing herewith a letter from our examiner of Metropolitan Housing Authority accounts, together with copies of various documents obtained from the Toledo Metropolitan Housing Authority, including Lease, Loan Contract, Terms and Conditions Regulations, Annual Contribution Contract with the United States Housing Authority and copies of various letters from the United States Housing Authority to the Toledo Metropolitan Housing Authority.

Under the provisions of Section 1078-36 of the General Code, it is the duty of this Bureau to examine and approve the accounting and other transactions of the Authority and it shall file reports with the State Board of Housing.

The examiner, in his letter of February 26, 1940, attached hereto, submitted a number of questions pertaining to the power of the Metropolitan Housing Authority to expend its funds for cer-

tain purposes, and since we have no rulings or precedents by which we could properly answer these questions, we are seeking your opinion and advice in this connection.

Will you kindly consider the questions contained in the examiner's letter, enclosed herewith, and give us your opinion in interpretation of the law to the end that we may properly perform our duties in making examinations of the Metropolitan Housing Authority accounts.

May we request return of the enclosed documents when they have served your purpose?"

The letter from your examiner, enclosed with your communication, reads as follows:

"Enclosed herewith, find a Lease, a Loan Contract, Terms and Conditions Regulations and an Annual Contribution contract between the Toledo Metropolitan Housing Authority and the United States Housing Authority. Also copies of various letters from the United States Housing Authority to the Toledo Metropolitan Housing Authority.

(1) Under these contracts does the Toledo Metropolitan Housing Authority have full and final authority to make their budget and expend funds that come into their possession in accordance with the laws of Ohio.

(2) Is it necessary to advertise for bids for supplies, coal, etc., not used in construction of a project?

(3) Do the employees of the Metropolitan Housing Authority come under the Public Employee Retirement Fund?

(4) Is it legal for the Toledo Metropolitan Housing Authority to expend its funds for the following purposes?

A. Moving, paying rent, repairing buildings, etc., for tenants who were occupying buildings on a site owned by the P. W. A. Housing Division and in which the Toledo Authority had no interest other than have the United States Housing Authority build project.

B. Dedication Program.

C. Renting and Showing Motion Picture Films of projects.

D. Fees paid real estate agents for appraising and purchasing land.

E. Fees paid real estate agents for renting stores.

F. Fees paid for Publicity Service (employing a Professional Publicity man) for educational purposes.

G. Employing Public Accountants to audit books.

H. Employing Detective Agency to guard property.

I. Purchasing Uniforms for employees and guards.

J. Traveling Expense to Conventions.

K. Salary and expense of United States Housing Authority; Engineers, Auditors, etc., for time spent at Toledo Metropolitan Housing Authority."

It is deemed unnecessary to set forth herein the Lease; Loan Contract; Terms and Conditions (U. S. H. A. Form 300; March 19, 1938); Regulations; the Annual Contribution Contract between the Toledo Metropolitan Housing Authority and the United States Housing Authority or the letters transmitted with your request. Indeed, since these documents consist of over one hundred and fifty printed or closely typewritten pages, the impracticability of burdening this opinion with the contents of these papers is obvious. Wherever necessary, particular parts of the documents and papers in question will be quoted or referred to.

Your questions will be answered in the order in which they are asked in the letter from your examiner and designated as they are in such inclosure.

(1) The first question might be summarily answered by the single word "yes". Manifestly any commission, board, officer, corporate body or individual, whether public, quasi-public or private, has "full and final authority" to make its or his budget, and, unless prohibited by a law of the United States, to "expend funds that come into their possession in accordance with the laws of Ohio."

I assume, however, that by this question it is intended to ask two things: First, is the Toledo Metropolitan Authority subject to the provisions of the Uniform Tax Levy Law, sometimes referred to as the Budget Act (Section 5625-1 et seq., General Code), and, second, do the laws of Ohio relating to the expenditure of public funds, including the sections of the General Code above referred to, have application to and govern a metropolitan housing authority?

Provisions for the creation and organization and for the authority, powers and duties of metropolitan housing authorities are contained in Sections 1078-29 to 1078-60, inclusive, of the General Code, known as the Housing Authority Law, originally enacted on August 30, 1933 (115 v. Pt. 2, 56).

Sections 1078-30, 1078-36, 1078-38, 1078-49a and 1078-60, General Code, respectively, provide in part as follows:

Section 1078-30:

"In order to make necessary provision for the preservation of

the public health, morals, safety and welfare, and in order to facilitate and provide proper sanitary housing conditions and accommodations for families of low incomes, and to provide for the elimination of congested and unsanitary housing conditions now existing in certain slum areas of the state which are a menace to health, safety, morals and public welfare, it is expedient to create the public authorities hereinafter provided for with the powers and duties hereinafter enumerated.

Whenever the state board of housing shall have determined by resolution that there is need for a housing authority in any portion of any county that comprises two or more political subdivisions or portions thereof but is less than all the territory within the county, a metropolitan housing authority shall be declared to exist and the territorial limits thereof shall be defined by the resolution of said state board of housing. The state board of housing shall adopt a resolution determining and declaring that there is need for a housing authority within such territorial limits if it shall find (a) that unsanitary or unsafe inhabited housing accommodations exist in such area or (b) that there is a shortage of safe and sanitary housing accommodations in such area available to persons who lack the amount of income which is necessary, as determined by said board, to enable them, without financial assistance, to live in decent, safe and sanitary dwellings without congestion. \* \* \*

A certified copy of the resolution of the state board of housing declaring the existence and boundaries of a housing authority district shall be immediately forwarded to each appointing authority hereinafter named. A housing authority shall consist of five (5) members, who shall be residents of the territory embraced in such metropolitan housing authority 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 power. Members of the authority so appointed shall hold office until their successors have been appointed and qualified.

Section 1078-36:

"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 offices of the state

of Ohio, which shall transmit its report to the state board of housing.”

Section 1078-38:

“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 1078-49a:

“A housing authority created under this act shall constitute a political subdivision of the state of Ohio within the meaning of section 5546-2 of the General Code.”

Section 1078-60:

“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.”

In addition, Section 1078-34, hereinafter quoted, provides that an authority created under the Housing Authority Law “shall constitute a body corporate and politic” for the purposes therein provided.

Even a cursory examination of the above statutes shows that, while a metropolitan housing authority is a “body corporate and politic”, that is, a corporate body created to do and perform those things and functions which the Legislature in the Housing Authority Law determined to be of a public character, it was not made a political subdivision, taxing authority, bond issuing authority or taxing unit within the meaning of the Uniform Tax Levy Law. Section 5625-1, General Code, provides in part as follows:

“The following definitions shall be applied to the terms used in this act:

(a) ‘Subdivision’ shall mean any county, school district, except the county school district, municipal corporation or township in the state. \* \* \*

(c) ‘Taxing authority’ or ‘bond issuing authority’ shall mean in the case of any county, the county commissioners; in the case of a municipal corporation, the council or other legislative authority



of such municipal corporation; in the case of a school district, the board of education; and in the case of a township, the township trustees. \* \* \*

(i) 'Taxing unit' shall mean any subdivision or other governmental district having authority to levy taxes on the property in such district or issue bonds which constitute a charge against the property of such district including conservancy districts, metropolitan park districts, sanitary districts, road districts and other districts. \* \* \* "

Obviously, a metropolitan housing authority does not come within any of the above definitions, and it necessarily follows that the provisions of the Uniform Tax Levy Law do not relate to or in anywise regulate or limit the powers of such an authority.

True it is that Section 1078-49a, supra, provides that a housing authority created under the Housing Authority Law shall constitute a state political subdivision "within the meaning of Section 5546-2", General Code. This last named section however, provides for the imposition of a "sales tax" and, inter alia, provides that the tax therein levied shall not apply to sales when "the consumer is the state of Ohio, or any of its political subdivisions." In other words, a metropolitan housing authority is made a political subdivision for the sole and only purpose of exempting it from the unpleasant duty of paying a tax for exercising the privilege of making a purchase.

*Expressio unius est exclusio alterius.*

From what has been said, I answer question (1) as follows:

I. The Toledo Metropolitan Housing Authority has full and final authority to make up its budget, and that the Uniform Tax Levy Law has no application thereto.

II. The Toledo Metropolitan Housing Authority may only expend funds which come into its possession "in accordance with the laws of Ohio". This conclusion will be elaborated upon in the remaining questions submitted by you.

III. The provisions of the Uniform Tax Levy Law do not apply to or in anywise limit or regulate a housing authority created under the Housing Authority Law.

(2) The answer to your second question must be in the negative. While there are a number of statutes requiring public commissions, boards

or officers to purchase different kinds of supplies or let certain contracts after advertising for bids,—as for example Section 196-7, General Code, relating to the purchase of certain supplies and equipment by the state purchasing agent; Sections 4221 and 4328, General Code, respectively, having to do with purchases of the kinds of property specified in such sections by villages and cities; and Section 7623, General Code, pertaining to certain contracts by school boards, there is no general section requiring all public bodies, commissions, boards and officers or quasi-public entities, to make purchases of the kind mentioned in your inquiry after public advertisement and the receiving of bids. And so far as a metropolitan housing authority is concerned, I find no statute making it necessary to advertise for bids, when purchasing “supplies, coal, etc., (sic) not used in construction of a project”. Section 1078-37, General Code, does provide that:

“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 advertisement 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.”

But it will be readily seen that this section only requires the advertising for bids for work on projects, and not for supplies of the kind referred to in your inquiry.

(3) The answer to your third question requires a consideration of Sections 486-32, 486-33a and 486-33c, General Code, at all times keeping in mind the nature and character of a metropolitan housing authority. These sections respectively provide in part as follows:

Section 486-32:

“That the following words and phrases as used in this act, unless a different meaning is plainly required by the context, shall have the following meanings:

\* \* \*

(4) ‘State employe’ shall mean any person holding a state office, not elective, under the state of Ohio, or employed and/or paid in whole or in part by the state of Ohio in any capacity whatsoever. But the term ‘state employe’ shall not include those persons who come within the provisions of the state teachers’ retirement system, as provided for in the General Code (Sections 7896-1 to 7896-63). \* \* \*

(5) 'Member' shall mean any person included in the membership of the retirement system as provided in this act. \* \* \*

(7) 'Employer' for the purposes of this act shall mean the state of Ohio, county, municipality, park district, conservancy district, health district or public library, as the case may be.

\* \* \* " (Emphasis mine.)

Section 486-33a:

"The state employes retirement system created by section 486-33, General Code, shall hereafter be known as the public employes retirement system, and the state employes retirement board shall hereafter be known as the public employes retirement board. \* \* \* Beginning July 1, 1938, in addition to the present membership of said retirement system, there shall be included therein all county, municipal, park district, conservancy, health and public library employes as defined herein, and such county, municipal, park district, conservancy, health and public library employes, except as otherwise provided herein, shall have all the rights and privileges and be charged with all the duties and liabilities provided for in the laws relating to said retirement system as are applicable to state employes. \* \* \* " (Emphasis mine.)

Section 486-33c:

"For the purposes of this act, 'county or municipal employes' shall mean any person holding a county or municipal office, not elective, in the state of Ohio, and/or paid in full or in part by any county or municipality in any capacity whatsoever. 'Park district employe' shall mean any person holding a park district office not elective in the state of Ohio or any person in the employ of a park district and/or paid in full or in part by a park district created by law. 'Conservancy employe' shall mean any person holding a conservancy office not elective in the state of Ohio and/or paid in full or in part by a conservancy district. For the purposes of this act a sanitary district shall be considered a conservancy district and employes of any such sanitary district shall be considered as conservancy employes, and the retirement board shall have the authority to grant to any such employes who were employes of any such sanitary district between the dates of April 18, 1938, and June 30, 1938, both dates inclusive, all rights and privileges of original membership, including a period of three months after the effective date of this act during which such employes may be permitted to claim exemption from participation in the retirement system. 'Health employe' shall mean any person holding a health office not elective, in the state of Ohio and/or paid in full or in part by any county, municipal or other health district created by law. 'Public library employe' shall mean any person holding a position in a public library, in the state of Ohio, and/or paid in full or in part by the board of trustees of a public library. \* \* \* The board shall have authority to exempt from compulsory membership in the retirement system classes or groups of employes engaged in work of

a temporary, casual or exceptional nature, but individuals in any such class or group may become members by making application therefor, subject to the approval of the retirement board; provided, however, that any county, municipal, park district, conservancy, health or public library employe who is, or who becomes, a member must continue such membership as long as he is such employe, even though he may be in or transferred to an exempted class or group. In all cases of doubt the retirement board shall determine whether any person is a county, municipal, park district, conservancy, health or public library employe as defined herein, and its decision shall be final. \* \* \*

As above pointed out, while a metropolitan housing authority is a body corporate and politic created to perform functions declared by the Legislature to be of a public nature, it is clear that such an authority is not included among those political subdivisions or public organizations enumerated in the Public Employee's Retirement Law, which by its terms limits membership in such Retirement System to public employes (as defined by Section 486-33c, supra), employed by the state, a county, municipality, park district, conservancy district, sanitary district, health district, or a public library. And there being nothing in the law authorizing membership of other employes public, quasi-public or private, your third question must be answered in the negative.

(4) A. The general powers of metropolitan housing authorities are expressly and specifically enumerated in Section 1078-34, General Code, which reads as follows:

“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 districts or (3) accomplishing a combination of the foregoing, shall have the following powers in addition to others herein specifically granted:

a. To sue and 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 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 re-planning 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 pledges of its revenues, or in any other manner; to invest any funds held in reserve 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.”

Sections 1078-34a and 1078-35, General Code, grant to metropolitan housing authorities the power of eminent domain.

It is unnecessary specifically to catalog just what powers and authority such a housing authority may exercise. Suffice it to say, I find nothing in Sections 1078-34, 1078-34a or 1078-35, supra, or any other section of the General Code, authorizing a metropolitan housing authority to expend “its funds”, for moving, paying rent, repairing buildings, and for like purposes for tenants who were occupying “buildings on a site owned by the P. W. A. Housing Division” and in which such an authority has no interest other than to have the United States Housing Authority build a project. It may be

argued that a metropolitan housing authority may expend, as a part of the consideration or purchase price for a parcel of real estate, which it has lawfully determined to acquire, in order that it may carry into effect the express power granted to it in paragraph b, Section 1078-34, *supra*, expressly authorizing it "to engage in, or to contract for, the construction, reconstruction, alteration, and/or repair of any housing project or part thereof," such of the funds under its control for the purposes mentioned in question (4) A. of your request. That is, it might be urged, for example, that there is no difference between paying \$6,000.00 for real estate which such an authority may determine lawfully to acquire directly to the owner of such real estate, or paying \$5,500.00 to such owner and expending \$500.00 for moving the goods of such owner, repairing the house into which he is to move, or for paying so many months rental for such house as may be agreed upon. The ultimate result would be the same.

Likewise, as a part of the consideration of the contract, the funds of such an authority may lawfully be expended to effectuate the taking over or leasing or managing "any housing project or undertaking constructed or owned" by the Federal Government. But your question (4) A. presents no such situation. Your question, as I understand it, is: May a metropolitan housing authority, under the laws of this state, use public moneys or funds, which it is authorized to expend for the purposes set forth in the Housing Authority Law, for the purpose of clearing certain lands owned by the P.W.A. Housing Division in order that the United States Housing Authority may construct a housing project on such lands. And to this question, my answer again is in the negative.

As was stated in Opinion No. 849, rendered to you under date of July 7, 1939 (Opinions Attorney General 1939, Vol. II, p. 1131), in which the powers and authority of the State Bridge Commission of Ohio, and the limitations thereon, were considered:

"That statutory officers, boards and commissions have such powers, *and only such powers*, as are expressly conferred by law and impliedly necessary to carry the express powers into effect, is so well settled in this state that the citation of authority is unnecessary. Probably no principle of public law is better settled. And it is equally well settled that when the question to be determined is concerned with the existence or non-existence of the power and authority to expend public moneys any doubt as to the legality and propriety of such expenditures must be resolved against the existence of the power. The third branch of the syllabus in *State ex rel v. Pierce, Auditor*, 96 O. S. 44 (1917), reads:

'In case of doubt as to the right of any administrative board to expend public moneys under a legislative grant, such doubt must be resolved in favor of the public and against the grant of power.'

See also *Peters v. Parkinson*, Treasurer, 83 O. S. 36 (1910).

While it might be urged that, since the funds derived from tolls are not raised by taxation and are not in the state treasury, they are not public moneys and therefore the above rule has no application, such a contention is not tenable. Quite obviously the state and the public have a very direct and substantial interest in these funds. \* \* \*

With reference to the character, powers, authority and duties of the Bridge Commission and a metropolitan housing authority, the analogy is complete.

It has been suggested by counsel for certain of the metropolitan housing authorities that paragraph d of Section 1078-35, *supra*, to the effect that a housing authority may "do all things necessary or convenient to carry out the powers" *expressly* given in the Housing Authority Law, serves to enlarge the powers of such an authority to the extent that the members thereof may, in the exercise of their discretion, do and perform such acts and functions as they deem expedient and beneficial. With this contention I cannot agree. In the first place, it will be noted that the paragraph just quoted limits the actions of an authority to the "powers *expressly* given" by statute. The word "necessary" may not be read out of the paragraph in question, and while the phrase is "necessary or convenient", the word "convenient" must be read with and in the light of the word "necessary". It is, of course, well settled that the word "or" may be read "and", and vice versa, whenever the change is necessary to give a statute or phrase sense and effect, or to harmonize its different parts. See *Black on Interpretation of Laws*, page 228; *Crawford's Statutory Construction*, page 322. "Or" should be read "and", therefore, in order that the word "necessary" may not be meaningless.

While certain of the statements of the great Chief Justice have been said to be clichés, I know of no better way to state the principle here applicable than to paraphrase the rule defining the constitutional powers of Congress laid down by Chief Justice Marshall in *McCulloch v. The State of Maryland* and others, 4 *Wheaton* 316, 421 (1819), in which the "necessary and proper" clause of the Federal Constitution was construed:

"Let the end be legitimate, let it be within the scope of the Constitution (statutes), and all means which are appropriate, which

are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the Constitution (statutes), are Constitutional (lawful).”

It has also been suggested that the first paragraph of Section 1078-30, supra, stating the reasons which the Legislature deemed to make it expedient to enact the Housing Authority Law, serves to enlarge the powers of a metropolitan housing authority. This paragraph is but a preamble setting forth the reasons for and the purpose of the law. As to the nature and effect of a preamble, the law is well stated at pages 253 and 254 of Black on Interpretation of Laws, as follows:

“The preamble to a statute is an introductory clause which sets forth the reasons which have led to the enactment, by reciting the state of affairs intended to be changed, the evils designed to be remedied, the advantages sought to be secured or promoted by the new law, or the doubts as to the prior state of the law which it is meant to remove. It is thus an exposition of the motives of the legislature, and in some sense a key to the meaning of the terms which they have employed to express their avowed intention. But it is not an essential part of the statute, and is by no means universally found in modern laws. \* \* \* The preamble is no part of the enactment; it does not proprio vigore make the law; in itself it has no constraining force upon the citizen or subject. But nevertheless it is for some purposes, and to a limited extent, a part of the statute. More especially, if it be referred to in the enacting clause to identify the subject matter of the law, or to explain the motive or the meaning of the legislature, it can be used for this purpose.

But while the uses of the preamble in cases of doubt or ambiguity are admitted, it is equally well settled that if the enactment clause is clear, sensible, and explicit, it cannot be controlled in its operation, nor extended or abridged by any considerations drawn from the preamble; for, in such cases, there is no room for construction and no need to resort to the preamble. \* \* \* ”

See also Crawford's Statutory Construction, page 355.

It may well be that the moving of the persons referred to in paragraph (4)A. of your letter, the paying of their rent, the repairing of the buildings into which they moved, et cetera, were extremely laudable acts, but, as said by Mr. Justice Sutherland in *Carter v. Carter Coal Company*, 298 U. S. 238, 291, 80 L. Ed. 1160 (1936), “nothing is more certain than that beneficent aims, however great or well directed, can never serve in lieu of constitutional power.” See also *Morrill, Collector, v. Jones*, 106 U. S. 466, 27 L. Ed. 267 (1882).



For the reasons above set forth, I am constrained to hold that expenditures such as those about which you inquire in paragraph (4)A. are not authorized.

(4)B. From what has been said, 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.

(4) C. Coming now to the question of "Renting and Showing Motion Picture Films of projects", while it is difficult to see the need of such form of advertising in view of the fact that housing projects are supposedly constructed to furnish proper sanitary accommodations for families of low incomes, it is my opinion that if this method of advertising be used for the purpose of procuring tenants in a project being operated by a metropolitan housing authority, it would be lawful. I am equally of the opinion, however, that the running and showing of such films for the purpose of enlightening the public and inculcating a desire on the part of the public for bigger and better projects would be unlawful. I find nothing in the Housing Authority Law investing an authority of the kind under consideration with the power to educate the public along such promotional lines.

It has been argued that "it is legal for a Board of Education to use moving pictures in its educational program." The complete answer to this argument is that such use has been expressly authorized by the Legislature in Section 871-48a of the General Code, as well as in the current appropriation bill and in other appropriation bills. The very fact that the Legislature saw fit *expressly* to authorize boards of education to use what is termed "visual education" is in itself an almost complete negation of the exercise of the general use of motion picture films by a metropolitan authority for educational or propaganda purposes, since there is no express legislative grant therefore.

(4) D. Little difficulty is experienced in answering the question asked in paragraph (4) D. for the reason that it is patent that the necessity of appraising land in order to determine what is a proper purchase price, is a proper step in the purchase of such land. Authorities of the kind here involved are authorized to purchase land as well as to acquire land by eminent domain. Manifestly, when buying land it is essential to know the fair value

thereof and the power to expend public funds for the purpose of ascertaining the true worth of real estate about to be purchased is certainly a necessary and convenient power to be implied from the express power to purchase.

(4) E. The same reasoning applies to the legality of paying fees to real estate agents for securing tenants in projects erected by metropolitan housing authorities. 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.

(4) F. The same answer to the question asked in paragraph (4) F. of the request must be given as was contained in the answer to question (4) C., and for the same reasons. As above pointed out, metropolitan housing authorities were created not to educate the public along such lines as they deemed proper, but to construct, lease and manage projects for slum clearance.

(4) G. Whether or not a metropolitan housing authority may employ public accountants to audit the books of such an authority is answered in Section 1078-36, *supra*, which provides that such books shall be inspected and approved by your bureau. It is a well settled principle of statutory interpretation and construction that when a statute prescribes the mode or method of doing a certain action, such method is not only an authorization but is a limitation as well. That is to say, the Legislature having prescribed that books of an authority of the kind here in question shall be audited by the Bureau of Inspection and Supervision of Public Offices, it must be presumed that the Legislature intended such books to be audited by the bureau and by the bureau alone. In this connection see *Frisbee Co. v. East Cleveland*, 98 O. S. 266, 120 N. E. 309 (1918), and *Botany Worsted Mills v. United States*, 278 U. S. 282, 49 S. Ct. 129, 73 L. Ed. 378, 385 (1928).

(4) H. Question (4) H. must be answered in the affirmative. 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. Certainly employing a detective agency is an appropriate method toward accomplishing a lawful end, and whether a metropolitan housing authority determines to have its property guarded by a detective agency or by the direct employment of guards is a matter within the discretion of such authority.

(4) I. As to the question of purchasing uniforms for employes and guards, I have no hesitancy in answering this question in the affirmative. The customary and beneficent results of uniforming employes of the character about whom you inquire is generally recognized as to both public and private property.

In Opinion No. 3501, Opinions, Attorney General, Vol. III, 1938, p. 2432, it was held that:

“The state bridge commission has authority to expend its funds for the purchase of uniforms for attendants. Opinion No. 2711 reversed in part.”

The same conclusion was reached by me in Opinion No. 849, Opinions, Attorney General, 1939, Vol. II, p. 1121. As above pointed out, the bridge commission and a metropolitan housing authority are public bodies of like nature, and the two opinions just cited, therefore, are directly in point.

(4) J. It is my opinion that a metropolitan housing authority is not authorized to expend public funds for traveling expenses to conventions.

In Opinion No. 849, Opinions, Attorney General, 1939, Vol. II, p. 1131, it was held as follows in the second branch of the syllabus:

“2. The state bridge commission cannot legally expend funds derived from tolls collected for transit over the bridges operated by such commission for the purpose of paying dues in the national toll bridge association or paying the expenses incurred in the attendance of commission members at conventions of such association.”

In the opinion proper it was said as follows:

“Your question as to the lawfulness of an expenditure of funds under the control of the bridge commission ‘for dues in the National Toll Bridge Association’ is not without difficulty, and were it not for the rule of law applicable to public expenditures and the holding of the Supreme Court in the case of *State ex rel v. Semple*, 112 O. S. 559 (1925), I would be inclined to hold such an expenditure legal. However, in view of the *Semple* case, I am constrained to resolve any doubt against this expenditure. \* \* \*

In so far as using the funds in question ‘to pay the expenses of the commission to attend conventions of that association’ is concerned, I have no difficulty whatever in answering this question in the negative. Certainly, if it is not lawful to pay dues for the commission in this association, *a fortiori* the expense of the individual members thereof incurred in attending the association’s conventions may not be paid from these funds. Moreover, the Legislature has expressly limited the members of the commission to receiving only such expenses as are *necessary* in the discharge of

their duties, it being provided in Section 1084-6, General Code, that each member might receive in addition to his salary 'the necessary expenses incurred in the discharge of the duties of his office.' It is not such expenses as might be 'necessary and proper' or 'necessary and incidental' but necessary, i. e., unavoidable, indispensable, that which cannot be dispensed with. See New Century Dictionary. And it is significant that while in the same section the commission is authorized 'to make and enter into all contracts and agreements necessary or incidental to the performance of its duties', only such expenses may be paid as are *necessary*."

Since it is expressly provided in the last paragraph of Section 1078-30, General Code, that:

" \* \* \*

All members of such housing authority shall serve without compensation but shall be entitled to be reimbursed for all *necessary* expenses incurred. \* \* \* " (Emphasis mine.)

the pertinency of Opinion No. 849, supra, is obvious.

In addition, your attention is invited to Opinion No. 1189, rendered to your Bureau under date of September 13, 1939, Opinions Attorney General, 1939, Vol. II, p. 1741, in which it was held:

"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' and the 'American Federation of Housing Authorities'."

Since this opinion has been published, I deemed it unnecessary to quote therefrom, and content myself with suggesting that I can see no difference between expending public funds for payment of membership fees in such associations as the National Association of Housing Officials or the American Federation of Housing Authority from spending such funds for the purpose of paying traveling expenses in attending such conventions, or conventions of like character.

Of course, nothing herein should be construed as preventing the expenditure of funds of the kind here under consideration to cover necessary traveling expenses for the purpose of conferring with public officials or others in the carrying on of the business of the authority.

(4) K. As to the last question asked in your request, your attention is invited to the provisions of Paragraph c, Section 1078-34, above quoted, to the effect that a metropolitan housing authority may borrow money or accept grants or other financial assistance from the Federal Government in aid of

any housing project, and to such ends "comply with such conditions and enter into such mortgages, trust indentures, leases or agreements as (might) be necessary, convenient or desirable". I am informed that as a condition to such Federal assistance, it is required that the compensation and expenses of United States Housing Authority Engineers, Auditors, etc., are required to be paid by the local authority, and it seems to me that the language of paragraph c, just referred to, amply warrants such expenditures.

Indeed, in the Terms and Conditions, U. S. H. A. Form 300, it is expressly respectively provided in Part I, Section 1, par. (h), and Part I, Section 2, as follows:

" \* \* \*

(h) *Architectural or Engineering Supervision and Inspection.*—If the local authority shall not provide and maintain competent and adequate architectural or engineering supervision and inspection of the development of the Project;"

"2. *Expenses.*—The sole obligation of the USHA under the Loan Contract will be to purchase Bonds, and it will be under no obligation to pay any costs, charges, or expenses incident to compliance with any of the duties or obligations of the Local Authority."

while the last paragraph of the Loan Contract between the Toledo Metropolitan Housing Authority and the United States Housing Authority, furnished with your request, reads:

"9. The USHA will provide such on-the-site supervision, during the construction of the Project, as it seems adequate to assure the development of the Project in accordance with the United States Housing Act of 1937 and this loan contract. The local Authority agrees to reimburse the USHA for the actual cost of the USHA providing such supervision."

For all of which reasons, and both upon principle and the authorities cited, it is my opinion that:

1. A metropolitan housing authority created and existing under the Housing Authority Law (Secs. 1078-29 to 1078-60 G. C., inc), being neither a "political subdivision", "taxing authority", "bond issuing authority" or "taxing unit" as these entities are defined by Section 5625-1, General Code, is not in anywise controlled or restricted by the Uniform Tax Levy Law (Sec. 5625-1, et seq., G. C.), and, therefore, has full and final authority as to the preparation of its budget and the expenditure of public funds under its control, subject to the limitation, of course, that such funds may only be

spent to carry into effect the powers and authority expressly granted by statute, and the powers and authority impliedly necessary and convenient to carry into effect the powers expressly granted.

2. A metropolitan housing authority is not, under the law of Ohio, required to purchase supplies, coal, et cetera, not used in the construction of a housing project, by public bids.

3. Employes of a metropolitan housing authority are not made members of the Public Employes Retirement System by law; nor are they eligible voluntarily to become members of such system by application or otherwise.

4. 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 expenditures of public funds, as are expressly granted by statute, and such powers as may be necessary and convenient (Sec. 1078-34, G. C., par. d) to carry the powers expressly granted into effect.

5. In order to give a statute, or any part or phrase thereof, sense and effect, or to harmonize the different parts thereof, the word "or" may be read "and", and vice versa.

6. The preamble of a statute merely sets forth the reasons for its enactment and expositis the motives of the Legislature for its passage. It is no part of the enactment and may only be resorted to in cases of doubt or ambiguity for the purpose of ascertaining the meaning of the statute. It may in no case enlarge the wording or meaning of a statute which is free from ambiguity, especially a statute conferring powers and authority upon a statutory board, commission or officer with reference to the expenditure of public funds under its or his control.

7. Under the Housing Authority Law of Ohio (Secs. 1078-29 to 1078-60, G. C., inc.), a metropolitan housing authority may not lawfully expend public funds under its control for the following purposes:

(1) Moving tenants, and paying rent for and repairing buildings into which tenants are moved from houses and buildings on a site owned by a P. W. A. Housing Division, in which such housing authority has no other interest than to have the United States Housing Authority construct a slum clearing project.

(2) A dedication program, that is, to celebrate or memorialize the

construction, leasing or acquisition for management of a slum clearance project.

(3) Renting and showing motion picture films for educational or propaganda purposes, although motion pictures may be used within reasonable discretion to obtain tenants for projects constructed, leased or otherwise acquired or managed by such an authority.

(4) Employing a professional publicity man for educational purposes.

(5) Employing public accountants, certified or otherwise, to audit the books of the authority, since in Section 1078-36, General Code, the Legislature has prescribed that the books of such an authority shall be subject to the inspection and approval of the Bureau of Inspection and Supervision of Public Offices.

(6) Paying public funds to cover the traveling and other expenses of the members or employes of such an authority incurred in attending a convention.

8. Under the Housing Authority Law (Secs. 1078-29 to 1078-60, G. C., inc.), a metropolitan housing authority may lawfully expend public funds under its control for the following purposes:

(1) Compensating real estate agents for appraising and purchasing land.

(2) Compensating real estate agents for securing tenants for stores owned, leased or managed by such authority.

(3) Employing a detective agency to guard property owned, leased or managed by such authority.

(4) Purchasing uniforms for guards or employes serving in and about such property.

(5) When so required by the United States Housing Authority, in contracts extending Federal aid or grants, or leases of Federal housing projects, paying the compensation and expenses of United States Housing Authority Engineers, Auditors, et cetera, for time spent while lawfully engaged in performing the duties of their office or position, with such housing authority (Sec. 1078-34, G. C.).

Respectfully,

THOMAS J. HERBERT,  
Attorney General.