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HOUSING FOR VETERANS ACT, EMERGENCY—AM. HB 167, 100 GA—BOARD OF COUNTY COMMISSIONERS AUTHORIZED TO CONTINUE OPERATION OF TEMPORARY EMERGENCY HOUSING UNTIL DECEMBER 31, 1955—NO OBLIGATION TO DO SO—BOARD AUTHORIZED TO SELL ANY OR ALL OF PROPERTY ACQUIRED IN OPERATION OF TEMPORARY EMERGENCY HOUSING—PROCEEDS OF SALE—SHOULD BE DEPOSITED IN GENERAL REVENUE FUND OF COUNTY—SECTION 1078-70 GC.

## SYLLABUS:

While a board of county commissioners is authorized by the Emergency Housing for Veterans Act, as amended by House Bill No. 167 of the 100th General Assembly, to continue the operation of temporary emergency housing for veterans until December 31, 1955, it is not obligated to do so and, under the terms of Section 1078-70, General Code, the board is authorized to sell, at such time as it determines to be proper, any or all of the property acquired in the operation of temporary emergency housing for veterans and deposit the proceeds of such sale in the general revenue fund of the county.

Columbus, Ohio, June 16, 1953

Hon. Robert L. Perdue, Prosecuting Attorney  
Ross County, Chillicothe, Ohio

Dear Sir:

I have before me your request for my opinion, which reads as follows:

“I have been asked by the County Commissioners of Ross County to obtain an opinion from you concerning the following problem:

“In 1946 the County Commissioners, using an appropriation by the State of Ohio and under the authority of Section 1078-62 of the Ohio General Code, purchased twenty (20) house trailer units to provide emergency housing for veterans. These trailers were placed in an area provided for in the City Park in the City of Chillicothe, Ohio. The commissioners now deem it expedient to sell these trailer units at public sale and to place the proceeds of such sale in a general revenue fund of the County pursuant to Section 1078-70 of the General Code. The specific questions for your consideration are:

“(1) Do the Commissioners have the authority to sell these trailer units at public sale and place the proceeds in the general

revenue fund of the County even though there is a shortage of housing for veterans in this particular County?

“(2) Do the Commissioners have the power and right to sell these trailer units at public sale prior to the expiration of the Emergency Housing for Veterans Act even though housing shortage still exists?

“(3) Who determines when a housing shortage ceases to exist within the meaning of this Act?

“I am aware of an opinion of your predecessor, Attorney General’s Opinion No. 1197, dated 1946. There seems to be sufficient ambiguity in this opinion to make it desirable to obtain a recent opinion from your office with reference to the power of the Commissioners to sell the emergency housing units acquired under the authority of Sections 1078-62 et seq. of the General Code.”

The Emergency Housing for Veterans Act, Sections 1078-62 to 1078-71, General Code, was passed in 1946. By the terms of Section 1078-68, Sections 2, 3 and 4 of the Act, Sections 1078-63, 1078-64 and 1078-65, expired on December 31, 1949. By the terms of Section 1078-69, Sections 1078-66 and 1078-67 were originally scheduled to expire on December 31, 1951. Since Section 1078-66 is the section which authorizes the county commissioners to rent, manage and control such facilities, it is clear that the General Assembly, in 1946, contemplated that there no longer would be any temporary emergency housing shortage for veterans after December 31, 1951 in *any* of the counties of Ohio. Thus, under the Act as originally passed, all such facilities would have been compelled to cease operation on December 31, 1951.

It is equally clear, however, that although the General Assembly *authorized* such continued operation until December 31, 1951, it did not *compel* such or attempt to declare, as a matter of law, that a temporary emergency housing shortage for veterans (1) existed in any specific county, or (2) would continue to exist in such specific county until December 31, 1951. As stated in Opinion No. 1197, Opinions of the Attorney General for 1946, page 660, at page 665:

“For the purpose of accomplishing what was intended, the county commissioners are given a considerable measure of discretion. \* \* \*”

Such discretion is evidenced throughout the Act. Discretion would have to be exercised by the county commissioners in determining initially whether to make application to the Treasurer of State for a portion of the

moneys appropriated by Section 1078-62; in determining what portion of such moneys to expend under the terms of Section 1078-63; in determining what housing facilities to erect, purchase or lease and what rules to make to govern the letting in accordance with the authority of Section 1078-66; and, finally, in determining when to sell the property so acquired.

The authority of the commissioners to sell is contained in Section 1078-70, General Code, which reads:

“The county commissioners of any county which has acquired property in accordance with provisions of this act may sell any or all of said property so acquired and deposit the proceeds of such sale in the general revenue fund of the county.”

Thus, the Act, as originally passed, clearly *authorized* the commissioners to sell any housing facilities so acquired without waiting until the compulsory termination of the entire program on December 31, 1951. In the 1946 opinion the then Attorney General held, and I believe correctly so, that since Section 1078-70 provided for the deposit of the proceeds of the sale in the general fund of the county, and since the Act contained no authority for the use of such general fund for the acquisition of other facilities, the commissioners were not authorized to sell the houses or buildings acquired under the provisions of such Act for the purpose of re-investing the proceeds of such sales in other properties to be used for the purposes of the Act.

I believe the statement of the Attorney General in the 1946 opinion with reference to the right of the commissioners to sell such facilities and place the money in the general fund of the county is free from any ambiguity. I quote from such opinion at pages 668 and 669:

“(5) As I have already indicated, it appears that the authority given to sell one or more of the properties so acquired and to deposit the proceeds in the general revenue fund was intended to be exercised after the emergency calling for the acquisition and use of such properties has passed and there is no longer need for providing temporary emergency housing for the veterans. The general assembly did not, however, see fit to limit the commissioners in the exercise of their discretion, and it is conceivable that a county might use the funds allotted to it in the acquisition of lands and buildings, and immediately sell them in disregard of the trust committed to it, and to its own enrichment. If too much discretion has been committed to the county commissioners in this respect, the responsibility must rest with the general assembly.”

The only changes in the Act since 1946 have been by way of amendments of Section 1078-69. The 99th General Assembly, in 1951, amended this section to provide that Sections 1078-66 and 1078-67 should expire on December 31, 1953 instead of on December 31, 1951, and the present 100th General Assembly only recently, by the passage of House Bill No. 167, again extended the expiration date to December 31, 1955.

While such amendments now *authorize* the commissioners to continue temporary emergency housing for veterans until December 31, 1955, obviously it does not *compel* them to do so. The question of whether to terminate the use of the facilities in question and, under authority of Section 1078-70, General Code, sell the same and place the proceeds of the sale in the county treasury is a matter solely for the sound judgment and discretion of the county commissioners.

I believe that the foregoing fully answers the specific questions you have propounded. Your first and second questions as to the powers of the commissioners to sell "even though there is a shortage of housing for veterans in this particular county" *assumes a fact*, the determination of which, under the law, is vested in the county commissioners. If they determine, in accordance with Section 1078-70, General Code, to sell at this time, it must be assumed that they found, as a matter of fact, that a temporary emergency housing shortage for veterans no longer exists in Ross County such as to warrant a continuation of such housing. But, in any event, as pointed out in the 1946 opinion, the General Assembly did not see fit to limit the commissioners in the exercise of their discretion as to when to sell such housing facilities.

In conclusion, it is my opinion that while a board of county commissioners is authorized by the Emergency Housing for Veterans Act, as amended by House Bill No. 167 of the 100th General Assembly, to continue the operation of temporary emergency housing for veterans until December 31, 1955, it is not obligated to do so and, under the terms of Section 1078-70, General Code, the board is authorized to sell, at such time as it determines to be proper, any or all of the property acquired in the operation of temporary emergency housing for veterans and deposit the proceeds of such sale in the general revenue fund of the county.

Respectfully,

C. WILLIAM O'NEILL  
Attorney General