

2659.

TAXES AND TAXATION—SALES TANGIBLE PERSONAL PROPERTY TO METROPOLITAN HOUSING AUTHORITIES—NOT SUBJECT TO OHIO RETAIL SALES TAX—CHARITABLE ORGANIZATION—SEE SECTIONS 1078-29 ET SEQ. G. C.

SYLLABUS:

Sales of tangible personal property to metropolitan housing authorities organized and existing pursuant to Section 1078-29, et seq., General Code, are not subject to the imposition of the Ohio retail sales tax.

COLUMBUS, OHIO, June 29, 1938.

The Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN: Your letter of recent date is as follows:

"The Tax Commission desires your immediate formal opinion regarding the taxability of sales to housing authorities, existing by virtue of the Federal Housing Bill and created under authority of Sections 1078-29 to 1078-44, General Code of Ohio, the Ohio statutes being enabling legislation adopted to take advantage of the Federal Housing Bill.

Housing Authorities have been created in several of the larger Ohio cities, principally Youngstown, Columbus, Dayton, and Cleveland. They are now embarking on a building program and the question of taxability of sales to these authorities has frequently been brought to the attention of the Tax Commission. We therefore ask your formal opinion on this subject."

Sections 1078-29 to 1078-44, General Code, provide for the organization and for the powers and functions of metropolitan housing authorities. Section 1078-30, General Code, summarizes the purposes of such authorities. The opening paragraph of such section reads as follows:

"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 area 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."

The foregoing section authorizes the State Board of Housing to order the organization of a metropolitan housing authority, the territorial limits of which shall be defined by resolution of such State Board of Housing, which shall be less than that of the county within which it is situated. The State Board is required to adopt a resolution declaring that there is need for a housing authority when it shall find unsafe and unsanitary conditions existing in a specified area, as therein set forth. Such section provides that a metropolitan housing authority shall consist of five members, residents of the territory embraced in such housing district, one appointed by the probate court, one by the court of common pleas, one by the county commissioners and two by the mayor of the most populous city in such territory. It is further provided that all members of such housing authority shall serve without compensation, being entitled to their necessary expenses only.

The following sections of the General Code, prescribing the powers and duties of metropolitan housing authorities with respect to providing housing for persons of low income and to correct unsafe and unsanitary conditions, need not be elaborated upon in this opinion. Comment should, however, be made upon the fact that all receipts by metropolitan housing authorities in the way of rent or otherwise and all expenditures are required by Section 1078-38, General Code, to be accounted for in an annual report to the State Board of Housing. This section further provides that all moneys received in excess of operating expenditures shall be devoted to meeting interest and principal requirements of indebtedness incurred by such authority and that from the excess receipts there shall be set aside such fund as may be deemed proper to cover repairs, depreciation and reserves and that any balance remaining over shall be applied to the reduction of rentals thereafter falling due.

The original act relating to metropolitan housing authorities comprised Sections 1078-29 to 1078-41, General Code. These sections have been supplemented by a later act, comprising Sections 1078-42 to 1078-60, General Code, conferring additional powers on such authorities consistent with their general purpose as hereinabove commented upon.

Section 1078-42, General Code, imposes certain duties with respect to rentals and tenant selection. Housing authorities are not permitted to accept any tenants in any dwelling in a housing project which have an aggregate annual income in excess of certain amounts determined by the authority to be necessary to enable such persons to secure safe, sanitary and uncongested dwelling accommodations and an adequate standard of living. Dwelling accommodations may be rented or leased only at rentals within the financial reach of persons who lack the amount of income so determined, and a greater number of rooms may not be rented or leased than are deemed necessary to provide safe and sanitary accommodations without overcrowding.

The section of the Retail Sales Tax Act pertinent to a determination is Section 5546-2, General Code, which section provides inter alia:

“The tax hereby levied does not apply to the following sales:

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10. Tangible personal property sold to charitable and religious organizations.”

If metropolitan housing authorities here under consideration may be said to be charitable organizations within the meaning of the term as used in Section 5546-2, supra, sales of tangible personal property to such authorities are not subject to the imposition of the sales tax. The purposes and functions of these authorities, as hereinabove briefly commented upon, are unquestionably public and designed for the relief of the poor. The persons to be benefited by such authorities are vague and uncertain until selected as falling within the provisions of Section 1078-42, hereinabove noted. It must be remembered, however, that the purpose of the housing authority law in benefiting the persons who come within its provisions is stated by the General Assembly necessary in the public interest for the elimination of congested and unsanitary housing conditions which are a menace to the health, safety, morals and welfare of the public in general. The following citations from Words and Phrases, First Edition, Volume 2, page 1083, are accordingly in point:

“An act, to be ‘charitable’ in a legal sense, must be designed for some public benefit to an indefinite and vague number; that is, the persons to be benefited must be vague, uncertain, and indefinite, until they are selected or appointed to be the particular beneficiaries of the trust for the time

being *Franta vs. Bohemian Roman Catholic Cent. Union*, 63 S. W. 1100, 1101, 164 Mo. 304, 54 L. R. A. 723, 86 Am. St. Rep. 611; *Burke vs. Roper*, 79 Ala. 138, 142.”

“A charitable use is one of a public nature, tending to the relief or benefit, in some shape or other, of the community at large, not restricted to the mutual aid of a few, as in a mutual benefit association. *Babb vs. Reed* (Pa.) 5 Rawle, 151, 158, 28 Am. Dec. 650.”

“The general relief of the poor is a charitable use. ‘Assistance of the poor is required not only by the moral religious duty of every citizen, but by a sound public policy, and a regard for the interests of the whole community. A gift to the poor generally, or to the poor of a particular town, parish, age, sex, or condition, is a good charitable gift. It is the number and indefiniteness of the objects, and not the mode of relieving them, which is the essential element of a charity. It makes little difference to the contributors, the poor, or the public, and none in the nature of the charity, what is the mode of distributing relief. In every act of relieving the poor, by whatever means, the immediate benefit is to the individual. Hunger, nakedness, and disease are personal, and the relief is also personal, and in one sense private. A good charitable use is public in the sense that it must be executed openly and in public, or in the sense of being so general and indefinite in its objects as to be deemed of common and public benefit.’ *Saltou Stall vs. Sanders*, 93 Mass. (11 Allen) 446, 454.”

In the American Law of Charities by Zollmann, pages 191 and 192, numerous illustrations are cited as to gifts which have been held to be for charitable purposes. The following language is particularly pertinent to the question here under consideration:

“A gift for the erection and control of model tenements to be rented out to worthy tenants in order to improve, by example and competition, the sanitary conditions of other tenements whose accommodations are by private interest limited to mere obedience to the compulsions of law, is another example.”

In consideration of the foregoing, there is little doubt in my mind but that the entire function and purpose of these local organizations are essentially charitable and it accordingly follows that sales of

tangible personal property to metropolitan housing authorities organized and existing pursuant to Section 1078-29, et seq., General Code, are not subject to the imposition of the Ohio retail sales tax.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

2660.

WORKS PROGRESS ADMINISTRATION PROJECTS—
COUNTY COMMISSIONERS AND VILLAGES AUTHORIZED TO SPONSOR SIDEWALK, STREET AND STORM SEWER IMPROVEMENTS—IF VILLAGES PAY ANY PART OF COST—ACTION MUST BE BY ORDINANCE AND USUAL LEGISLATIVE STEPS.

SYLLABUS:

County commissioners and villages are authorized under Section 2450-2, et seq., General Code, to adopt resolutions providing that the board of county commissioners sponsor the construction of sidewalk, street and storm sewer improvement projects, within municipal corporations within their county as Works Progress Administration Projects, providing none of the cost of the same is paid by said villages. However, if the villages pay any part of such cost, the action of council providing for the expenditure of the money of the village on such project must be by ordinance and must follow the usual legislative steps required in such case.

COLUMBUS, OHIO, June 30, 1938.

HON. FREDERICK R. PARKER, *Prosecuting Attorney, Bryan, Ohio.*

DEAR SIR: This is to acknowledge receipt of your recent communication requesting my opinion, which reads as follows:

“I am handing you herewith the original letter from the Ohio Works Progress Administration, No. 1, together with the papers referred to in the letter including resolutions from six villages in this county.

Inasmuch as the opinion requested in this letter is of general interest throughout the state, I am passing this matter on to you and will appreciate your opinion in the premises.”