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1. SECTION 3735.31, R. C., AUTHORIZING A METROPOLITAN HOUSING AUTHORITY TO INVEST, MUST BE CONSTRUED WITH THE UNIFORM DEPOSITORY ACT, CHAPTER 135, R. C., UNDER WHICH INVESTMENT OF SUCH FUNDS IS LIMITED TO OBLIGATIONS OF THE UNITED STATES AND STATE OF OHIO.
2. SECTION 3735.31, R. C., DOES NOT AUTHORIZE A LOAN OF FUNDS TO A MUNICIPAL CORPORATION, AND SUCH A LOAN IS UNLAWFUL. §§ 3735.31, 135., R. C.

SYLLABUS:

1. Section 3735.31, Revised Code, authorizing a metropolitan housing authority to invest funds, must be construed together with the provisions of the Uniform Depository Act, Chapter 135., Revised Code, specifically Section 135.12, Revised Code, under which the investment of such funds is limited to obligations of the United States and of the State of Ohio therein enumerated.

2. Section 3735.31, Revised Code, authorizing a metropolitan housing authority to invest funds, does not authorize a loan of funds to a municipal corporation, and such a loan is not authorized by law.

Columbus, Ohio, November 21, 1961

Hon. Paul J. Mikus, Prosecuting Attorney
Lorain County, Elyria, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“The Lorain Metropolitan Housing Authority has available approximately \$135,000.00 in monies obtained from the sale of Veterans War Housing. This money is kept separate of any subsidized funds from Public Housing Administration.

“We wish to make inquiry as to regulation concerning such funds and also to ask if it is possible for the Lorain Metropolitan Housing Authority to make loan of a portion of such monies to the City of Lorain, Ohio. If such negotiation is possible kindly advise as to what requirements would be necessary.

“This money would be used by the City of Lorain towards their prorata portion of funds necessary to instituting a comprehensive plan for Urban Renewal in the City of Lorain.

"The transaction would be secured, by the City of Lorain, with collateral and interest payment and repayment for the entire sum so involved.

"Ohio Revised Code Sec. 3735.31 sets out the authority to make investments: The question we have is whether the aforementioned loan would be permissible under the interpretation of the word investment as mentioned in the statute."

Section 3735.31, Revised Code, in which the powers of a metropolitan housing authority are enumerated, contains, in division (B), the provision relating to the question here discussed, which states that such authority may:

"* * * invest any funds held in reserve or sinking fund or not required for immediate disbursements;" * * *"

I note that the money involved was obtained from the sale of Veterans War Housing and that it is kept in a fund separate from the funds the Lorain Metropolitan Housing Authority obtained as subsidy from the Public Housing Administration. It appears, therefore, that such money was received pursuant to division (C), Section 3735.31, Revised Code, that a metropolitan housing authority may:

"Borrow money or accept grants or other assistance from the federal government for or in aid of any housing project within its territorial limits; * * *"

An examination of Section 3735.31, Revised Code, fails to disclose a provision granting a metropolitan housing authority the power to loan any of its funds. Thus, the question arises whether or not the power to invest under such section may be considered as being synonymous with the power to loan the funds specified therein.

I think it is quite plain that as between the two terms, "to invest" is broader than "to loan," and that the former term therefore includes the latter. However, it is also clear that loaning money is accordingly a narrower form of investment, defined in Webster's Third International Dictionary as "to lend (money) at interest," while the verb "invest," in its primary meaning, is defined by the same authority as:

"To commit (money) for a long period in order to earn a financial return (invested his savings *in stocks, bonds, and real estate*)." Emphasis added).

Another aspect of the question here considered was dealt with by one of my predecessors in Opinion No. 2497, Opinions of the Attorney General for 1938, Volume II, page 1085, where it is stated in the syllabus:

“Funds coming into possession of a metropolitan housing authority created under sections 1078-30, et seq., of the General Code, are required to be deposited in accordance with the provisions of the Uniform Depository Act, Sections 2296-1, et seq., General Code.”

Section 1078-30, et seq., General Code, is now Section 3735.27, et seq., Revised Code, and Section 2296-1, et seq., General Code, is now Section 135.01, et seq., Revised Code. Said Opinion No. 2497, *supra*, cites, among other things, division (B) of Section 2296-1, General Code, which is now division (B) of Section 135.01, Revised Code, and reads:

“‘Subdivision’ means any county, school district, municipal corporation, except a municipal corporation or a county which has adopted a charter under Article XVIII or Article X, Ohio Constitution, having special provisions respecting the deposit of the public moneys of such municipal corporation or county, township, municipal or school district sinking fund, special taxing or assessment district, or other district or local authority electing or appointing a treasurer. In the case of a school district, special taxing or assessment, district, or other local authority for which a treasurer, elected or appointed primarily as the treasurer of a subdivision, is authorized or required by law to act as ex officio treasurer, the subdivision for which such a treasurer has been primarily elected or appointed shall be considered to be the ‘subdivision.’ Said term also includes a union or joint institution or enterprise of two or more subdivisions, which is not authorized to elect or appoint a treasurer, and for which no ex officio treasurer is provided by law.”

In Opinion No. 2497, *supra*, at page 1086, it is then stated:

“It is observed that the foregoing definition includes any ‘local authority electing or appointing a treasurer in this state,’ as well as any local authority for which any subdivision treasurer is authorized to act as ex-officio treasurer.

“Paragraph g of such Section 2296-1 however broadens the provisions of paragraph b of such section, *supra*, with respect to the necessity of a treasurer being elected or appointed for a local authority. Such paragraph g reads as follows:

“‘Treasurer’ includes the treasurer of state and the treasurer, or other officer exercising the functions of a treasurer, of any subdivision.’

“In view of the foregoing definition of the word ‘treasurer,’ it would appear that any local authority for whom any officer exercises the functions of a treasurer is a subdivision within the meaning of the term as used in the Uniform Depository Act.”

I note that in said opinion the concluding sentence of Section 1078-2, General Code, is cited as additional ground for the conclusion reached therein. This, it appears, was error, as shown by Section 3735.26, Revised Code, (successor to former Section 1078-2, General Code) which was then, as now, applicable to the original public housing act, passed by the General Assembly in 1932 (114 Ohio Laws, Part II, 78) but not to metropolitan housing authority, legislation for which was enacted in 1937 (117 Ohio Laws, 337). Accordingly, Section 1078-60, General Code, wherein metropolitan housing authorities are designated as “*bodies corporate and politic,*” (which designation is now incorporated in Section 3735.31, Revised Code), should have been cited, without affecting the result; for it is quite clear that the term “agencies and instrumentalities of the state,” used in Section 1078-2, General Code, is synonymous with “body corporate and politic,” which has been defined as:

“A social compact by which the whole people covenants with each citizen, and each citizen with the whole people, that all shall be governed by certain laws for the common good.”

See: *Ulich v. Kolesar*, 54 Ohio App., 309; *United States v. Maurice*, 26 Fed. Cas., 1216; *City of Durham v. Eno Cotton Mills*, 141 N.C., 215, 54 S.E. 453, 7 L.R.A. (N.S.) 321.

However, aside from the foregoing, I believe the conclusion reached in Opinion No. 1085, *supra*, is correct; and it follows, therefore, that metropolitan housing authorities are, with respect to the investment of funds, such as here considered, governed by the provisions of Chapter 135., Revised Code, specifically Section 135.12, Revised Code, which reads in pertinent part:

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“If, after compliance with sections 135.01 to 135.23, inclusive, of the Revised Code, requiring the deposit of public moneys in public depositories, the amount of public moneys of the state or of a subdivision is in excess of the aggregate amount of such deposits, and the board finds that such excess cannot be deposited in public depositories because of the limitations of such sections, such board may order the treasurer to invest any part of such

excess in bonds, notes, certificates of indebtedness, treasury bills, or other securities, issued by and constituting direct obligations of the United States, discount notes of the Federal National Mortgage Association, or obligations of the state of Ohio issued pursuant to the authority of section 2e, Article VIII, Ohio Constitution, provided that only such obligations as will mature or are redeemable at the option of the holder within two years from the date of purchase shall be eligible securities for such investments. The treasurer shall not invest in discount notes of the federal national mortgage association an amount in excess of ten per cent of the available funds for investing. Any order of the board directing the treasurer to invest public moneys shall specifically state the amount of public moneys to be invested and shall specifically describe the securities to be acquired.

“* * *

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The quoted part of Section 135.12, *supra*, speaks for itself, and needs no comment on my part.

It is accordingly my opinion as regards your specific question, and you are advised:

1. Section 3735.31, Revised Code, authorizing a metropolitan housing authority to invest funds, must be construed together with the provisions of the Uniform Depository Act, Chapter 135., Revised Code, specifically Section 135.12, Revised Code, under which the investment of such funds is limited to obligations of the United States and of the State of Ohio therein enumerated.

2. Section 3735.31, Revised Code, authorizing a metropolitan housing authority to invest funds, does not authorize a loan of funds to a municipal corporation, and such a loan is not authorized by law.

Respectfully,

MARK McELROY

Attorney General