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HOUSING AUTHORITY, METROPOLITAN—GIFT RECEIVED FROM FEDERAL GOVERNMENT—CERTAIN BUILDINGS ERECTED AS TEMPORARY HOMES FOR VETERANS—INCOME—MAY BE USED IN AID OF ANY HOUSING PROJECT—TERRITORIAL LIMITS—HOUSING AUTHORITY AUTHORIZED TO EXPEND SUCH INCOME TO ELIMINATE SLUM AREAS—PLANS TO CONSTRUCT HOUSING FOR FAMILIES OF LOW INCOME—O.A.G. 1949, OPINION 1315, PAGE 961, MODIFIED.

SYLLABUS:

A Metropolitan Housing Authority organized pursuant to Section 1078-29 et seq., General Code, which has received as a gift from the federal government, certain buildings which had been erected as temporary homes for veterans, may use the income arising therefrom, for and in aid of any housing project within its territorial limits, and such Housing Authority is authorized to expend such income in eliminating slum areas and in the preparation of plans for, and construction of housing for families of low income. Opinion No. 1315, Opinions of the Attorney General for 1949, page 961, modified.

Columbus, Ohio, December 31, 1952

Bureau of Inspection and Supervision of Public Offices
Columbus, Ohio

Gentlemen:

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

“We are in receipt of a request from the Columbus Metropolitan Housing Authority for an opinion from your office relative to the use of certain funds under their control, which were derived from gifts or grants received by the Columbus Metropolitan Housing Authority.

“Inasmuch as the problem before the Columbus Metropolitan Housing Authority is common to all such housing authorities in Ohio, the following question is submitted for your consideration, with a request that you furnish us your formal opinion in answer thereto:

“Can a metropolitan housing authority, organized and existing under the Housing Authority Law of Ohio, expend funds which it receives as a gift or grant from a private

or public source, or the income derived therefrom, for any and all purposes set forth in the Housing Authority Law, including but not limited to the retirement of indebtedness, the establishment of proper reserves, and the reduction of rents?

“Enclosed herewith is a brief prepared by attorneys for the Columbus Metropolitan Housing Authority which will explain the background and pertinent details involved in the aforesaid question. In connection with said question we direct your attention to Attorney General’s Opinion No. 1315 rendered December 22, 1949, by your predecessor and recorded at page 961 of 1949 Opinions.”

The “Housing Authority Law,” Sections 1078-29 to 1078-49a, General Code, was enacted in 1933, and became effective September 5, 1933. See 115 Ohio Laws, Part 2, page 56.

It is apparent from the language of Section 1078-30, General Code, that it was the intention of the Legislature that the use of funds from whatever source, should be directed to the development of slum clearance and low income housing, the first paragraph of said section reading 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 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.”

The accounting procedure and restrictions on the use of receipts were contained in Section 1078-38. This section, which has not been amended since its original enactment, in 1933, reads as follows:

“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.”

That provision was clearly intended to make sure that the income arising from the renting of housing units constructed under the Housing Law should be devoted to maintenance, and to the payment of monies borrowed for their construction, and that after those purposes were assured, any balance then remaining should be applied to the reduction of rentals of such houses.

Section 1078-34, General Code, which was a part of the same Act as originally enacted, read in part as follows :

“The authority created under this act shall constitute a body corporate and politic, and for the purpose of clearing, planning and rebuilding 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 corporate succession, to receive grants from state, federal or other governments, or from private sources, * * *

“b. To determine what areas are unsanitary or substandard and to *prepare plans for projects in such areas*; * * * 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; * * *” (Emphasis added.)

The powers conferred by this section were substantially supplemented by an Act of the General Assembly, which became effective May 7, 1937 (117 Ohio Laws, 324). The section, in addition to other unimportant changes, was amended by adding a new paragraph, which reads as follows :

“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; * * *” (Emphasis added.)

This amendment, I think, is worthy of careful analysis. It will be noted that Section 1078-34, supra, as originally enacted, provided, and still provides in paragraph “a”, that for the purpose of clearing slums and providing housing for low income families, every housing authority should

have the power among others, to receive grants from state, federal or other governments, and in paragraph "b", that it might borrow money for such purposes and secure the same by mortgages.

When the General Assembly later saw fit to amend this section by adding paragraph "c", giving such housing authorities specific power to receive grants or other financial assistance from the federal government "for or in aid of any housing project within its territorial limits," we must ascribe to the legislature a purpose to broaden the authority theretofore given.

I am informed that at and prior to the time this amendment was passed, housing authorities in various parts of the state had constructed housing units of considerable number and extent, with money borrowed from the federal government on long term bonds issued by the several housing authorities and secured by mortgages on such buildings and pledge of their rentals. The rentals were fixed at such amount that they would fully amortize the cost of these buildings within their estimated life. As to these, the provisions of Section 1078-38, General Code, clearly apply and the rentals received from these housing units must be used strictly in accordance with the provisions of that section.

It appears from information accompanying your request, that in the year 1946 the Public Housing Authority of the United States erected in various cities, temporary housing units for veterans and their families who were unable to secure housing. These buildings were erected under authority of an amendment of June 23, 1945, to the so-called Lanham Act. This amended act states that it is to amend the Act entitled "An Act to expedite the provisions of housing in connection with national defense, and for other purposes, approved October 14, 1940, as amended." The amendment reads in part as follows:

"Title V.

"Housing for Distressed Families of Servicemen and Veterans with Families.

"Section 501. In those areas or localities where the Administrator shall find that an acute shortage of housing exists or impends and that, because of war restrictions, permanent housing cannot be provided in sufficient quantities when needed, the Administrator is authorized to exercise all of the powers specified in Titles I and III of this Act, subject to all of the limitations upon the exercise of such powers contained in such titles, to

provide housing for distressed families of servicemen and for veterans and their families who are affected by evictions or other unusual hardships (where their needs cannot be met through utilization of the existing housing supply, including housing under the jurisdiction of the Administrator): Provided, that any housing constructed under the provisions of this Title V shall be undertaken only where the need cannot be met by moving existing housing and shall be of a temporary character subject to the removal provisions contained in Title III of this Act: And provided further, that the Administrator shall fix fair rentals for housing constructed or made available pursuant to this Title V which shall be within the financial reach of families of servicemen and veterans with families. * * *

On or about the 31st day of October, 1949, these buildings were transferred by the federal authorities, without monetary consideration, to the local housing authorities, with no restriction except as provided in the instrument of transfer, that the local housing authorities were to continue to give preference in renting, to veterans and service men. The form of this instrument is as follows:

“RELINQUISHMENT AND TRANSFER UNDER THE
INDEPENDENT OFFICES APPROPRIATION ACT, 1950
(Including Waiver of Removal Requirements)

Pursuant to the request of (Name of transferee) (hereinafter called the ‘Authority’) dated....., filed and supported as required by the Independent Offices Appropriation Act of 1950, approved August 24, 1949, and based on the representation that it will, in filling vacancies in the housing project transferred and relinquished hereunder, continue to give preference to veterans and servicemen, as said terms are defined in the contract, rights to which are being relinquished hereunder, the Housing and Home Finance Administrator hereby relinquishes and transfers, without monetary consideration, to said Authority all contractual rights (including the right to revenues and other proceeds) and all property right, title and interest of the United States in and with respect to the temporary housing located on land owned or controlled by such authority in....., and designated as Project No....., under Contract No..... with the United States of America, provided, however, that any revenues or other proceeds from such housing to which the United States is entitled under said contract shall not cease to accrue to the United States until the end of the month in which this instrument is executed, and the obligation of the Authority to pay such amounts shall not be affected hereby.

No right, title or interest in and to any land held by the United States, or housing located thereon, are relinquished or transferred by this instrument.

The above request filed by the Authority having been supported by resolution of the governing body of the municipality or county having jurisdiction in the area in which the temporary housing is located specifically approving the waiver of the removal requirements of Section 313 of the Lanham Act (Public Law 849, 76th Congress, as amended), the provisions of that Section and the contractual obligations of the Authority to the Federal Government with respect thereto are hereby terminated and shall cease to apply to said temporary housing.

This.....day of.....,

HOUSING AND HOME FINANCE ADMINISTRATOR

By
 Director, Detroit Field Office
 Public Housing Administration."

This was an outright gift, and said premises were and are free from any indebtedness, and they have since that time, been rented to service men and their families. Let it be noted that these buildings were not houses built by the Metropolitan Housing Authorities, were not built pursuant to the Ohio Housing Law, were not built to supplant slums, and were not designed for low income families, but were built by federal authorities, to supply temporary homes for veterans who were unable by reason of a shortage of houses, to find a place to live.

These properties were accepted, and have been held by the local housing authorities pursuant to the provisions of paragraph "C" of the amendment of Section 1078-34, General Code, above referred to, and the housing authorities very naturally claim the right to use the income arising from these buildings, in so far as it is not needed for their maintenance, for carrying on the specific work for which these authorities were organized, to wit, for preparing plans for and constructing new housing developments for families with low incomes. However, they are restrained from carrying out this purpose with these funds, by reason of the opinion of my predecessor, referred to in your letter, the syllabus of which is as follows:

"1. A Metropolitan Housing Authority cannot use rental income to employ engineers to survey land owned by the Authority in preparation to hiring architects to design future housing projects or use such funds to hire architects to make preliminary studies or surveys of such projects.

"2. Income from housing units cannot be used by a Metropolitan Housing Authority to pay a flat fee per month to a Planning Commission as a method of financing the Public Housing portion of a city's over-all planning program.

"3. A Metropolitan Housing Authority cannot use rental income to employ engineers, clerks or other types of employees and assign them to work with a City Planning Commission as the Metropolitan Housing Authority's contribution towards the Public Housing portion of a city's over-all plan."

The result of this holding is, that since the income from these houses, which has accumulated to a considerable amount, cannot be used for planning or constructing any new tenements, and since it is not required for meeting the payments due on any previous loans from the federal government, it must simply accumulate in a reserve fund, with no use either now or in prospect. In the meantime, the purposes for which the Housing Authority Law was enacted are, to a large extent stymied.

The request for that opinion shows very clearly that there was presented to the then Attorney General the question of the use of these very rentals which are being received by metropolitan housing authorities from the temporary buildings above referred to, which had been donated by the federal government. The Attorney General, it will be noted, referred in the syllabus, to this income as, "income from housing units," and applied the provisions of Section 1078-38 *supra*, to the disposition of such income. I submit that the income received from the veterans' temporary housing units was not the kind of income which it was intended should be governed by Section 1078-38. In my opinion, these buildings were not "housing units" at all, within the purview of the housing act, because it dealt only with buildings that might be constructed pursuant to the Act for families with low incomes.

Instead of a gift by the federal government of buildings that were occupied by veterans, it might have seen fit to donate a hotel or warehouse or any other income producing structure, or a sum of money, and plainly, the income arising from such structures, or such cash donation would not be within the purview of the section which undertakes to control the income from the housing units coming within the purview of the housing law.

When the legislature provided that gifts or grants from the federal government might be used "for or in aid of any housing project," I think

we have the right to assume that it knew the ordinary meaning of the word "project" and also that it used the word "any" with the purpose of allowing the housing authority to use its own judgment as to the application of funds arising from such gift or grant, so long as they would be applied to the general purpose for which these authorities were created.

Coming directly to the meaning of the word "project" we find that it does not relate to something already completed, but only to something planned for the future—something "projected." In Webster's New International Dictionary we find that "project" is defined as follows:

"A plan as devised or proposed; a scheme; a proposal; a planned undertaking."

In view of this definition, how can it be claimed that when specific authority is given to use certain funds "for or in aid of any project," they must be confined to paying off a debt on a building erected years ago, or reducing the rentals of such buildings. The conclusion seems to me to be inescapable that it was the intention of the legislature to authorize the use of the funds in question in the development of plans for new "projects", to wit, "new plans, new proposals, newly planned undertakings."

I think it may be admitted that my predecessor, in reaching the opinion he did, was correct in so far as it applied to buildings constructed or to be constructed under the Housing Law, and to the income arising from them, but he wholly overlooked the effect of the special power granted in the amendment of Section 1078-34, wherein Housing Authorities were authorized to accept grants from the federal government "for or in aid of any housing project," and that opinion unduly restricts the housing authorities in the use of income derived from unrestricted gifts, in the development of new projects for eliminating slum areas and providing housing for persons with low incomes.

Accordingly, I feel compelled to modify the opinion above referred to, in so far as it restricts the use of income arising from an unrestricted gift received from the federal government.

In construing a statute we should keep in mind the manifest purpose of the law and avoid, if possible, a construction that would defeat it. As said in 37 Ohio Jurisprudence, page 657:

"Section 362. General Rules. Statutes are to be given a fair and reasonable construction in conformity to their general

object, in order to effectuate such object and purpose and should not be given such an interpretation as would thwart that purpose. If the words and language are susceptible of two constructions, one of which will carry out and the other defeat such manifest object and purpose, they should receive the former construction.”

Furthermore, the statutes in question, being for the improvement and protection of the public health and welfare, are entitled to a liberal construction. Sutherland Statutory Construction, Section 7201, makes this general statement :

“Probably all legislation is enacted for the purpose of promoting the general welfare. But certain types of legislation may operate to achieve greater, and more direct social reforms than others. Although the line of demarcation is incapable of precise definition, the policy of the courts has been to give general welfare legislation a liberal construction with a view towards the accomplishment of its highly beneficent objectives.”

In Section 7202, the same writer makes a similar statement as to statutes aimed at promoting public health.

Accordingly, it is my opinion, and you are advised that a Metropolitan Housing Authority organized pursuant to Section 1078-29 et seq., General Code, which has received as a gift from the federal government certain buildings which had been erected as temporary homes for veterans, may use the income arising therefrom, for and in aid of any housing project within its territorial limits, and such Housing Authority is authorized to expend such income in eliminating slum areas and in the preparation of plans for and construction of housing for families of low income. Opinion No. 1315, Opinions of the Attorney General for 1949, page 961, modified.

Respectfully,

C. WILLIAM O'NEILL
Attorney General.