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METROPOLITAN HOUSING AUTHORITY—EMPLOYES ORGANIZED UNDER SECTION 1078-30 ET SEQ., G.C.—NOT WITHIN PURVIEW OF LAWS RELATING TO CIVIL SERVICE —SECTION 486-1 ET SEQ., G.C.

SYLLABUS:

The employes of a metropolitan housing authority, organized pursuant to the provisions of Section 1078-30 et seq., General Code, are not within the provisions of the laws relating to civil service, as defined in Section 486-1 et seq., of the General Code.

Columbus, Ohio, February 4, 1952

The State Civil Service Commission of Ohio
Columbus, Ohio

Gentlemen:

I have before me your communication in which you request my opinion, reading as follows:

"Under date of January 7, 1952, the following letter was received from G.H.P., Executive Secretary of the Hamilton County Good Government League, Cincinnati 2, Ohio:

'My organization has received several complaints within the past few months concerning certain personnel practices in the Metropolitan Housing Authority of Cincinnati.

'We understand that this is a quasi-public corporation governed by the laws of Ohio, and would like to know whether its employes come under the Ohio civil service rules and regulations and if so, to what extent those laws are being availed of.

'Any information, including classified or provisional lists of employees if any, or any other information at hand, would be greatly appreciated by us and would permit us to go more carefully into this problem.'

"There is no record in the State Civil Service Commission relative to the Metropolitan Housing Authority of Cincinnati, or of any employees appointed by that agency. We do have a record of employees appointed by the Regional Planning Commission of Hamilton County and the Rural Zoning Commission of Hamilton County.

"Your opinion will be appreciated upon the question raised in the letter from Mr. G.H.P., as to whether the employees of the Metropolitan Housing Authority of Cincinnati, are in the civil service of the state."

The meaning and scope of the term, "civil service" are defined in Section 486-I, General Code, as follows:

"1. The term 'civil service' includes all offices and positions of trust or employment in the service of the state and the counties, cities and city school districts thereof."

The question presented by your opinion is, whether the employes of a metropolitan housing authority are in the civil service of the state. It seems quite obvious that unless the metropolitan housing authority

falls within one of the branches of government named in the division above quoted, these employes are not within the civil service.

Accordingly, it becomes necessary to examine the law creating a metropolitan housing authority. The pertinent sections are Section 1078-30 et seq., of the General Code. A portion of Section 1078-30 which defines the area of a metropolitan housing authority, reads as follows:

“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 same section provides for the appointment of a so-called housing authority, to whom is committed the administration of the law in a territory so established. That portion of Section 1078-30 governing such appointment reads as follows:

“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;
* * *”

It is further provided that the members of such housing authority shall serve without compensation.

Section 1078-31, General Code, reads as follows:

“Said housing authority shall be organized by electing one of its number chairman, and another vice-chairman, and shall have power to employ counsel, a director who shall be ex officio secretary, and such other officers and employees as may be desired, and shall fix the term of office, qualifications and compensation of each.”

It will be noted that the permissible territorial limits of the metropolitan housing authority must comprise at least two political subdivisions or portions thereof but must in every case be less than the entire territory of a county.

It is further to be noted that no one political subdivision has authority to appoint the members of the board or to administer the law, such power of appointment being made to include one appointment by the probate court, one by the common pleas court, one by the county commissioners and two by the mayor of the most populous city in the territory. Therefore, it is quite plain that the housing authority cannot be said to be a department of any county or city or other political subdivision.

Section 1078-34, General Code, provides as follows:

“An authority created under this act shall constitute a body corporate and politic, * * *”

There is nothing in the law relating to such housing authority which either obligates or authorizes the county commissioners of any county in which it is located, to furnish any financial support whatsoever to such housing authority, except a provision in Section 1078-33, General Code, which authorizes the county commissioners to loan to it a sum not exceeding \$20,000.00 for the purpose of paying the expenses of the organization and supervising its work “during the period of initial construction of the proposed projects,” such loan to be authorized by a resolution of said county commissioners, which shall set forth the terms and time of repayment thereof. Neither is there any provision in the law for any financial support from the state or from any other public subdivision. Section 1078-34 supra, in defining the powers of such organization, gives it express authority 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.

Since it is clear that the metropolitan housing authority is not a county nor a city, nor a department of either, the only remaining question seems to be whether such housing authority is a subdivision or department of the state. The answer to this appears to be obvious. The Supreme Court, in the case of *Ohio Citizens Trust Company, v. Evatt*, 146 Ohio St., 30, held:

“A metropolitan housing authority organized under Section 1078-29 et seq., General Code, is not an instrumentality of the federal government or a subdivision of the state, within the meaning of Section 5406, General Code, and deposits of such authority in a financial institution of this state constitute taxable deposits and must be returned as such by the financial institution in which they are deposited.”

In Opinion No. 3188, Opinions of the Attorney General for 1940, page 1149, a number of questions were discussed as to the character and status of a metropolitan housing authority, with reference to various laws of the state, and it was held:

"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.) * * *

"* * * 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."

In the course of the opinion, it was said at page 1156:

"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."

This opinion called attention to the provision of Section 1078-49a, General Code, which provides that a housing authority shall constitute a state political subdivision within the meaning of Section 5546-2, General Code. That section, however, is a part of the law relating to the imposition of a sales tax, and this exception was inserted in the housing authority law for the sole purpose of including the housing authority with the political subdivisions which are exempt from the payment of the sales tax.

It may also be noted that since the rendition of the 1940 opinion just referred to, the employees of a metropolitan housing authority have, by amendment of the laws relating to the Public Employees Retirement System, been included in the scope of that System. This, however, can have no effect in altering the character of the metropolitan housing authority or bringing its employees within the purview of the civil service law.

In Opinion No. 1645, Opinions of the Attorney General for 1918, page 1594, it was held:

“The officers and employes of a district tuberculosis hospital, created under Sections 3148 et seq. G.C. (107 O.L., 497), do not come within the provisions of the civil service act Sections 486-1 to 486-31 inc., G. C.”

In this opinion emphasis was laid upon the fact that the boundaries of a district tuberculosis hospital are not co-extensive with any county or other political subdivision and that the hospital is governed by an independent board. Referring to the theory that all public institutions within the state might be regarded in a sense as state institutions, and their employes as state employes, the then Attorney General said:

“In other words, if the term ‘state’ were meant to include all offices and positions within the state, irrespective of the nature of the offices and positions, there would have been no necessity of adding ‘counties, cities and city school districts thereof.’”

In Opinion No. 125, Opinions of the Attorney General for 1919, page 217, it was held:

“Employes of the aforesaid park board are not in the service of the state, nor counties, cities or city school districts thereof within the purview of the civil services laws, and are not subject to the jurisdiction of the state civil service commission.”

In the course of the opinion, it was said at page 220:

“While the employes or appointees of the board of park commissioners may be said to hold positions within the state, or under the general authority of the state, yet in the sense in which the language is used in the civil service laws, such employes are not in the service of the state in the more limited sense in which it is used as in contradistinction with the counties, cities and city school districts, all of which are subdivisions thereof.”

A like holding was announced in Opinion No. 593, Opinions of the Attorney General for 1927, page 1006, as to employes of a county library district.

In specific answer to your question it is my opinion that the employes of a metropolitan housing authority, organized pursuant to the provisions of Section 1078-30 et seq., General Code, are not within the provisions of

the laws relating to civil service, as defined in Section 486-I et seq., of the General Code.

Respectfully,

C. WILLIAM O'NEILL
Attorney General