

OPINION NO. 82-001

Syllabus:

The State Board of Housing may properly require an express determination of need under R.C. 3735.27 within each political subdivision, or portion thereof, proposed for inclusion within the territorial limits of a metropolitan housing authority.

To: John E. Jundt, Chairman, State Board of Housing, Columbus, Ohio
By: William J. Brown, Attorney General, January 4, 1982

I have before me the request of the State Board of Housing for my opinion as to whether the board has the authority to require that for a given political subdivision to be included by the Board within the territorial limits of a metropolitan housing authority ("MHA"), the need for an MHA must be shown to exist in that subdivision.

It is basic in the law of this state that a governmental body, such as the State Board of Housing, is conferred only those powers and charged only with those duties as are necessarily implied from express law. State ex rel. Williams v. Glander, 148 Ohio St. 188, 74 N.E.2d 82 (1947). Where a statute has granted a board the authority to do a certain thing, but has not stated a specific manner in which to do it, the board may exercise that authority in a reasonable manner not in conflict with the laws of the state. State ex rel. Preston v. Ferguson, 170 Ohio St. 450, 166 N.E.2d 365 (1960).

With respect to the determination of inclusion of a given political subdivision within the territorial limits of an MHA, R.C. 3735.27 provides:

Whenever the state board of housing has 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 the board. . . .

. . . .

A certified copy of the resolution of the board, declaring the existence and boundaries of a housing authority district, shall be immediately forwarded to each [MHA board member] appointing authority. . . .

. . . .

. . . After such district has been formed, the board may enlarge the territory within such district to include other political subdivisions, or portions thereof, but the territorial limits of which shall be less than that of the county.

This section requires the Board, whenever it has by resolution determined a need in any portion of a county for a housing authority, to perform certain duties. It must

declare the existence of a metropolitan housing authority, fix the boundaries of the MHA, and notify each appointing authority therein. Thereafter, the Board retains a power to enlarge the MHA to include additional territory. This section, however, does not require that the limits of an MHA be drawn along the boundaries of any given political subdivision. Instead, R.C. 3735.27 speaks in terms of defining district limits to encompass the area of "need. . .in any portion of [a] county" and permits subsequent enlargement by the Board to include a political subdivision or an area containing merely a portion of a political subdivision. The only express territorial limitations which the Board must observe are that, in the creation of an MHA, a newly defined district must encompass at least two political subdivisions or portions thereof, and in the creation as well as thereafter in an expansion of an MHA for a given county, a given MHA must encompass an area "less than that of the county."

Under the reasoning of Preston, the decision whether to include a given political subdivision, or indeed a portion of that subdivision, within the limits of a given MHA is left to the discretion of the Board. As such, it is to be done in a reasonable manner. The customary standard for the judicial review of the reasonableness of an agency's action is whether the decision was arrived at in a manner free from a gross abuse of discretion or corrupt motive. By imposing a requirement upon itself that an express determination of need must be made for each political subdivision, or portion thereof, proposed for inclusion within the limits of an MHA, the Board has not acted in conflict with any express provision of law of which I am aware. To the contrary, such a procedure appears to be a reasonable method to permit the Board to set MHA territorial limits in a uniform and consistent manner.

Therefore, it is my opinion, and the Board is hereby advised, that the State Board of Housing may properly require an express determination of need under R.C. 3735.27 within each political subdivision, or portion thereof, proposed for inclusion within the territorial limits of a metropolitan housing authority.