

**OPINION NO. 81-041****Syllabus:**

1. The Ohio Housing Development Board is an instrumentality of the State and is authorized under Ohio law to engage in or assist in the development or operation of low income housing. The Board, may, therefore, be designated a "public housing agency" as defined in 42 U.S.C. §1437(a)(6).
2. The Ohio Housing Development Board has the authority, pursuant to R.C. 128.05(H), to contract with the U.S. Department of Housing and Urban Development to receive, administer and disburse federal funds, including rent subsidy payments, under

Section 8 of the Housing and Community Development Act of 1974, 42 U.S.C. §1437(f).

3. The Ohio Housing Development Board may exercise its powers throughout the State, and is not restricted to those portions of the State outside the territorial jurisdiction of any metropolitan housing authority created pursuant to R.C. Chapter 3735.

**To: William A. Losoncy, Executive Director, Ohio Housing Development Board,  
Columbus, Ohio**

**By: William J. Brown, Attorney General, July 23, 1981**

I have before me your request for my opinion concerning the Ohio Housing Development Board's authority and jurisdiction with respect to the conduct of housing assistance activities. Your specific questions are:

Is the designation of the OHDB as a Public Housing Agency valid under the statutes of the State of Ohio and under applicable Federal statutes and regulations?

Is the OHDB authorized to receive financial aid from HUD to accept and disburse rent subsidy payments and to enter into contract with HUD to administer the State's Section 8 Housing Programs?

Is the OHDB created under Chapter 128 of the Ohio Revised Code, restricted in its authority to carry out its duties to those portions of the State outside of the territorial jurisdiction of any Metropolitan Housing Authority created under Section 3735 of the Ohio Revised Code?

With respect to your first question, the applicable federal statute is 42 U.S.C. §1437(a)(6). The term "public housing agency" is defined therein to mean "any State, county, municipality, or other governmental entity or public body (or agency or instrumentality thereof) which is authorized to engage in or assist in the development or operation of low income housing." In order to find that the statutory definition is applicable to the OHDB, two questions must be resolved. First, is the OHDB an agency or instrumentality of the State? Second, is the OHDB authorized to engage in or assist in the development or operation of low income housing? R.C. Chapter 128 resolves both these questions unequivocally in the affirmative.

In R.C. 128.02 the General Assembly expressly states "that in carrying out Chapter 128. . .the Ohio housing development board. . .[is] acting in all respects for the benefit of the state in the performance of essential public functions." It is, therefore, clearly an instrumentality of the State. Moreover, the provisions of R.C. Chapter 128, particularly R.C. 128.05, confer upon the Board broad authority to engage in or assist in the development of housing. That such powers may be exercised to develop or to assist in the development of "low income housing" is clear from the legislative findings set forth in R.C. 128.02:

The general assembly hereby finds that. . .there now exists in many areas throughout the state an acute shortage of decent, safe, and sanitary housing available at prices or rentals which can be paid by persons of low and moderate income. . . .

The general assembly hereby finds that by reason of the foregoing it is imperative that the supply of residential housing for persons and families of low and moderate income be increased through the state. . . .

It is, therefore, my opinion that the OHDB is an instrumentality of the State and is authorized to engage in or assist in the development or operation of low income housing. Thus, as a matter of Ohio law the OHDB may properly be designated a public housing agency as defined in 42 U.S.C. §1437(a)(6).

Your second question seeks confirmation of the Board's authority to contract with the U.S. Department of Housing and Urban Development for the administration of housing programs, particular the rent subsidy payments program, available under Section 8 of the Housing and Community Development Act of 1974, 42 U.S.C. §1437. That Act was enacted by Congress for the purpose of appropriating federal funds and credit to the states to subsidize the rental of dwellings by low income families. The stated purpose of the Act is "to vest in local public housing agencies the maximum amount of responsibility in the administration of their housing programs." 42 U.S.C. §1437. Accordingly, Section 8 of the Act, 42 U.S.C. §1437(f), authorizes the Secretary of Housing and Urban Development to enter into annual contribution contracts with public housing agencies, pursuant to which HUD commits to provide the public housing authority with sufficient funds to make housing assistance payments to owners of dwelling units who rent to eligible low income persons and to pay the public housing authority appropriate administrative fees, and the public housing authority agrees to be responsible for monitoring performance by the owner. See 24 C.F.R. §880.201 (Section 8 Housing Assistance Payments Program for New Construction); 24 C.F.R. §882.102 (Section 8 Housing Assistance Payments Programs Existing Housing).

Although no express provision exists with reference to this particular act, the Board does have broad power to participate in federal assistance programs. Pursuant to R.C. 128.05(H), the Board is authorized to:

Receive and accept gifts, grants, loans, or any other financial or other form of aid from any federal, state, local, or private agency or fund, including but not limited to rent supplement or interest subsidy payments or other forms of subsidy, for any of the purposes of the board, and enter into any contract with any such agency or fund in connection therewith. . . .

It is my opinion that this statute provides the requisite authority for the Board to contract with the U.S. Department of Housing and Urban Development to administer the State's Section 8 housing programs, to receive financial aid from that agency and to disburse rent subsidy payments available through such programs. Of course, the specific terms of any such contract must be reviewed to determine compliance with the requirements of State law and the lawful purposes of the Board.

Your third question raises the issue of the geographical jurisdiction of the Board. You ask if the Board is restricted in its authority to carry out its duties to those portions of the State outside the jurisdiction of any metropolitan housing authority. In my opinion it is clear from the legislative purpose in enacting R.C. Chapter 128 that the Board's jurisdiction was not intended to be so limited.

This legislative purpose is set forth in R.C. 128.02, which I have quoted in pertinent part previously. It is noted therein that the Board was created because the General Assembly had determined that there is an acute shortage of decent, safe and sanitary housing for low and moderate income persons "in many areas throughout the state," and that "it is imperative that the supply of residential housing for persons and families of low and moderate income be increased throughout the state." Thus, the General Assembly in enacting R.C. Chapter 128 was clearly intending to remedy what is perceived to be a problem throughout the State. It is impossible to conclude, therefore, that the General Assembly intended to confer upon the Board anything less than state-wide jurisdiction. There is, moreover, no statement in the enabling statutes for metropolitan housing authorities, R.C. 3735.27 *et seq.*, to suggest that these subdivisions of the State were intended to have exclusive power to carry out public housing programs within

their respective jurisdictions. To the extent any such inference could be drawn from these statutes, the resulting conflict with the express legislative findings in R.C. 128.02 would have to be resolved to give effect to the latter. See R.C. 1.51. R.C. 128.02 is both the more specific statute and the later adoption. It is, therefore, my opinion that the Board may exercise its powers throughout the State.

Accordingly, in specific response to your questions, it is my opinion, and you are advised, that:

1. The Ohio Housing Development Board is an instrumentality of the State and is authorized under Ohio law to engage in or assist in the development or operation of low income housing. The Board may, therefore, be designated a "public housing agency" as defined in 42 U.S.C. §1437(a)(6).
2. The Ohio Housing Development Board has the authority, pursuant to R.C. 128.05(H), to contract with the U.S. Department of Housing and Urban Development to receive, administer and disburse federal funds, including rent subsidy payments, under Section 8 of the Housing and Community Development Act of 1974, 42 U.S.C. §1437(f).
3. The Ohio Housing Development Board may exercise its powers throughout the State, and is not restricted to those portions of the State outside the territorial jurisdiction of any metropolitan housing authority created pursuant to R.C. Chapter 3735.