

**OPINION NO. 67-065****Syllabus:**

Where the State Board of Housing has created a metropolitan housing authority pursuant to Section 3735.27, Revised Code, and there is no city in existence within the territorial limits of such housing authority, the two members of the authority normally appointed by the mayor of the most populous city in the territory may be appointed by the mayor of the most populous village in the territory included in the housing authority district.

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To: Martin E. Blum, Chairman, State Board of Housing, Columbus, Ohio  
By: William B. Saxbe, Attorney General, July 19, 1967

Your request for my opinion reads as follows:

"The State Board of Housing at its meeting held May 10, 1967, upon petition, and pursuant to Sec. 3735.27, R.C., adopted Resolution No. 2-67 creating the Clermont Metropolitan Housing Authority, the territorial limits of which are defined as:

'Ohio township including the village of New Richmond; Franklin township including the village of Felicity; and Tate township including the village of Bethel.'

"The Code provides that initially two members of a local Metropolitan Housing Authority are to be appointed by the mayor of the most populous city in the territory included in the said district in accordance with the last preceding federal census.

"Since the territory included in the local authority includes no incorporated city, your opinion is respectfully requested as to who is to make the two initial appointments which the statute provides are to be made by the mayor of the most populous city within the territorial limits of the Clermont Metropolitan Housing Authority."

Section 3735.27, Revised Code, reads in part as follows:

"Whenever the state board of housing has determined by resolution that there is a 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.\* \* \*"

(Emphasis added)

Subdivision (N) of Section 3501.01 under Title 35, Elections, of the Revised Code, defines "political subdivision" to mean "county", "township", "city", "village", or "school district". Similarly under the Civil Defense Chapter, Subdivision (F) of Section 5915.01, Revised Code, defines "political subdivision" to include a county, township, city or village. Applying these code definitions to the previously quoted portion of Section 3735.27, Revised Code, it appears that a metropolitan housing authority may be created in any portion of a county that comprises two or more townships, cities, or villages, provided that the territory included is less than all the territory within the county.

Section 3735.27, Revised Code, also provides for appointing the members of the housing authority. It is stated, in part,

"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 appointing authority. A housing authority shall consist of five members, who shall be residents of the territory embraced in such metropolitan housing authority district. One member shall

be appointed by the probate court, one member by the court of common pleas, one member by the board of county commissioners, and two members by the mayor of the most populous city in the territory included in said district, in accordance with the last preceding federal census.\* \* \*" (Emphasis added)

Section 703.01, Revised Code, provides for the classification of municipal corporation. It reads in part:

"Municipal corporations, which, at the last federal census, had a population of five thousand or more, or five thousand registered resident electors or resident voters as provided in Section 307.011 of the Revised Code, are cities. All other municipal corporations are villages. Cities, which, at any federal census, have a population of less than five thousand shall become villages. Villages, which at any federal census, have a population of five thousand or more, shall become cities.\* \* \*"

It seems clear that to require the appointment of two members of the housing authority by the mayor of the most populous city in the metropolitan housing authority district is inconsistent with the description of what may comprise the territory of such district. The circumstances presented in your request for my opinion illustrate the situation whereby a metropolitan housing authority has been created correctly with regard to the statutory requirements of territorial limits, yet no city, as defined by Section 703.01, supra, exists from which a mayor's appointment may issue.

The intent of the legislature in empowering the State Board of Housing to create metropolitan housing authorities may be derived from the following quoted portion of Section 3735.27, Revised Code:

"\* \* \*The board shall adopt a resolution determining and declaring that there is a need for a housing authority within such territorial limits if it finds either:

"(A) Unsanitary or unsafe inhabited housing accommodations exist in such area;

"(B) There is a shortage of safe and sanitary housing accommodations in such area available to persons who lack the amount of income which is necessary, as determined by said board, to enable them, without financial assistance to live in decent, safe and sanitary dwellings without congestion.

"\* \* \* \* \*"

Where the State Board of Housing has found such a need or needs to exist I would find it most difficult to interpret a reference to "the most populous city in the territory" as a limitation upon the preceding words of the statute defining the territory. Certainly, the overriding purpose of the legislature was to assist in housing families of low incomes and to alleviate unsanitary and congested housing conditions. An unreasonable or arbitrary restriction as to the character of the territory where

such a need might exist ought not to be imputed to the legislative attempt to provide for the public health and general welfare.

Once created a metropolitan housing authority is entrusted with great power. It may determine what areas constitute slum areas, clear, plan and rebuild such areas, and in doing so exercise the sovereign delegation of eminent domain. It seems obvious to me that where such exercise of power may greatly affect the persons and property of a housing district, the legislature intended that the most populous area within the territory be represented in the membership of the authority. Since the difference in classification as a city rests only upon enumeration of population I feel that this intent of the legislature may be satisfied by a more liberal construction of that part of Section 3725.-27, Revised Code, providing for appointment of members of a housing authority. The literal interpretation of the words of an act should not prevail if it creates a result contrary to the apparent intention of the legislature and if the words are sufficiently flexible to admit of a construction which will effectuate the legislative intention. (See Section 4706, Vol. 2, Sutherland's Statutes and Statutory Construction, Third Edition.)

Your question indicates that the territory defined by the resolution creating the Clermont Metropolitan Housing Authority includes three villages within such territorial limits. Accordingly, it is my opinion, and you are hereby advised, that where the State Board of Housing has created a metropolitan housing authority pursuant to Section 3735.27, Revised Code, and there is no city in existence within the territorial limits of such housing authority, the two members of the authority normally appointed by the mayor of the most populous city in the territory may be appointed by the mayor of the most populous village in the territory included in the housing authority district.