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METROPOLITAN HOUSING AUTHORITY—IS A POLITICAL SUBDIVISION OF THE STATE—§5923.05, R.C.—EMPLOYEES ENTITLED TO LEAVE OF ABSENCE FOR MILITARY SERVICE—NO LOSS OF PAY FOR PERIOD NOT MORE THAN 31 DAYS EVEN IF PAID FOR MILITARY SERVICE—§§5923.05, 3735.27, *et seq.* OAG NO. 1158-1960—NO. 1468-1960.

SYLLABUS:

A metropolitan housing authority established pursuant to the provisions of Section 3735.27, *et seq.*, Revised Code, is a political subdivision of the state within the purview of Section 5923.05, Revised Code, and the employees of such an authority are entitled to leave of absence for military service without any loss of pay for a period of not more than thirty-one days in any one calendar year regardless of the fact that such employees may be paid for such military service. (Opinion No. 1468, Opinions of the Attorney General for 1960, approved and followed.)

Columbus, Ohio, September 28, 1960

Hon. Thomas A. Beil, Prosecuting Attorney
Mahoning County, Youngstown, Ohio

Dear Sir :

I have your request for my opinion which reads as follows :

“This is to advise that the General Counsel for the Youngstown Metropolitan Housing Corporation has requested this office to secure your opinion due to the fact that counsel for the Regional Office of said corporation in Chicago, Illinois will not authorize payment for military pay without diminution without your opinion on this question.

‘1. Is a local housing authority created pursuant to Ohio Revised Code 3735.27 a political sub-division within the meaning of Ohio Revised Code, Section 5923.05?

‘2. Do the provisions of Section 5923.05 require the payment of full salary without deminution of the amount of military pay, that is, does an employee of a political subdivision receive his military pay in addition to his full pay from the subdivision or should the military pay be deducted from his pay received by the political subdivision?’

“Please advise this office as to your opinion on this matter.”

Section 5923.05, Revised Code, reads as follows :

“All officers and employees of the state or the political subdivisions thereof who are members of the Ohio national guard, the Ohio defense corps, the Ohio naval militia, or members of other reserve components of armed forces of the United States are entitled to leave of absence from their respective duties without loss of pay for such time as they are in the military service on field training or active duty for periods not to exceed thirty-one days in any one calendar year.”

Since the provisions of said section apply to officers and employees of the state or the political subdivisions thereof, we are first faced with the problem of determining whether the Youngstown Metropolitan Housing Corporation created pursuant to Section 3735.27, Revised Code, is a political subdivision of the state of Ohio within the meaning of that term as used in the above quoted section.

There appears to be no statutory definition of “political subdivisions” as used in Section 5923.05, *supra*, and although I have made an extensive

search of the case law in Ohio dealing with this subject, I have been unable to find any court decision which directly answers this question. In the case of *Wolf vs. City of Columbus*, 98 Ohio App., 333, however, the court, in dealing with a similar question, stated on page 336:

“In 72 Corpus Juris Secundum, 223, we find the term ‘political subdivision’ defined as follows:

‘The term is broad and comprehensive and denotes any division of a state made by the proper authorities thereof, acting within their constitutional powers, for the purpose of carrying out those functions of the state which by long usage and inherent necessities of government have always been regarded as public; a division of a parent entity for some governmental purpose.’

* * *

“* * * In their public capacity they function as agents or instrumentalities of the state government and therefore constitute political subdivisions.”

Also, in my Opinion No. 1158, Opinions of the Attorney General for 1960, issued on February 22, 1960, in which I was considering whether a port authority could be considered a political subdivision within the sales tax exemption law, I stated:

“It is readily apparent that the definition of ‘subdivision’ found in Section 5739.02, Revised Code, is limited as provided in that section to this term as used in particularly enumerated statutory provisions, which provisions do not include those of Section 5739.02, Revised Code. It is plain, too, as pointed out by Turner, J., in *Kinsey v. Bower*, 147 Ohio St., 66 at page 76, that the definition of ‘subdivision’ found in the Uniform Tax Levy Law (Section 5705.01 et seq., Revised Code,) has application only as the term is used therein.

“In our own case, then, to paraphrase the language of Turner, J., in *Kinsey, supra*, there is no justification for departing from the ordinary meaning of the term ‘political subdivision’ as used in Section 5739.02, Revised Code. Webster defines ‘subdivision’ as ‘A part of a thing made by subdividing,’ and the term ‘political’ as:

* * * of or pertaining to, or incidental to, the exercise of the functions vested in those charged with the conduct of government; relating to the management of affairs of state * * *.’

“A ‘political subdivision’ of the state must, therefore, refer to (1) a limited geographical area within the state, (2) wherein a public agency is authorized by law to exercise some governmental function.”

Section 3735.27, Revised Code, clearly provides for the territorial limits within which the governing body of a housing authority may act. The powers of a housing authority are found mainly in Section 3735.31, Revised Code, which provide that a metropolitan housing authority is a body corporate and politic, may sue or be sued, receive grants from the state, federal and other governments, conduct investigations relative to housing and living conditions, enter any buildings and property during such investigations, conduct examinations, subpoena and require the attendance of witnesses, and after determining that an area constitutes a slum area, acquire such area by eminent domain if necessary. Contracts for work to be done must be let on bids (Section 3735.36, Revised Code). Also, it has been held that funds coming into the possession of a metropolitan housing authority must be deposited in accordance with the uniform depository law (Opinion No. 2497, Opinions of the Attorney General for 1938, page 1085).

It will also be noted that the employees of a metropolitan housing authority are entitled to membership in the public employees retirement system (Section 145.01, Revised Code), and that under Section 3735.26, Revised Code, such authorities:

“* * * are hereby declared to be the agencies and instrumentalities of the state for the purpose of attaining the ends recited in this section and their necessity in the public interest is hereby declared as a matter of legislative determination.”

In view of the powers and duties of housing authorities as noted above, and the definitions of the *Wolfe* cases and Opinion No. 1158, *supra*, I am of the opinion that a metropolitan housing authority is a political subdivision within the purview of Section 5923.05, *supra*.

In arriving at the above conclusion, I am not unaware of the provisions of Section 3735.50, Revised Code, which provides:

“A metropolitan housing authority, created under section 3735.27 of the Revised Code, constitutes a political subdivision of the state within the meaning of section 5739.02 of the Revised Code.”

Although this section does provide that a housing authority is a political subdivision for a particular purpose, I do not believe that this should exclude it from being a political subdivision for other purposes. Rather, I think that the intention of Section 3735.50, *supra*, was to insure

that a housing authority be considered a political subdivision under Section 5739.02, Revised Code, since the latter named section contains no definition of the words "political subdivision."

Your second question was considered in Opinion No. 1468, Opinions of the Attorney General for 1960, issued on June 17, 1960, the syllabus of which reads:

"An employee of the state or one of its political subdivisions is entitled under Section 5923.05, Revised Code, to leave of absence for military service without any loss of pay from his employer for a period of not more than 31 days in any one calendar year, regardless of the fact that such employee may be paid for his military service; and the provisions of said section take precedence over any conflicting provisions of a municipal corporation, charter or otherwise."

In accordance with the above, it is my opinion and you are advised that a metropolitan housing authority established pursuant to the provisions of Section 3735.27, *et seq.*, Revised Code, is a political subdivision of the state within the purview of Section 5923.05, Revised Code, and the employees of such an authority are entitled to leave of absence for military service without any loss of pay for a period of not more than thirty-one days in any one calendar year regardless of the fact that such employees may be paid for such military service. (Opinion No. 148, Opinions of the Attorney General for 1960, approved and followed.)

Respectfully,
MARK McELROY
Attorney General