

MAINE STATE LEGISLATURE

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October 30, 1963

Dean Fisher, Commissioner, Department of Health and Welfare - Attn: Paul McClay, Director,
Division of General Assistance
Ruth L. Crowley, Assistant Attorney General and Frank W. Davis, Assistant Attorney General

Legal Opinion on Public Housing Project

FACTS:

The Public Housing Administration of the federal government has indicated the possibility of making federal funds available at no cost to the State for the construction of low-cost housing on the Passamaquoddy Indian Reservations and possibly on the Penobscot Indian Reservation. It is necessary to establish a Local Housing Authority with which the Public Housing Administration will deal. A copy of the fact sheet published by the Public Housing Administration is attached for a more comprehensive outline of the project.

Since the Passamaquoddy Indian Reservations are State-owned, there are no tax payments involved. The Division of Indian Affairs in the Department of Health and Welfare has indicated that it would not charge any rental for these homes, if constructed.

It is necessary for the State of Maine, either through its Division of Indian Affairs or other authority to guarantee maintenance of the buildings so constructed.

QUESTION:

Is it legally possible for the Division of Indian Affairs or the Department of Health and Welfare to enter into an agreement with the Public Housing Administration to become a party in the construction of such buildings?

ANSWER:

No.

OPINION:

It would seem that low-cost or no-cost housing through the Public Housing Administration of the federal government on either Passamaquoddy or Penobscot Indian Reservations is not possible by law.

First, we question the authority to establish a Local Housing Authority in the absence of specific legislation authorizing same. The fact sheet published by the Public Housing Administration in designating local responsibility, says: "The Local Housing Authorities which plan, build, own, and operate public housing are independent, public-corporate entities, were established under State legislation and empowered to contract with the PHA for financial and technical assistance in the development of low-cost housing." There is nothing in our existing statutes governing the Indian tribes which would authorize the establishment of such a Local Housing Authority.

Furthermore, the statutes do not empower the Department of Health and Welfare or its Division of Indian Affairs to enter into contracts on behalf of the tribes.

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 Chapter 25, Section 322 of the Revised Statutes provides that the Department shall have general supervision over the Indian tribes. It is impossible for us to interpret this to include entering into contracts on behalf of said tribes.

Before these housing projects can be constructed, several contracts must be executed -- e.g., the preliminary loan contract is first executed between PHA and the Local Housing Authority, whereby funds are made available for the local authority to hire an architect and proceed with preliminary planning of the project; later comes the annual contribution contract which provides for substantial loans for the total development cost of the project; finally there is the construction contract awarded by the Local Housing Authority to the lowest responsible bidder, subject to approval by PHA.

We find nothing in the fact sheet to indicate that the cost of such housing projects is borne wholly by the federal government. Rather it appears to us that the PHA loans the money for the construction and there is specific provision that "the local authority repays all Federal loans plus interest."

There has been some verbal understanding that the Federal government would pay the entire cost of such projects with the express provision that some State agency shall guarantee maintenance of the buildings so constructed. Because the credit of the State of Maine cannot be pledged, neither the Director of Indian Affairs nor any other State official or agency could make such a guarantee.

Under all these circumstances our conclusion is that the Division of Indian Affairs cannot legally enter into any contract with the Federal government for this type of housing project on either Indian Reservation.

MLC:mgb
 FWD:mgb
 Att: 1

Arthur L. Crowley
 Arthur L. Crowley
 Assistant Attorney General

Frank W. Davis
 Frank W. Davis
 Assistant Attorney General

2171 HORSE VINCENY VILL
 140A 9 1963
 VINCENY GENERAL
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Public Housing

FACT SHEET

on the program of Federal aid to communities for the provision of public housing for low-income families



Housing and Home Finance Agency
Public Housing Administration
Washington 25, D. C.

February 1962

"UNLESS WE INCREASE THE SUPPLY OF LOW-RENT (PUBLIC) HOUSING, OUR COMMUNITIES CANNOT RID THEMSELVES OF SLUMS, PROVIDE ADEQUATE COMMUNITY FACILITIES, AND REHOUSE LOW-INCOME FAMILIES DISPLACED BY CLEARANCE OPERATIONS."

President John F. Kennedy
HOUSING MESSAGE, 1961

PUBLIC HOUSING

IT IS AN ECONOMIC FACT THAT IN THE development of housing, there is a level below which private enterprise cannot produce standard shelter at a fair profit.

This void in the private housing market, unfortunately, has been filled, over the years, by slum dwellings.

LOCAL-FEDERAL COOPERATION

The low-rent public housing program was created by Congress in the Housing Act of 1937 as a local-Federal aid to communities through which they may provide safe, decent, and sanitary housing to shelter low-income families who cannot afford standard private housing.

In this program, a local authority determines the need, plans and constructs the housing, and manages it, and the local governing body grants it exemption from local taxes. The Federal Government, through loans or guarantees of loans, makes possible the financing of the housing, and makes an annual contribution to enable rents to be set within the reach of low-income families.

The public housing program is the only existing source whereby a sufficient supply of standard housing may be made available to fill the pressing housing needs of the low-income families of America. In addition, the program provides to communities, a supply of low-rent housing for families displaced by urban renewal, highway construction and other urban improvements. Moreover, the program is a prime source for low-rent housing for the elderly, a rapidly growing group urgently needing decent, safe housing at rents they can afford.

Under the basic legislation, and subsequent amendments to it, the public housing program has produced more than 487,000 dwelling units. It shelters approximately 1,800,000 persons. More than half are children; approximately 115,000 are elderly. Moreover, as of June 30, there were 41,344 low-rent dwellings under construction and 112,398 more in various stages of preconstruction.

Under provisions of the Housing Act of 1961, the PHA is authorized to contract with local authorities for approximately 100,000 additional public housing dwellings. There is no expiration date limiting this contract authorization.

ALTERNATIVE TO SLUMS

Because of their extremely low incomes, the great majority of families now living in public housing could not afford to rent or purchase standard private housing available in their communities, but had to endure slum conditions in order to provide for themselves the other necessities of life--food, clothing, and medical care. Some public housing tenants were without housing or were to be displaced by public action through no fault of their own.

Families admitted to public housing in 1960 averaged a weekly income of \$44.60, and they paid an average monthly rent of \$39.00, including utilities. These figures are especially significant when one considers that the average family living in public housing consists of four persons. These low rents are made possible because of local tax exemption on the dwellings and the Federal annual contributions. Rents charged at admission generally are set at least

20 percent below the lowest rents for standard private housing available in the community.

Public housing, therefore, does not compete with the standard private housing market, but is in direct competition with slum housing, a part of our total housing inventory in which no one takes pride.

LOCAL RESPONSIBILITY

The Local Housing Authorities which plan,

build, own, and operate public housing are independent public-corporate entities. They are not part of Federal Government, but are established under State legislation and are empowered to contract with the PHA for financial and technical assistance in the development of low-rent housing. Each local authority is governed by local commissioners (usually five) who are appointed by the Mayor or governing body and who usually serve without pay.

HOW PUBLIC HOUSING IS DEVELOPED

Based upon existing local need, the LHA will make application to the PHA for a program reservation and preliminary loan for a given number of public housing units. This application must be approved by the local governing body, and follows the execution of an agreement of cooperation between the LHA and the local governing body. In this agreement, the local government agrees to furnish usual municipal services such as police and fire protection to the project. In turn, the LHA agrees to make a payment in lieu of taxes, so that the dwellings will bear a fair share of municipal costs. The payment in lieu of taxes generally amounts to ten percent of shelter rents.

Upon independent verification of the existence of need, the PHA will issue a program reservation for the requested units. This takes the form of an informal statement to the LHA that upon completion of certain prerequisites PHA is prepared to assist with the development of the dwellings.

PLANNING THE PROJECT

The preliminary loan contract, which is the first contract executed between PHA and the LHA, provides for funds with which the local authority may hire an architect and proceed with preliminary planning of its project, including site selection and market surveys.

As planning advances, a development program is produced by the local authority. This program is a detailed account of the authority's plans and schedule for the development of the dwellings and is a prerequisite to the annual contributions contract.

THE "WORKABLE PROGRAM"

Before PHA may execute an annual contributions contract with the LHA, the locality must also have submitted, to the Housing and Home Finance Agency, an approvable program for community improvement. This document, often referred to as the "Workable Program", sets forth the community's plan for effectively dealing with the problem of urban slums and

blight and the establishment of residential neighborhoods of suitable environment for adequate family life.

TEMPORARY FINANCING

When PHA executes an annual contributions contract with the LHA, it, among other things, may lend up to 90 percent of the total development cost of the project. Under the contract, the LHA will requisition funds, acquire the site, and accept bids for the construction of the low-rent homes.

By the Housing Act of 1961, room cost limitations were set at \$2,000 (\$3,000 per room in the case of Alaska or, in the case of dwellings designed for elderly, \$3,000 per room and \$3,500 per room in the case of Alaska). The legislation also provides that the PHA Commissioner may authorize up to \$750 more per room depending upon certain local factors.

The construction contract is awarded to the lowest responsible bidder and is approved by PHA. The local authority then issues orders-to-proceed to the contractor and construction is started.

PERMANENT FINANCING

When the project is approximately 90 percent completed, the LHA, with the cooperation of PHA, will sell its housing authority bonds on the private market. From the money received, the local housing authority repays all Federal loans, plus interest.

When the project is completed, the local housing authority, having established income limits and rents, will accept tenants and the management phase of the program will begin. Rents are set for each family in relation to its income. When a family's income rises above the limits established for continued occupancy, it must move as soon as it can obtain other housing that meets its needs. From the rents collected, the local authority pays all operating expenses, including a payment in lieu of taxes to the local taxing body.

FEDERAL ANNUAL CONTRIBUTIONS

With any remaining funds a payment on the bonded indebtedness is made. In nearly every case these residual funds are not sufficient to meet the year's payment on the bonds. The PHA, from appropriated funds, makes up the difference. This is termed the Federal annual contribution.

Local housing authority bonds are secured by a pledge of the annual contributions uncondi-

tionally payable in an amount sufficient to retire the capital cost of the housing within 40 years. The faith of the United States is pledged to the payment of the annual contributions.

Certain additional contributions may be made in respect to low-rent dwellings in which extremely low-income elderly persons and families live. This is provided by the Housing Act of 1961 since such low-income elderly cannot afford even the low rents normally charged.

FOR FURTHER INFORMATION

More detailed information concerning the public housing program may be obtained from the nearest PHA Regional Office or by inquiry

addressed to the Public Housing Administration, Washington 25, D. C.

OPB 923812

REGIONAL OFFICES

ATLANTA: ROOM 737, PEACHTREE-SEVENTH BUILDING, 50 SEVENTH STREET, N.E., ATLANTA 23, GEORGIA (ALABAMA, FLORIDA, GEORGIA, KENTUCKY, MISSISSIPPI, NORTH CAROLINA, SOUTH CAROLINA, TENNESSEE)

CHICAGO: ROOM 2201, 185 NORTH WABASH AVENUE, CHICAGO 1, ILLINOIS (ILLINOIS, INDIANA, IOWA, MICHIGAN, MINNESOTA, NEBRASKA, NORTH DAKOTA, OHIO, SOUTH DAKOTA, WISCONSIN)

FORT WORTH: ROOM 2072, 300 WEST VICKERY BOULEVARD FORT WORTH 4, TEXAS (ARKANSAS, COLORADO, KANSAS, LOUISIANA, MISSOURI, NEW MEXICO, OKLAHOMA, TEXAS)

NEW YORK: 346 BROADWAY, NEW YORK 13, NEW YORK

PUBLIC HOUSING ADMINISTRATION

(CONNECTICUT, MAINE, MASSACHUSETTS, NEW HAMPSHIRE, NEW JERSEY, NEW YORK, RHODE ISLAND, VERMONT)

PHILADELPHIA: ROOM 1102 WIDENER BLDG., CHESTNUT AND JUNIPER STS., PHILADELPHIA 7, PENNSYLVANIA (DELAWARE, MARYLAND, PENNSYLVANIA, VIRGINIA, WEST VIRGINIA, THE DISTRICT OF COLUMBIA)

PUERTO RICO: CREDITO AND AHORRO BUILDING, STOP 17, PONCE DE LEON AVENUE, SANTURCE, PUERTO RICO (PUERTO RICO AND THE VIRGIN ISLANDS)

SAN FRANCISCO: 1360 MISSION STREET, SAN FRANCISCO 3, CALIFORNIA (ALASKA, ARIZONA, CALIFORNIA, HAWAII, IDAHO, MONTANA, NEVADA, OREGON, UTAH, WASHINGTON, WYOMING)