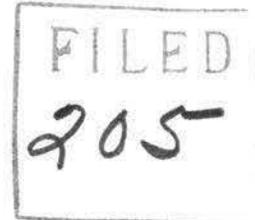


HOUSING AUTHORITIES: Sections 99.010 to 99.230 of the  
CITIES, TOWNS AND VILLAGES: Revised Statutes of Missouri, "The  
Housing Authorities Law", authorizes  
cities to determine and declare the need for a housing authority  
upon a finding that insanitary or unsafe inhabited dwelling accom-  
modations exist in such city or that there is a shortage of safe  
or sanitary dwelling accommodations in such city available to  
persons of low income at rentals they can afford. The cities  
have no authority to declare a need for a limited housing authority  
under the provisions of the Housing Authorities Law.

OPINION NO. 205

March 17, 1970

Honorable A. Basey Vanlandingham  
Senator, 19th District  
12 North Second Street  
Columbia, Missouri 65201



Dear Senator Vanlandingham:

This opinion is in response to your request regarding an interpretation of Sections 99.010 to 99.230, RSMo, known as "The Housing Authorities Law."

Specifically, your question is stated as follows:

"Does a City have the legal right to limit by their creative Resolution, Declaration, or otherwise, the powers of a Housing Authority as provided in Chapter 99 of the 1959 RSMo, thereby creating a limited Housing Authority?"

It is our understanding that the City of Kirksville, Missouri, wishes to create a "limited Housing Authority for low-income senior citizens."

Section 99.040, RSMo 1959, provides:

"1. In each city (as herein defined) and in each county of the state there is hereby created a municipal corporation to be known as 'the housing authority' of the city or county; provided, however, that such authority shall not transact any business or exercise its powers hereunder until or unless the governing body of the city or the county, as the case may be, by resolution or other

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declaration shall determine at any time hereafter that there is need for an authority to function in such city or county. The determination as to whether or not there is such need for an authority to function may be made by the governing body upon the filing of a petition signed by fifty taxpayers of the city or county, as the case may be, asserting that there is need for an authority to function in such city or county and requesting that the governing body so declare.

"2. The governing body shall determine that there is need for a housing authority in the city or county, as the case may be, if it shall find that insanitary or unsafe inhabited dwelling accommodations exist in such city or county or that there is a shortage of safe or sanitary dwelling accommodations in such city or county available to persons of low income at rentals they can afford. In determining whether dwelling accommodations are unsafe or insanitary said governing body may take into consideration the degree of overcrowding, the percentage of land coverage, the light, air, space and access available to the inhabitants of such dwelling accommodations, the size and arrangement of the rooms, the sanitary facilities, and the extent to which conditions exist in such buildings which endanger life or property by fire or other causes.

"3. In any suit, action or proceeding involving the validity or enforcement of or relating to any contract of the authority, the authority shall be conclusively deemed to have become established and authorized to transact business and exercise its powers hereunder upon proof of the adoption of a resolution or other declaration by the governing body declaring the need for the authority. Such resolutions or other declaration shall be deemed sufficient if it declares that there is such need for an authority and finds in substantially the foregoing terms (no further detail being necessary) that either or both of the enumerated conditions exist in the city or county, as the case may be. A copy of such resolution or other declaration duly certified by the clerk shall be admissible in evidence in any suit, action or proceeding."

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Under the above sections, therefore, the municipal authority is created but may not transact any business until the governing body by resolution finds a need to exist in either or both of the two specifically enumerated circumstances. The resolution under the third paragraph of the above section is deemed sufficient if it declares that there is a need for an authority and finds that such conditions exist in the city.

Further, the sections provide for the appointment of commissioners (Section 99.050, RSMo 1959), constitute the authority a municipal corporation, and grant the authority numerous powers (Section 99.080, RSMo 1959).

There are no provisions in the statute which indicate an intent on the part of the legislature to authorize the "governing body," (Section 99.020, RSMo Supp. 1967) in this case the city to restrict or limit the powers of such authority either by the adoption of the resolution declaring the need for such authority or thereafter.

The resolution or declaration, of course, has no greater standing than an ordinance; and an ordinance cannot be in direct conflict with statutory provisions. Wood v. City of Kansas City, 162 Mo. 303, 62 S.W. 433 (1901). Ordinances in conflict with prior or subsequent state statutes relating to governmental matters are required to yield. Carson v. Oxenhandler, 334 S.W.2d 394 (Mo. App. 1960). Where matters are of state concern though local in their operation, the state retains control, State v. City of St. Louis, 318 Mo. 870, 2 S.W.2d 713 (Mo. en Banc 1928).

It has been held by our courts that the General Assembly in the act under consideration declared the Housing Authority to be a municipal corporation, defined its purposes, declared them to be governmental functions, and declared the existence of an urgent necessity for its services. Larat Inv. v. Bickman, 134 S.W.2d 65 (en Banc 1939).

It is also clear that the powers of the housing authority are derived directly from the state and are not bestowed by the municipality. The housing authority is not a subordinate branch of the municipality's governing body, and not a municipal agent. City of Paterson v. Housing Authority of Paterson, 96 N.J. Super 394, 233 A.2d 98 (1967). After the city officials proceeding under the provisions of the Housing Law determine that such an independent corporation shall exist, all things thereafter done in relation to the authority are done under the provisions of the Housing Authority Law. State ex rel Great Falls Housing Authority v. City of Great Falls, 100 P.2d 915 (Sup. Mont. 1940).

Although we have been unable to find any Missouri or other

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authorities directly in point with the question that you pose, it is our view that the holdings of the cases cited dealing with the nature and purposes of the Housing Authority Law lead us to the conclusion that the City of Kirksville does not have the power to create a "limited housing authority."

CONCLUSION

It is therefore the opinion of this office that Sections 99.010 to 99.230 of the Revised Statutes of Missouri, "The Housing Authorities Law", authorizes cities to determine and declare the need for a housing authority upon a finding that insanitary or unsafe inhabited dwelling accommodations exist in such city or that there is a shortage of safe or sanitary dwelling accommodations in such city available to persons of low-income at rentals they can afford. The cities have no authority to declare a need for a limited housing authority under the provisions of the Housing Authorities Law.

The foregoing opinion, which I hereby approve, was prepared by my assistant John C. Klaffenbach.

Yours very truly,



JOHN C. DANFORTH  
Attorney General