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ATTORNEY GENERAL

OFFICES OF THE  
ATTORNEY GENERAL OF MISSOURI  
JEFFERSON CITY

January 20, 1976

OPINION LETTER NO. 11

Mr. Alan C. Kohn  
Chairman, Missouri Housing  
Development Commission  
20 West 9th Street, Suite 934  
Kansas City, Missouri 64105

Dear Mr. Kohn:

This letter is in response to your question asking:

"Can funds appropriated by H.B. No. 4 (1973) to MHDC for 'initial funding of the Missouri Housing Development Commission Mortgage Insurance Reserve Fund' be pledged as additional security for a particular MHDC bond or note issue?"

As you point out in your question, the appropriation at issue was made by the 77th General Assembly to the Missouri Housing Development Commission (MHDC) for the initial funding of the Missouri Housing Development Commission Mortgage Insurance Reserve Fund (the "Fund") from the Revenue Sharing Trust Fund in the amount of one million dollars. In our Opinion No. 285, dated November 14, 1973, to Mr. Peter Salsich, this office considered the constitutional validity of the appropriation and found such appropriation to be constitutional.

It is our understanding that MHDC has drawn down the amount appropriated to the Fund and has maintained the Fund in a segregated account which has been invested. To finance its activities, MHDC proposes to issue approximately 16 million dollars in notes. These notes would be secured by certain mortgages held by MHDC.

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It is proposed that the Fund be pledged as additional security for the notes to offer noteholders additional protection should the market value of the mortgages be less than their face value and insufficient to serve as adequate security for the notes. It is further anticipated that as soon as practical MHDC will obtain long-term financing for its activities.

One primary risk that MHDC takes is that any mortgage that it purchases will decline in value prior to the time long-term financing is accomplished. This is the risk that MHDC desires to insure itself against--namely a decline in value of the mortgages.

It appears that there is no express statutory fund to which this appropriation refers and the precise intent of the legislature with respect to the use of the Fund is not entirely clear. It is reasonable to conclude, however, that the legislature intended that MHDC would be in a position to meet its statutory responsibilities.

In meeting its responsibilities it is the duty of MHDC to determine the legislative intent in making the appropriation in question and to apply the appropriation accordingly. In these premises such a determination cannot be delegated to the Attorney General under the provisions of Section 27.040, RSMo, providing for the issuance of Attorney General's opinions, and we are of the view that this office should not interfere with the determination of MHDC unless such determination is clearly in error.

We have the views of MHDC and its counsel which support the application of the Fund as additional security for particular MHDC bond or note issues. We have not received the brief of any other counsel or other authority disputing the position of MHDC with respect to the use of the Fund.

Basically the view of MHDC is that because the language of the appropriation does not refer to any specific statutory fund and does not prohibit the application of the Fund to maintain the value of mortgages owned by MHDC, the Fund may be applied or used for purposes which do afford protection to the mortgages of MHDC against such specified contingencies as MHDC deems necessary. One such specified contingency is that the mortgages may decline in value prior to the time long-term financing is accomplished.

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Although the use to which the Fund may be applied has not been defined in express terms by the General Assembly, we believe that the view of MHDC is reasonable and is within the scope of its duty to make its own determination of the use that can be made of the Fund.

Very truly yours,

A handwritten signature in cursive script, appearing to read "John C. Danforth".

JOHN C. DANFORTH  
Attorney General