

HOUSING AUTHORITY: Housing authorities of Missouri have the power under Sections 99.090 and 99.100, RSMo 1959, to establish fixed rents for like housing units and are not bound to establish rent as a percentage of the tenants' income.

OPINION NO. 397

October 24, 1967

Honorable William C. Phelps  
State Representative--4th District  
1701 Bryant Building  
Kansas City, Missouri 64106



Dear Representative Phelps:

This is in answer to your letter requesting an opinion which reads in part as follows:

"I hereby request an Attorney General's opinion on the question of whether the housing authorities of Missouri have the power to establish fixed rents on like housing units or are the authorities bound to establish rents as a percentage of the tenant's income."

As you have stated in your letter, Sections 99.090 and 99.100, RSMo 1959, govern in this situation.

Section 99.090, RSMo 1959, states:

"It is hereby declared to be the policy of this state that each housing authority shall manage and operate its housing projects in an efficient manner so as to enable it to fix the rentals for dwelling accommodations at the lowest possible rates consistent with its providing decent, safe and sanitary dwelling accommodations, and that no housing authority shall construct or operate any such project for profit, or as a source of revenue to the city or the county. To this end an authority shall fix the rentals for dwellings in its projects at no higher rates than it shall find to be necessary in order to produce revenues which (together with all other available monies, revenues, income and receipts of the authority from whatever sources derived) will be sufficient

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(1) To pay, as the same become due, the principal and interest on the bonds of the authority;

(2) To meet the cost of, and to provide for, maintaining and operating the projects (including the cost of any insurance) and the administrative expenses of the authority; and

(3) To create (during not less than the six years immediately succeeding its issuance of any bonds) a reserve sufficient to meet the largest principal and interest payments which will be due on such bonds in any one year thereafter and to maintain such reserve."

Section 99.100, RSMo 1959, states in part as follows:

"In the operation or management of housing projects an authority shall at all times observe the following duties with respect to rentals and tenant selection:

(1) It may rent or lease the dwelling accommodations therein only to persons of low income and at rentals within the financial reach of such persons of low income;

(2) It may rent or lease to a tenant dwelling accommodations consisting of the number of rooms (but no greater number) which it deems necessary to provide safe and sanitary accommodations to the proposed occupants thereof, without overcrowding; and

(3) It shall not accept any person as a tenant in any housing project if the person or persons who would occupy the dwelling accommodations have an annual net income in excess of five times the annual rental of the quarters to be furnished such person or persons, except that in the case of families with three or more minor dependents, such ratio shall not exceed six to one; in computing the rental for this purpose of selecting tenants, there shall be included in the rental the average

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annual costs (as determined by the authority) to occupants of heat, water, electricity, gas, cooking range and other necessary services or facilities, whether or not the charge of such services and facilities is in fact included in the rental."

Since both of these sections set out above are directly in point they must be read and construed together with effect given to all provisions if possible as was intended by the legislature. See *Mitchum vs. Perry*, 390 S.W. 2d 600.

Considering Section 99.090, supra, it essentially states that the housing authority shall manage and operate its housing projects so as to fix the rentals for dwelling therein at a rate as low as possible, charging only that amount which it shall find necessary to produce revenues which will: (1) pay the principal and interest on the bonds of the authority; (2) meet the cost of maintaining and operating the projects; and, (3) create a sufficient reserve to meet the largest principal and interest payments which will be due on such bonds in any one year thereafter.

Section 99.100, RSMo 1959, states essentially that in the management of the housing projects the authority shall observe the following rules: (1) It may rent or lease the dwelling accommodations only to persons of low income; (2) It may rent or lease the tenant dwelling accommodations consisting of only the number of rooms which is necessary to provide safe and sanitary accommodations; and, (3) It shall not accept any person as a tenant in the housing project if the person or persons who occupy the dwelling accommodations have an annual net income in excess of five times the annual rental or six times the annual rental where there are three or more minor tenants. This last section goes on further to state that the cost to occupants of heat, water, electricity, gas, cooking range and other necessary services or facilities shall be included in the rental.

Considering these two sections together, it is apparent that Section 99.090, RSMo 1959, first requires the housing authorities to rent the housing as cheaply as possible and at the same time meet all the financial obligations enumerated in said statute. Secondly, it is also apparent that Section 99.100, RSMo 1959, imposes an additional limitation which we are concerned with here, that being that the housing authority shall not accept any person as a tenant in any housing project if that person has a net income in excess of five or six times the annual rental to be charged, this limitation depending on the number of minor dependents of the tenant as set out in the statute.

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It is our opinion that the answer to your question is as simple as it may seem. The housing authorities of Missouri not only have the power to establish fixed rents, but are required to do so by Section 99.090, RSMo 1959, in accordance with the provisions set out therein. They are likewise required to select tenants which meet the statutory provisions of Section 99.100, supra, the provision of immediate concern being that the tenant not have an annual income in excess of five or six times the annual rent set by the housing authority, said annual rent to include the cost of heat, water, electricity, gas, cooking range and other necessary services or facilities. It is noted that another construction has been suggested by the Federal Housing Authority in regard to Section 99.100, RSMo 1959; that being that the rent charged for a housing authority unit must be set as a percentage of the particular occupant's income. However, to give such a construction to Section 99.100, RSMo 1959, would be to virtually ignore the provisions of Section 99.090, RSMo 1959, since setting the annual rent of a housing authority unit at a percentage of the tenant's income would make it virtually impossible for the housing authorities to set the rent as low as possible and at the same time be assured of having ample revenue to (1) pay the principal and interest, (2) meet the cost of maintaining and operating the project, and (3) create a sufficient reserve to meet the largest principal and interest payments which will be due in any one year thereafter. In other words, if the housing authority is bound to set the rent at a percentage of its tenants' incomes, it has no certain way of ascertaining what the income will be, thus no way of ascertaining what the rent collected will be.

To further support this construction of the aforementioned statutes, attention is directed to the phrase: " \* \* \* in computing the rental for this purpose of selecting tenants, there shall be included in the rental the average annual cost (as determined by the authority) to occupants of heat, water, electricity, gas, cooking range and other necessary services or facilities, \* \* \*." When this phrase is considered in light of the remainder of the statute, it seems abundantly clear that the phrase "in computing the rental" refers to the process of arriving at the annual rental, which is to be used in selecting tenants, and not to the criteria for setting the rental rate of a tenant.

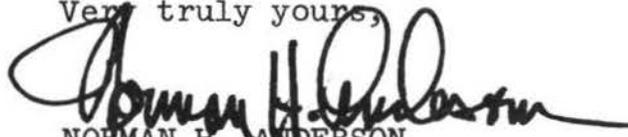
#### CONCLUSION

This office is of the opinion that the housing authorities of Missouri have the power under Sections 99.090 and 99.100, RSMo 1959, to establish fixed rents for like housing units and are not bound to establish rent as a percentage of the tenants' income.

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The foregoing opinion, which I hereby approve, was prepared by my Assistant, L. Michael Lorch.

Very truly yours,

A handwritten signature in black ink, appearing to read "Norman H. Anderson". The signature is written in a cursive style with a large initial "N" and "A".

NORMAN H. ANDERSON  
Attorney General