

Answer by letter-Wieler

December 19, 1969

OPINION LETTER NO. 512

Mr. Gene Sally, Director
Department of Community Affairs
Jefferson Building
Jefferson City, Missouri 65101



Dear Mr. Sally:

This is in answer to your request for an opinion from this office upon the following question:

"'Is a municipal housing authority, organized under the provisions of Chapter 99 of the Revised Statutes of Missouri, included under the provisions of House Bill No. 2, First Extraordinary Session of the Seventy-fifth General Assembly?'"

House Bill No. 2 provides:

"Section 1. Section 108.170, RSMo Supp. 1967, is repealed and one new section enacted in lieu thereof, to be known as section 108.170, to read as follows:

"108.170. Other provisions of law to the contrary notwithstanding, any and all bonds including revenue bonds hereafter issued under any law of this state by any county, city, town, village, school district, educational institution, drainage district, levee district, nursing home district, hospital district, library district, road district, fire protection district, water supply district, sewer district, special authority created under Section 64.920, RSMo, authority created pursuant

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to the provisions of Chapter 238, RSMo., or other municipality, political subdivision or district of this state shall be negotiable and may bear interest at a rate not exceeding six percent per annum, and may be sold, at any sale pursuant to any law applicable thereto, at the best price obtainable, not less than ninety-five percent of the par value thereof, anything in any proceedings heretofore had authorizing such bonds or in any law of this state to the contrary notwithstanding. Such aforementioned bonds may bear interest at a rate not exceeding eight percent per annum if sold at public sale after giving reasonable notice of such sale, at the best price obtainable, not less than ninety-five percent of the par value thereof. Industrial development revenue bonds may, however, be sold at private sale and bear interest at a rate not exceeding eight percent per annum if sold pursuant to any law applicable thereto, at the best price obtainable, not less than ninety-five percent of the par value thereof.

"Section A. Because many political subdivisions of this state have found it extremely difficult and, in many cases, impossible to sell their bonds at six percent interest on the bond market and consequently are unable to build or maintain public utilities and services necessary to the health, safety, and well-being of their citizens, this act is deemed necessary for the immediate protection of the public health, welfare, peace and safety, and is hereby declared to be an emergency act within the meaning of the constitution, and this act shall be in full force and effect upon its passage and approval."

Section 99.080, RSMo 1959, provides that a municipal housing authority shall constitute a municipal corporation, exercising public and essential governmental functions. Also, enclosed is a copy of Opinion No. 394, issued to the Honorable Thomas A. Walsh on November 2, 1967, which holds that the St. Louis Housing Authority is a "public body" within the meaning of Section 105.500, RSMo Supp. 1967. In arriving at this conclusion, the opinion finds that a housing authority is both a municipality and a political subdivision of this state for certain purposes. This being so, it is our view that House Bill No. 2 was meant to apply to municipal housing authorities as well as the other political subdivisions listed.

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However, before the provisions of House Bill No. 2 can be applied by municipal housing authorities, certain inconsistencies between the bill and Section 99.150, RSMo 1959, must be resolved. Section 99.150 provides:

"1. Bonds of an authority shall be authorized by its resolution and may be issued in one or more series and shall bear such date or dates, mature at such time or times, bear interest at such rate or rates, not exceeding six per cent per annum, be in such denomination or denominations, be in such form, either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption (with or without premium) as such resolution, its trust indenture or mortgage may provide.

"2. The bonds shall be sold at not less than par at public sale held after notice published once at least five days prior to such sale in a newspaper having a general circulation in the area of operation and in a financial newspaper published in Kansas City or in the city of St. Louis, provided, that such bonds may be sold to the federal government at private sale at not less than par and, in the event less than all of the bonds authorized in connection with any project or projects are sold to the federal government, the balance of such bonds may be sold at private sale at not less than par at an interest cost to the authority of not to exceed the interest cost to the authority of the portion of the bonds sold to the federal government.

"3. In case any of the commissioners or officers of the authority whose signatures appear on any bonds or coupons shall cease to be such commissioners or officers before the delivery of such bonds, such signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if they had remained in office until such delivery. Any provision of any law to the contrary notwithstanding, any bonds issued pursuant to sections 99.010 to 99.230 shall be fully negotiable.

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"4. In any suit, action or proceedings involving the validity or enforceability of any bond of an authority or the security therefor, any such bond reciting in substance that it has been issued by the authority to aid in financing a housing project to provide dwelling accommodations for persons of low income shall be conclusively deemed to have been issued for a housing project of such character and said project shall be conclusively deemed to have been planned, located and constructed in accordance with the purposes and provisions of sections 99.010 to 99.230."

The Missouri Supreme Court has said:

"Courts will not hold that a later statute repeals an earlier one by implication, nor by an express provision to the effect that it repeals former acts inconsistent with it, unless the inconsistency clearly appears. . . ." Nichols v. Hobbs, 197 S.W. 258, 259 (Mo. 1917)

It is clear that House Bill No. 2 does not repeal Section 99.150 expressly. See Stricklen v. Combe Printing Co., 249 Mo. 614, 621, 155 S.W. 829 (1913), wherein the court said, ". . . If there has been a repeal, then it is one by implication. . . ." when dealing with a statute which provided, ". . . All acts or parts of acts not in conformity with the provisions of this act are hereby repealed. . . ." Therefore, it is necessary to compare the two provisions to see whether or not Section 99.150 has been repealed by necessary implication. House Bill No. 2 provides that any and all bonds issued by any municipality may bear interest at a rate not exceeding six percent per annum with the exception that such bonds may bear interest at a rate not exceeding eight percent per annum if sold at public sale after giving reasonable notice of such sale and that such bonds shall not be sold for less than ninety-five percent of the par value thereof, any law to the contrary notwithstanding. Section 99.150 is directly contrary in two instances in that it provides that bonds issued by a municipal housing authority shall not bear interest at more than six percent and that they shall be sold at not less than par value. To this extent, the two sections are irreconcilable. Further, in view of the legislative pronouncement that the provisions of House Bill No. 2 are to be controlling, any law to the contrary notwithstanding, it is our opinion that the legislature intended for the provisions of House Bill No. 2 to be controlling in those instances where House Bill No. 2 conflicts with other laws. By the same token, it can be said that the legislature

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did not intend to repeal those laws which are not in conflict. We note the following language of the Missouri Supreme Court in the decision dealing with the conflict between Section 108.170, RSMo Supp. 1967 (the forerunner to House Bill No. 2) and Section 108.080, RSMo 1959, with respect to interest rates:

" . . . In other words, we rule that the re-enactment of § 108.170 in 1965 did by implication repeal the limitation of interest to 4%, as expressed in § 108.080. Otherwise, § 108.080 may stand as written; the only change will be in the permitted rate of interest. The presence in § 108.170 of the words: 'anything * * * in any law of this state to the contrary notwithstanding,' confirms us in this view. That expression was not new in the re-enactment, but its inclusion, then and previously, is some evidence of an intent to make the section controlling as to all political subdivisions. . . ." Edwards v. St. Louis County, 429 S.W.2d 718, 722 (Mo. en banc 1968)

Therefore, it is our view that those provisions of Section 99.150 which are irreconcilable to the provisions in House Bill No. 2 are repealed by necessary implication.

It is the opinion of this office that a municipal housing authority, organized under the provisions of Chapter 99 of the Revised Statutes of Missouri, is included under the provisions of House Bill No. 2 of the First Extraordinary Session of the 75th General Assembly and bonds issued by said authority may be sold at not less than ninety-five percent of par and may bear interest at a rate not exceeding eight percent if sold at public sale pursuant to the notice qualifications of Section 99.150, subsection 2, RSMo 1959.

Yours very truly,

JOHN C. DANFORTH
Attorney General

Enclosure: Op. No. 394
11-2-67, Walsh