

NURSING HOMES:
MISSOURI HOUSING
DEVELOPMENT COMMISSION:

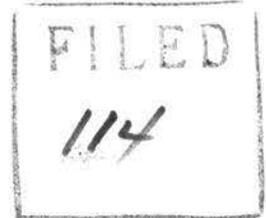
struction of nonprofit facilities which will provide nursing home residential services for persons of low and moderate income who live on a permanent basis in such homes.

The Missouri Housing Development Commission, Sections 215.010, RSMo et seq., has the authority to make first mortgage loans for the con-

OPINION NO. 114

April 4, 1973

Mr. Peter W. Salsich, Jr.
Chairman, Missouri Housing
Development Commission
3642 Lindell Boulevard
St. Louis, Missouri 63108



Dear Mr. Salsich:

This opinion is in answer to your question asking:

"Under Chapter 215 R.S.Mo 1969, as amended, may the Missouri Housing Development Commission make a policy determination as to whether or not it may make first mortgage loans for the construction and rehabilitation of residential housing for occupancy by elderly persons of low and moderate income that will include in-house medical care, food accommodations and social service features and will be licensed by the Division of Health under Section 198.021, R.S.Mo where there is a need for such housing and where the Commission shall determine that construction and permanent loans are not otherwise available, wholly or in part, from private lenders upon reasonably equivalent terms and conditions?"

You also state that the organization involved is not for profit.

The question, as you indicate, centers on the definition of "residential housing" which is defined in Section 215.010(8) as follows:

"'Residential housing' means a specific work or improvement within this state undertaken

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primarily to provide dwelling accommodations, including the acquisition, construction or rehabilitation of land, buildings and improvements thereto, and such social, recreational, commercial, communal or other nonhousing facilities as may be incidental or appurtenant thereto."

Under the provisions of Section 215.030, RSMo, the "Missouri Housing Development Commission", which is created under Section 215.020, RSMo, "has and may exercise all powers necessary or appropriate to carry out and effectuate its purpose, including but not limited to the following:

"(1) Make first mortgage loans, including mortgages insured or otherwise guaranteed by the federal government, to finance the building or rehabilitation of residential housing designed and planned to be available at low and moderate rentals or to be sold to low and moderate-income families and others upon such terms as hereinafter designated;

"(2) Insure any first mortgage loan, the funds of which are to be used to develop low and moderate-income residential housing and the borrower of which agrees to the restrictions placed on such projects by the commission;

"(3) To make or participate in the making of federally insured construction loans to sponsors of residential housing for occupancy by persons and families of low and moderate income. Such loans shall be made only upon determination by the commission that construction loans are not otherwise available, wholly or in part, from private lenders upon reasonably equivalent terms and conditions;
. . ."

The purpose for the enactment of Sections 215.010, et seq., is set forth in the preamble to House Bill No. 130, 75th General Assembly, as introduced, which states the legislative declaration:

"Section 1. It is hereby found and declared that as a result of public actions involving highways, public facilities and urban renewal projects and as a result of the spread of

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slum conditions and blight to formerly sound neighborhoods, there exists within Missouri a serious shortage of decent, safe, and sanitary housing available at low rentals to persons and families of low income. This shortage is inimical to the safety, health, morals and welfare of the residents of this State and the sound growth of its communities.

"Private enterprise and investment, have not been able to produce without assistance, the needed construction of decent, safe and sanitary housing at rentals which persons and families of low income can afford, or to achieve the urgently needed rehabilitation of much of the present low and moderate income housing stock. It is, therefore, imperative that the cost of mortgage financing, a major factor materially affecting rental levels in housing built by private enterprise, be made lower in order to reduce rental levels for low income persons and families; that the supply of housing for persons and families displaced by public action or natural disaster be increased; and that private enterprise be encouraged to sponsor, build and rehabilitate housing which will help prevent the recurrence of slum conditions and assist in their permanent elimination throughout Missouri."

It can easily be seen from this declaration of legislative purpose which included within its scope "persons" as well as "families" and from the substantive provisions of this law that the primary purpose of the law is a public one involving the general welfare. It was largely on this basis that we held that the Bill's provisions are not in violation of the Missouri Constitution in our Opinion No. 140, 1971, which was addressed to you.

Clearly the definition of "residential housing", above, is broad and not limited to family units. The word "dwell" means simply "to inhabit". Ballentines Law Dictionary, Second Edition, p. 417. It would seem then that the words "dwelling accommodations" as used in the definition mean accommodations for living.

Nursing homes which are licensed under Chapter 198 are within the definition of Section 198.011, RSMo, which provides in part:

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"(1) The term 'nursing', 'convalescent' or 'boarding' home means a private home, institution, building, residence or other place, whether operated for profit or not, which provides, through its ownership or management, maintenance, personal care or nursing for three or more individuals not related to the operator, who by reason of illness, physical infirmities or advanced age are unable to care for themselves; or provides sheltered care to three or more individuals not related to the operator, which includes treatment or services which meet some need of the individual beyond the basic requirements for food, shelter and laundry. The term shall not include the following: . . ."

The general rule of construction respecting remedial public welfare statutes is that statutes enacted in the interest of the public welfare should be liberally construed. State ex rel. Laundry, Inc. v. Public Service Commission, 34 S.W.2d 37 (Mo. 1931). A remedial statute should be construed so as to meet the cases which are clearly within the spirit or reason of the law or within the evil which it was designed to remedy, provided such interpretation is not inconsistent with the language used, and all reasonable doubts should be resolved in favor of its applicability to the particular case. State ex rel. Brown v. Board of Education of City of St. Louis, 242 S.W. 85 (Mo. banc 1922).

In the premises we take note of the numerous problems attendant the furnishing of licensed nursing home residential care to low income persons and we recognize that the lack of such residential facilities poses a serious public welfare problem. We see no reason why the fact that such residents need more than food or shelter should disqualify such facilities from the aid of the Commission in the issuance of loans pursuant to the "state housing" laws. We thus conclude that such homes which accept persons on a permanent residential basis provide residential housing and may qualify for first mortgage loans.

CONCLUSION

It is the opinion of this office that the Missouri Housing Development Commission, Sections 215.010, RSMo et seq., has the authority to make first mortgage loans for the construction of nonprofit facilities which will provide nursing home residential services for persons of low and moderate income who live on a permanent basis in such homes.

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

Very truly yours,

A handwritten signature in cursive script, appearing to read "John C. Danforth". The signature is written in dark ink and is positioned above the typed name.

JOHN C. DANFORTH
Attorney General