



OFFICES OF THE

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY

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JOHN C. DANFORTH
ATTORNEY GENERAL

OPINION LETTER NO. 176

Honorable Jerold L. Drake
Representative, District 5
Post Office Box 400
Grant City, Missouri 64456

Dear Representative Drake:

This letter is in response to your request for a ruling on the following question:

"May a housing authority of a city (organized and operating pursuant to Sections 99.010 through 99.230) enter into a contract with the owners of an apartment complex located in the same city and by the terms of which the housing authority will manage for a fee the apartment complex for the owners thereof, the occupants of the apartment complex not being subject to the same admissions policies and rules and regulations as the occupants of the project owned and operated by the Housing Authority, with the proceeds of the management contract to be used in the furtherance of the purposes of the Housing Authority?"

The facts, as they appear in your opinion request, indicate that a group of private individuals constructed an apartment complex pursuant to the National Housing Act, Section 221(d)(3).¹

¹The act is designed to assist private industry in providing housing for low and moderate income families and displaced families. The section provides below-market interest rate insurance.

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At the present, said apartment complex is being operated and managed by said group of private individuals. The Housing Authority of the City of Maryville desires to enter into a contract with said group of private individuals. The terms of said contract would provide that the Housing Authority would operate and manage for a fee said apartment complex according to the provisions of the contract. The Housing Authority would neither assume liabilities for any debts or operating expenses of the apartment complex, nor would the admissions and occupancy of the tenants of said apartment complex be subject to the same restrictions as the tenants of the housing complex owned by the Housing Authority. The contractual agreement would be strictly for the purpose of generating income for use by the Housing Authority in its community projects.

The declaration and purpose of Chapter 99, RSMo 1969, are set forth in Section 99.030, RSMo 1969. These statements parallel the dicta recited in McQueen v. Druker, 317 F.Supp. 1122 (D.C. Mass. 1970). In that case the court remarked:

". . . the general goal of both national and state housing programs is to provide for necessitous persons a decent home and a suitable living environment. This include adequate, safe, and sanitary quarters. But it also implies an atmosphere of stability, security, neighborliness, and social justice." Id. at 1129-1130.

Section 99.080, subsection 1, RSMo 1969, provides, in part:

"1. An authority shall constitute a municipal corporation, exercising public and essential governmental functions, and having all the powers necessary or convenient to carry out and effectuate the purposes and provisions of sections 99.010 to 99.230, including the following powers in addition to others herein granted:"

and mortgages for rental housing enacted in the Housing Act of 1961 (12 U.S.C. §1715L). To qualify as a mortgagor for a Section 221(d) (3) project a group must be within one of the following categories: (1) a public agency or body which is not a local public housing authority; (2) a cooperative, including an investor-sponsor; (3) a limited dividend corporation; (4) a nonprofit organization; or (5) other mortgagor approved by the Secretary of the Department of Housing and Urban Development.

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This paragraph is followed by a listing of seven subparagraphs expressly enumerating and outlining the powers of a housing authority. The grant of power for a housing authority to contract with private individuals to manage and operate an apartment complex cannot be found in these statutory provisions.

Under Missouri law a municipal corporation possesses only those powers granted in express words, those necessarily or fairly implied in or incident to the powers expressly granted, and those essential to the declared objectives and purposes of the corporation. Fair, reasonable doubt concerning the existence of the power is resolved against the corporation. City of Meadville v. Caselman, 227 S.W.2d 77 (K.C.Mo.App. 1950); City of Bellefontaine Neighbors v. J. J. Kelley Realty and Building Company, 460 S.W.2d 298 (St.L. Ct.App. 1970). Although the management and operation for income of an apartment complex by a housing authority generates benefits which may fulfill the purposes of a housing authority, the management and operation of an apartment complex is not "necessary or convenient" in effectuating the purposes and provisions of Section 99.030, RSMo 1969.

In addition, Section 99.090, RSMo, respecting rentals, states in mandatory language that a housing authority shall:

". . . 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 moneys, revenues, income and receipts of the authority from whatever sources derived) will be sufficient

(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

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(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."

And Section 99.100, RSMo, states in similar obligatory language that a housing authority shall observe the following duties with respect to rentals and tenant selection:

"1. 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 dependants, 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 annual cost (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 for such services and facilities is in fact included in the rental.

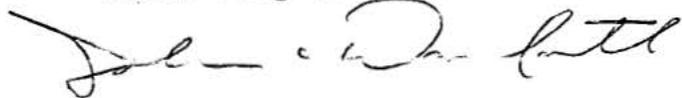
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"2. Nothing contained in this or section 99.090 shall be construed as limiting the power of an authority to vest in an obligee the right, in the event of a default by the authority, to take possession of a housing project or cause the appointment of a receiver thereof, free from all the restrictions imposed by this or section 99.090."

Thus the role of a housing authority in acting as a manager and operator of an apartment complex would conflict with the real role of autonomy granted to a housing authority in order to exercise its designated duties.

Therefore, it is our view that a housing authority of a city may not enter into a contract with the owners of an apartment complex located in the same city by the terms of which the housing authority is to manage and operate for a fee the apartment complex for the owners pursuant to standards established by the owners.

Yours very truly,



JOHN C. DANFORTH
Attorney General