



STATE OF KANSAS

*Office of the Attorney General*

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CURT T. SCHNEIDER  
Attorney General

September 8, 1975

ATTORNEY GENERAL OPINION NO. 75-353

Mr. B. D. Watson  
City Attorney of Independence  
109 West Laurel  
Independence, Kansas 67301

Re: Cities--Housing--Eligible Persons

Synopsis: A local housing authority operating under the Municipal Housing Law, K.S.A. 17-2338 *et seq.*, may not lease or rent property in housing projects operated under the act to persons other than persons of low income, as defined by the city or authority pursuant to the act.

\* \* \*

Dear Mr. Watson:

As City Attorney for the City of Independence, you advise that the City is contemplating construction of a high-rise apartment building under the provisions of K.S.A. 17-2338 *et seq.*, and is presently making arrangements for government assistance from the United States Department of Housing and Urban Development, generally in the form of rent subsidies. The City Commission has inquired whether such housing facilities, if built, may be rented to other than low-income tenants. You indicate your understanding that federal regulations impose no restriction in this regard, the income of the tenant affecting only the amount of government rent subsidies, if any.

More precisely, you indicate, the City is considering the rental of housing in the project to low-income persons on a priority basis, and to others, regardless of income, if the number of housing units exceeds those necessary to supply the needs of low income and elderly persons.

As you point out, the provisions of the Municipal Housing Law, K.S.A. 17-2337 *et seq.* are replete with references to housing

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for low income and elderly persons. Indeed, for the purposes of the entire act, K.S.A. 17-2339(i) defines the terms "housing project" and "project" as

"any work or undertaking to provide decent, safe, and sanitary urban or rural dwellings, apartments, or other living accommodations *for persons of low income.*" [Emphasis supplied.]

The underscored phrase is defined by subsection (i) as

"persons or families who lack the amount of income which is necessary (as determined by the city or county undertaking a project) to enable them without financial assistance, to live in decent, safe, and sanitary dwellings, without overcrowding."

The powers of municipalities under the act are set out in K.S.A. 17-2345: each substantive operating power of the local authority refers to housing projects as defined above, i.e., undertakings to provide housing for persons of low income. And explicitly, K.S.A. 17-2347(a) provides that a municipality shall

"(a) rent or lease the dwelling accommodations in a housing project *only to persons of low income* and at rentals within the financial reach of such persons." [Emphasis supplied.]

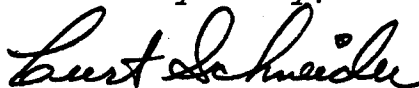
The act was not designed to enable municipal housing authorities to displace or compete with providers of housing in the general commercial market, but to enable cities to meet a special and well-defined need, for adequate housing for persons of low income. Any rental of property to persons other than those persons of low income as defined pursuant to the act would be *ultra vires*, in my opinion. Moreover, any property acquired by the city or local housing authority and used for purposes other than those permitted by the act, such as rental of housing units to persons other than those of low income, would as a result of such *ultra vires* use doubtless be subject to consideration for restoration

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to the tax rolls, for the exemption afforded by K.S.A. 17-2349 extends no further than to property acquired and held pursuant to the act, and any housing project, or portion thereof, which was utilized for providing housing for other than persons of low income and the elderly, would not be a "housing project" as that term is defined by K.S.A. 17-2345(d).

In short, I agree fully with your opinion that the City has the authority to determine the maximum limits of income, taking into account family size and other pertinent circumstances, and thus to define the class of "persons of low income," and when that is done, the tenants of housing projects operated under the Municipal Housing Law are limited to persons of low income thus defined. Moreover, I also share your view that the City may not rent or lease such housing to persons of other than low incomes, once defined, within the scope of the Municipal Housing Law, even though the City may have a surplus of such housing accommodations.

Yours very truly,



CURT T. SCHNEIDER  
Attorney General

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