



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

July 10, 1978

ATTORNEY GENERAL OPINION NO. 78- 218

The Honorable Tim Holt
State Representative
Post Office Box 2783
Wichita, Kansas 67201

Re: Cities--Housing Authorities--Powers

Synopsis: A city or housing authority created under the Municipal Housing Law, K.S.A. 17-2337 *et seq.* is authorized to furnish dwelling accommodations to persons of low income through the lease or rental of dwelling accommodations and the operation of housing projects, and not merely as a vendor of housing units on the sale market.

* * *

Dear Representative Holt:

You inquire concerning the Municipal Housing Law, K.S.A. 17-2337 *et seq.* In particular, you inquire whether a city or municipal housing authority constituted under this act is authorized to engage in the construction and sale of single family dwellings. It is proposed, you advise, that deeds to homes thus sold be placed in escrow, and the payments will be calculated in amounts necessary to retire bonds issued for the project.

The act is replete with legislative findings regarding the existence of insanitary, unsafe and overcrowded dwelling accommodations in urban areas of the state, of a shortage of safe and sanitary dwelling accommodations available at rents or payments which persons of low income can afford, of the unfortunate conditions which result from such shortages, and that the furnishing of adequate dwelling accommodations are governmental functions of public concern. K.S.A. 17-2338. Cities are given broad powers

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under this act to enable them to provide adequate housing for persons of low income. K.S.A. 17-2345. K.S.A. 17-2346 emphasizes the importance of making housing available to persons of low income:

"It is hereby declared to be the policy of this state that each municipality shall manage and operate its housing projects in an efficient manner so as to enable it to fix the rentals or payments for dwelling accommodations at low rates consistent with its providing decent, safe and sanitary dwelling accommodations for persons of low income and that no municipality shall construct or operate any housing project for profit, or as a source of revenue to the municipality. To this end the municipality shall fix the rentals or payments for dwellings in its projects at no higher rates than it shall find to be necessary in order to produce revenues . . . [which are sufficient to retire any bonds, maintain adequate reserves, provide for operating costs, and to make payments in lieu of taxes and other repayment of federal annual contributions as is consistent with maintenance of the low-rent character of the projects.]"

It provides, in addition, that

"Rentals or payments for dwellings shall be established and the projects administered insofar as possible, so as to assure that any federal financial assistance required shall be strictly limited to amounts and periods necessary to maintain the low-rent character of the projects."

K.S.A. 17-2347 provides thus, in pertinent part:

"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;

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(b) rent or lease to a tenant such dwelling accommodations which it deems necessary to provide safe and sanitary accommodations to the proposed occupants thereof, without overcrowding; and

(c) fix income limits for occupancy and rents after taking into consideration the family size, composition, age, physical handicaps, and other factors which might affect the rent paying ability of the family, including the economic factors which affect the financial stability and solvency of the project."

In addition, preference for occupancy is to be given to persons displaced by the project itself, and to elderly persons generally, "who desire to rent or lease dwelling accommodations in such housing project."

These repeated references to the lease or rental of dwelling accommodations compel the judgment, in my opinion, that the act does not authorize a city or housing authority to act merely as a vendor of housing, as has been proposed. Certain provisions may be cited as supporting the proposal which you have described. K.S.A. 17-2345(d) authorizes the city or authority to "sell, lease, exchange, transfer, assign, pledge or dispose of any real or personal property or any interest therein as any part of a housing project established under this act." In addition, K.S.A. 17-2346 refers in three instances to "rentals or payments for dwellings" from which it may be argued that "payments" includes payments made under a mortgage. However, that same section states that "[r]entals or payments for dwellings shall be administered insofar as possible . . . to maintain the low-rent character of the projects." The entire following section, K.S.A. 17-2347, is devoted to restrictions regarding the rental of such projects.

In sum, it is my opinion that the act was intended and specifically drawn in order to authorize Kansas cities to furnish dwelling accommodations to persons of low income by making such accommodations available by lease or rental, and that it does not authorize cities or housing authorities created thereunder to operate merely as a builder and vendor of housing. The act was drawn to authorize the city or housing authority to furnish housing to persons

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of low income through the operation of housing projects, rather than merely as a vendor of housing units on the sale market.

Yours truly,



CURT T. SCHNEIDER
Attorney General

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