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February 3, 2012

ATTORNEY GENERAL OPINION 2012 - 5-A

Ryan Vincent, General Counsel
Kansas Housing Resources Corporation
611 S. Kansas Avenue, Suite 300
Topeka, Kansas 66603

Re: State Boards, Commissions and Authorities—Development Finance Authority—Division of Housing; Establishment and Administration; Powers and Duties; State Housing Plan; Official State Agency for Purposes of Federal Acts and Programs

Synopsis: An out-of-state entity is neither a Kansas municipality, or housing authority created thereby, nor part of the Division of Housing within the Kansas Development Finance Authority. Such an entity may not act as a "public housing authority" in Kansas. This opinion is intended to clarify and supersede Attorney General Opinion No. 2012-5. Cited herein: K.S.A. 17-2337; 17-2338; 17-2339; 17-2340; 17-2345; K.S.A. 2010 Supp. 74-8950; 74-8957; 74-8958; 42 U.S.C.A. § 1437; 42 U.S.C.A. § 1437a; 42 U.S.C.A. § 1437f.

* * *

Dear Mr. Vincent:

As general counsel for the Kansas Housing Resources Corporation, you request our opinion regarding whether an out-of-state entity may act as a public housing agency in Kansas. In your request for an opinion, you state that the Kansas Housing Resources Corporation is able and willing to continue implementation of a program for project-based rental assistance under 42 U.S.C.A. § 1437f.

The United States Housing Act of 1937, as amended by the Housing and Community Development Act of 1974¹ (Housing Act) provides for financial assistance from the federal government to state and local governments "to remedy the unsafe housing conditions and the acute shortage of decent and safe dwellings for low income families" and "to address the shortage of housing affordable to low-income families."² Under the Housing Act:

The Secretary [of the Department of Housing and Urban Development] is authorized to enter into annual contributions contracts with public housing agencies pursuant to which such agencies may enter into contracts to make assistance payments to owners of existing dwelling units in accordance with this section. In areas where no public housing agency has been organized or where the Secretary determines that a public housing agency is unable to implement the provisions of this section, the Secretary is authorized to enter into such contracts and to perform the other functions assigned to a public housing agency by this section.³

The Housing Act includes a definition of "public housing agency." "(A) Except as provided in subparagraph (B), the term 'public housing agency' means any State, county, municipality, or other governmental entity or public body (or agency or instrumentality thereof) which is authorized to engage in or assist in the development or operation of public housing."⁴

"In order to accomplish the stated purpose of the Housing Act, Congress specifically recognized the need to vest the maximum amount of power and responsibility with the local public housing authorities in order to promote efficient management of the programs."⁵

The Legislature of the State of Kansas expressed similar concerns regarding the lack of available safe and sanitary dwelling accommodations for persons of low income when it enacted the Municipal Housing Law.⁶ Under the Municipal Housing Law, every municipality⁷ is granted the power "[t]o prepare, carry out, and operate housing projects."⁸ The Law further confers upon municipalities the power to establish housing authorities and to delegate to such authorities "any and all of the powers conferred on the municipality by this act."⁹ The area of operation of such a housing authority "include[s] such municipality and the area within five (5) miles of the territorial city boundaries thereof: *Provided*, Such

¹ 42 U.S.C.A. §§ 1437 *et seq.*

² 42 U.S.C.A. § 1437(a)(1).

³ 42 U.S.C.A. § 1437f(b)(1).

⁴ 42 U.S.C.A. § 1437a(b)(6).

⁵ *Rivera v. Reading Housing Authority*, 819 F.Supp. 1323, 1328-329 (E.D. Pa. 1993), *aff'd Rodriguez v. Reading Housing Authority*, 8 F.3d 961 (3rd Cir. 1993).

⁶ K.S.A. 17-2337 *et seq.* See specifically K.S.A. 17-2338.

⁷ See K.S.A. 17-2339(o) ("Municipality" shall mean any city or county).

⁸ K.S.A. 17-2345(a).

⁹ K.S.A. 17-2340.

area shall not include any area which lies within the territorial boundaries of another city as herein defined without the consent of the other city nor any area in another county."¹⁰

The Legislature has likewise created the Division of Housing within the Kansas Development Finance Authority.¹¹

Subject to and in accordance with the provisions of K.S.A. 74-8901 *et seq.*, and amendments thereto, the division of housing is hereby authorized and empowered to:

- (1) Prepare, from time to time amend, and administer the state housing plan in accordance with criteria of the federal department of housing and urban development;
- (2) serve as a clearinghouse and single point of contact for the state regarding information, programs, and resources related to affordable and accessible housing;
- (3) provide access and management of federal housing programs for delivery to the citizens and businesses of Kansas;
- (4) work with existing agencies, organizations, and social programs to assist in the development of affordable and accessible housing; and
- (5) exercise such other powers and perform such other duties as may be prescribed by law.¹²

The Division of Housing "shall serve as the officially designated state agency of Kansas" whenever such a designation "is required by any federal act or program under which federal financial assistance is made available for housing or housing related purposes."¹³

Through the Municipal Housing Law and K.S.A. 2010 Supp. 74-8950 *et seq.*, the Kansas Legislature has authorized municipalities, or housing authorities created thereby, and the Division of Housing within the Kansas Development Finance Authority to engage in or assist in the development or operation of public housing. Such entities are within the definition of "public housing authority" set out in 42 U.S.C.A. § 1437a. The Secretary of Housing and Urban Development may, therefore, enter into annual contribution contracts pursuant to 42 U.S.C.A. § 1437f with these entities. An out-of-state entity is neither a

¹⁰ K.S.A. 17-2339(f).

¹¹ K.S.A. 2010 Supp. 74-8950; 74-8957. Prior to issuance of Executive Reorganization Order No. 30 in 2003, the Division had been within the Department of Commerce and Housing.

¹² K.S.A. 2010 Supp. 74-8957(b).

¹³ K.S.A. 2010 Supp. 74-8958.

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Kansas municipality, or housing authority created thereby, nor part of the Division of Housing within the Kansas Development Finance Authority and, therefore, is not authorized to act as a "public housing authority" in Kansas. This opinion is intended to clarify and supersede Attorney General Opinion. 2012-5.

Sincerely,

Derek Schmidt
Attorney General

Richard D. Smith
Assistant Attorney General

DS:AA:RDS: