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FOREWORD

In the course of his address before a section of the American Bar Association at its annual meeting held at Cleveland in July 1938, Mr. Leon H. Keyserling, Deputy Administrator and General Counsel of the United States Housing Authority, pointed out that "an increasing number of decisions in State courts are sustaining the validity and powers of local housing authorities. These local authorities, modeled in some respects after the New York Port Authority and other municipal authorities, are the real spear-heads of public housing. They constitute one of the most significant developments in recent law, and will play a major role in the coming history of municipal government."

The number of decisions by the highest state courts sustaining the validity of local housing legislation, has more than doubled since the time of Mr. Keyserling's remarks. There are now thirteen decisions in as many states favorably deciding the many issues raised in the respective cases.

The social forces at work in pressing for the adoption of legislation enabling localities to clear their slums and rehouse their low-income families have culminated in the enactment of such laws in thirty-seven states. But, as in the case of most legislation where novel methods are employed to bring about desirable ends, the state housing enabling legislation must get over the disconcerting hurdles which often confront it. And the first, if not the highest of these hurdles, is the question of the validity of the legislation.

Tomorrow's historian will have the advantage of perspective. We who move in today's events, however, cannot help but be aware that in the field of public law, new law is being made. A whole new concept, that of the public authority, is surely, if slowly, in the ascendency. New social connotations are being given to old legal concepts, so

that such expressions as "delegation of legislative powers", "municipal debt-incurring limits", "public purpose", "self-executing tax-exemption provisions" and the like, take on new meanings as the courts have analyzed these expressions in the light of their effect on the housing legislation.

The thirteen decisions which are collected in this publication are the first housing authority cases in this country. The American Federation of Housing Authorities is confident that these opinions, together with the analyses which accompany them, will prove of value to the many local housing authorities throughout the country who have so convincingly displayed their alertness in meeting problems that are individual and their capacity for cooperation in solving those that are common.

PREFACE

The gradual evolution of a new body of legal doctrine has made the progress of public housing possible in America. It has cleared the way for the work of the builders and planners, and has enabled state, city and federal government to join hands for the common end of rehousing the wage-earner. There were many formidable obstacles that had to be overcome before anything tangible could be accomplished, but in spite of the need for reformulating and redefining many traditional legal concepts, in spite of the confused if not unfavorable state of the established precedents, the development of this new structure has been remarkably rapid and remarkably favorable, on the whole. One decision after another has followed in quick succession; and the high courts of our states have swept away the barriers that once had seemed almost insurmountable. To appreciate these accomplishments in their true perspective requires some analysis of the background.

Dominating the whole question in the dark days of 1933 was a question that now sounds as distant and forgotten as the "Merry Widow" - should housing projects be built from Washington or built by local bodies with aid from Washington? Obviously, some measure of federal aid was essential. The question was however whether federal aid necessarily involved centralized bureaucratic control extending to every detail of planning, construction and operation, with the local Authorities playing a distinctly subordinate role. That question was finally answered in the negative when the government decided to withdraw its appeal to the Supreme Court of the United States in the crucial case of United States v. Certain Lands in Kentucky,* in which both the District Court and the Circuit Court of Appeals had found, on the application of the United States to condemn certain lands for a housing project, that

* 7 Fed. Sup. 137 (1935) Aff'd. 78 Fed. (2d) 684 (C.C.A. 6th) 1935

the government was without constitutional power to take private property for this purpose, since no power specifically or by implication authorizing such action could be found among the strictly limited powers delegated to it by the sovereign states.

Housing was not a purpose, therefore, for which the federal government was authorized to take property against the will of its owner. The decision was greeted with consternation by the advocates of centralized housing policy, and yet in spite of the seeming setback to the cause of public housing it really was one of the most fortunate things that had ever happened in the whole history of the American movement. For it served definitely to reorient the whole federal policy along different, far more realistic and far more practical lines. The threat of defeat in the Supreme Court accomplished what no amount of persuasion could do - it pointed out the logical and natural division of function between federal government and local Authority that has since become crystallized into harmonious interdependence under the carefully conceived and skilfully administered provisions of the United States Housing Act. To that extent all true friends of public housing will view the decision as a blessing in disguise.

For the power of eminent domain - surely the first essential for any public housing project involving more than a few parcels - which the federal courts had denied to the United States government, the state appellate courts, in a series of momentous decisions, had already confirmed to the states and to the housing authorities created by them. The decisions reprinted in this volume, among many other questions, resolve that issue uniformly in one sense. And on the other hand the federal government, regardless of abstract and technical considerations, had in practice the right to spend for purposes deemed public by Congress - a right made impregnable by the doctrine enunciated in Massachusetts

v. Mellon (1911)* to the effect that a taxpayer had no standing to question the propriety of any federal expenditure, since his own interest in the matter was so vague, uncertain and indeterminable that no damage could be shown. Thus state power and federal power fitted together, in the case of housing as well as of other activities, into a perfectly clear and perfectly distinct pattern. Washington might aid financially without fear of judicial reproof, and might exercise such general supervisory control as was compatible with the autonomy of the local bodies, and necessary to assure the uniform and advantageous expenditure of the federal subventions. Yet to the states and to the local authorities established under their sovereign protection remained the essentially local function of originating, planning, constructing and operating housing projects with a minimum of outside interference and a maximum of flexibility and adaptation to local conditions.

The decisions in this book trace, to some extent, the outlines of that cooperation, of that coordination. Housing law is still in its infancy. Yet it is a lusty infant that housing practitioner and officials and administrators are called upon to nurture. Familiarity with all the nuances of local interpretation and action according to a strategy cooperatively developed is more than desirable - it is essential. These decisions, and the digests of them in part I, are presented with that thought primarily in mind.

* * * * * * * * *

The first of these decisions - <u>New York City Housing Authority v. Muller</u>** - established the principle, since followed by courts almost all over the country - that the provision of public low-rent housing was a public purpose for which private property might be taken.

* 262 U. S. 447
** 270 N. Y. 333

The writer was in charge of the litigation for the New York City Housing Authority. With considerable trepidation the case was argued in the lower courts, for at the time of the enactment of the Municipal Housing Authorities Law in New York in 1934, there was still no conclusive body of housing precedent that could be relied on, and there was no way of telling what the courts would do. Analogy, of course, was strong, but by no means conclusive. Public housing as a municipal activity was new, and its novelty raised issues which clouded in doubt not only the powers conferred by legislative grant upon local housing Authorities, but even the validity of the obligations they were authorized to issue. The Public Works Administration questioned the legality of their bonds. The power of eminent domain was doubtful. Whether housing was a public purpose for which public monies could lawfully be spent was still undetermined.

There were certain inconclusive precedents for the employment of the police power and of the taxing power against the slums, but there was none for the use of eminent domain.

In Massachusetts, on the contrary, the Supreme Judicial Court had held that private property could not be condemned to provide homes for wage earners.* In another case**, the Court had even said:

> "In a general sense it is of public interest that the people be well housed but this does not authorize the state to become the general landlord. The subject is a proper one for the exercise of the police power but not of eminent domain."

Fortunately these cases were, of course, not binding upon the New York courts. Yet they certainly did not help us, or make us much more cheerful. We won at Special Term. But when <u>New York Housing Authority v. Muller</u> was finally argued before the Court of Appeals, the

* Opinion of the Justices, 211 Mass. 624

** Salisbury Land and Improvement Co. v. Commonwealth, 215 Mass. 371.

Chief Justice said, in substance, from the bench:

> "In your efforts to clean up the slums of New York City we held valid the Multiple Dwelling Law, and then during the emergency housing shortage, when people were being put out on the streets, we held rent restriction valid. Now you ask for the privilege of eminent domain. If we give you this, what will you want next?"

In a sphere as new as public housing, and with boundaries and objectives as fluid, the fears of the Chief Justice were readily comprehensible. Throughout the country the precise limits of the concept of "public use" were hazy. Two different interpretations were current. One held that an undertaking was for public use only if it were used by the public or by a public agency. Another, more liberal view, held it sufficient to make a project for the public use if it was for or conducive to the public benefit or welfare.

In spite of the ominous question from the Chief Justice, the Court of Appeals adopted the liberal definition of public use and handed down the first decision from any high court holding housing to be a public purpose for which public money could be spent and private property acquired. Following that decision, numerous courts in other states accepted the same view and broadened the powers that local housing authorities might lawfully exercise in the fulfillment of their functions. The decisions reprinted in this volume are more eloquent than any comment upon them. For they served to clear away the tangled maze of archaic verbiage and impassable obstructions that only a few years ago were thought by many to make any large scale housing program for the American wage-earner impossible.

Yet all the legal obstacles to the fullest development of public housing have not yet been eliminated. The United States Housing Act requires the free exercise not only of the eminent domain power but of the police power and of the taxing power as well. Before a project

may be approved for federal assistance, a certain amount of assistance must also be provided by local or state governments. These must cooperate finanically and in other ways. USHA is not permitted to assume the entire burden. The police power must be used to eliminate, by demolition or improvement, substandard dwellings equivalent in number to the new dwellings to be provided by a project. Whether insanitary houses can be torn down under the police power without payment of compensation; whether the city can do the work necessary to make dwellings comply with legal requirements and file prior liens therefor; whether bonds issued in connection with non-federal projects are exempt from federal taxation - these are only a few of the questions which are still to be resolved. Revision of condemnation practices to facilitate the low-cost acquisition of land is also essential.

These are the legal frontiers still to be traversed. It is important that the Authority counsel bear in mind the practical and realistic strategy that must be employed in developing precedent on the many different housing questions that may arise from time to time. And it is equally important that all Authorities keep in touch with one another to post themselves on the current status of the litigation that concerns all these vital issues and many others as well. The Federation has filed briefs as amicus curiae in the Pennsylvania case and its counsel is prepared to aid on these and other questions arising from time to time. After all, judicial interpretation is still based upon precedent, and adverse decisions handed down as a result of careless or insufficient preparation, or appeals thoughtlessly taken in jurisdictions where the decision is apt to be unfavorable, or other tactical blunders may influence the whole housing movement unfavorably, and endanger the program not only in the single state immediately concerned but in all other states as well. Until all of the questions involved in a housing program

are finally resolved, cooperation between Authorities is essential and the exchange of information between them is of primary importance. With this in view, the Federation has prepared this compilation for the use of housing officials and housing Authorities.

For authorizing and encouraging this work, thanks are due to John Carroll, President, Langdon W. Post, Chairman of the Board, and James A. Urich, Executive Secretary of the Federation.

CHARLES ABRAMS
Counsel to the American Federation
of Housing Authorities, Inc.

PART I

SUMMARIES OF ALL DECISIONS RELATING TO THE CONSTITUTIONALITY AND LEGALITY OF THE STATE HOUSING AUTHORITIES LAWS

In New York City Housing Authority v. Muller, 270 N. Y. 333, 1 N. E. (2d) 153 (Mar. 17, 1936), an action by the authority to condemn land for use as a site for a low-rent housing project, the Court of Appeals of New York held that low-rent housing is a public use for which property may be condemned. In a decision which marked a significant advance in the law relating to municipal housing, Judge Crouch for the New York Court of Appeals described the implements available to the state in its attack on the low-rent housing problem as follows:

"That the fundamental purpose of government is to protect the health, safety, and general welfare of the public. All its complicated activities have that simple end in view. Its power plant for the purpose consists of the power of taxation, the police power, and the power of eminent domain. Whenever there arises, in the state, a condition of affairs holding a substantial menace to the public health, safety, or general welfare, it becomes the duty of the government to apply whatever power is necessary and appropriate to check it. There are differences in the nature and characteristics of the powers, though distinction between them is often fine. (Citing cases). But if the menace is serious enough to the public to warrant public action and the power applied is reasonably and fairly calculated to check it, and bears a reasonable relation to the evil, it seems to be constitutionally immaterial whether one or another of the sovereign powers is employed."

The case of Spahn vs. Stewart, 268 Kentucky 97; or 103 S. W. (2nd) page 651, (Feb. 19, 1937) decides that this Act does not confer legislative powers on the Housing Commission. It also decides that the commission may lawfully prescribe hours of labor and minimum wages to be paid in the erection of buildings provided for by Section 4, and the city may advance salaries of the commission and expenses of survey and preliminary plans.

The power of condemnation authorized by Section 6 of this Act is held to be constitutional because the purpose is a public one. The provision exempting from taxation bonds issued by the commission, provided for by Section 10, is also held to be constitutional.

The Supreme Court of the State of Alabama, in an opinion to the Governor, (March 17, 1938) decided:

> "The housing authority is an administrative agency of a city and its property is, therefore, for certain purposes, that of a municipal corporation and is entitled to the tax exemption of Section 91, Constitution."

Though under this opinion the real and personal property of housing authorities, created under the Act of 1935, is exempt from ad valorem taxes imposed by any authority in the state, it does not exempt such property from improvement assessments or excise taxes. (Opinion of the Justices, March 17, 1938)

Wells v. Housing Authority of the City of Wilmington, North Carolina and the City of Wilmington, North Carolina, (197 S. E. 693), decided June 15, 1938, by the Supreme Court of North Carolina, held:

(1) That slum clearance and construction of low-rent housing projects to rehouse low-income slum dwellers are public purposes in which a local housing authority may legally become engaged.

(2) That a local housing authority has the right to exercise the power of eminent domain in condemning property for the purpose of constructing low-rent housing projects for families with low income.

(3) That a local housing authority is a municipal corporation within the meaning of Article 5, Section 5 of the North Carolina Constitution, and as such, all real and personal property owned and administered by such authority is exempt from all State, county and local ad valorem taxes.

(4) That revenue bonds issued by a local housing authority for the purpose of aiding in the financing of housing projects are not debts or obligations of the authority or of the municipality within the meaning of the Constitutional provisions forbidding the incurring of debt without a vote of the people.

(5) That a city may lawfully convey real estate to a local housing authority with or without consideration. The Court held that the benefits received by the municipality in carrying out the purposes of the Act was a sufficient monetary consideration to support a conveyance of real estate from the city to the authority.

(6) That a local housing authority is not an administrative agency of the city but is a separate and distinct municipal corporation.

State ex rel. Gaston L. Porterie, Attorney General vs. Housing Authority of New Orleans, et al, 182 Southern Reporter 725, decided in June 27, 1938, held as follows:-

(1) That a city may lawfully contribute or lend funds to a local housing authority for preliminary or organization expenses and may purchase the bonds of a local housing authority. The Court held the City in so doing was performing, indirectly through a public agency created by the State and sanctioned by its own governing authority, one of the primary functions of municipal government.

(2) That the City of New Orleans, acting through its Commission Council, may lawfully close streets within the area of a housing project and sell same to the local housing authority.

(3) That the housing authorities law is a general law notwithstanding its application is limited to cities having a population of over 20,000.

(4) That the property of local housing authorities acquired and held for the purposes authorized by the Louisiana Housing Authorities Law is "public property" and as such is exempt from taxation by virtue of Article X, Section 4 of the Constitution of Louisiana.

(5) That a local housing authority has the right to exercise the power of eminent domain in condemning property for the purpose of constructing low-rent housing projects for families of low income.

(6) That the debts of a local housing authority will not be debts of the City or of the State or of any municipality thereof.

(7) That a local housing authority is not a municipal corporation within the meaning of Article XIV, Section 14 of the Constitution of Louisiana and so is not required to comply therewith in issuing bonds and incurring debt.

The recent decision, in the case of Dornan v. Philadelphia Housing Authority, City of Philadelphia and the School District of Philadelphia, 200 Atl. 834, rendered on June 30, 1938 by the Supreme Court of Pennsylvania, held:

(1) That the use to which the property acquired by the housing authorities will be devoted constitutes a public use within the legal definition of that term.

(2) That the projects will be entitled to complete tax exemption including exemption from taxes imposed for school purposes.

(3) That the housing authorities law does not violate the constitutional provision against special legislation regulating the affairs of counties, cities, townships, wards, boroughs or school districts.

(4) That the housing authorities law does not involve any unconstitutional delegation of legislative power.

(5) That the housing authorities do not constitute special commissions within the meaning of Article III, Section 20 of the Pennsylvania Constitution which prohibits the General Assembly from delegating to such commissions any power to make, supervise or interfere with any municipal improvement, money, property or effects, or to perform any municipal function.

(6) That housing authorities are not municipalities and the debts of such authorities are not debts of any city, county, municipal subdivision or the commonwealth.

(7) That the titles of both the housing authorities law and the housing cooperation law are broad enough to cover the subject matter and that each of these laws relates to one subject.

Marvin v. The Housing Authority of Jacksonville, Florida, et al., 183 So. 145, rendered by the Supreme Court of Florida on July 27, 1938, held:

(1) That low-rent housing and slum clearance is public purpose;

(2) That the obligations of a housing authority in Florida are not debts of the municipal corporation in which the authority functions and are not bonds within the meaning of the Florida Constitution, and thus, that an election is not necessary to authorize such obligations; and

(3) That the property of local housing authorities is exempt from taxes.

<u>Williamson</u> v. <u>Housing</u> <u>Authority</u>, <u>etc</u>. <u>of</u> <u>Augusta</u>, <u>et</u> <u>al</u>. 199 S. E. 43

(September 21, 1938)

(1) That the Housing Authority of Augusta was organized for a public purpose and its functions of clearing slums and constructing low-rent housing projects were public and not private purposes.

(2) That the fact that the Housing Authorities Law vests a local housing authority with the power of eminent domain was not an unconstitutional delegation of such power because the purpose for which the power would be exercised was a public use.

(3) That the bonds and other obligations of the Housing Authority of the City of Augusta issued to finance the development of a low-rent housing project were not "bonds" within the meaning of Section 7 of Article 7, paragraph 1, of the Constitution of the State of Georgia.

(4) That all the real and personal property owned by The Housing Authority of Augusta is exempt from all ad valorem taxes.

(5) That the City of Augusta under its police power is authorized to effect elimination of unsafe or insanitary dwellings.

(6) That neither the Housing Authorities Law nor the Housing Cooperation Act contained provisions in conflict with the Constitution of the State of Georgia.

W. E. McNulty, Taxpayer of the City of Columbia v. L. B. Owens, Mayor of the City of Columbia, 199 S. E. 425 (October 13, 1938).

(1) That question of whether an Act is for a public purpose is primarily one for Legislature, and the Court will not interfere with the legislative finding of the need for low-cost housing and slum clearance, the apparent inability of private capital to supply it, and the satisfactory solution afforded by similar governmental programs here and elsewhere. Therefore, the project planned by the local housing authority is an exercise of proper governmental function for a valid public purpose.

(2) That proposed slum clearance and low-rent housing project is exempt from taxation and special assessments by the State constitution under Article 10, Sections 1 and 4, as municipal property used exclusively for public purposes.

(3) That a contract between city and the authority for payments is a benefit to taxpayers of the city rather than a detriment, as property of an authority exempt from taxation and special assessments.

(4) That a housing authority may acquire property for slum clearance or low-cost housing and such acquisition would not constitute a taking of property for private purposes within the prohibitions of the Constitution, Article 1, Section 17.

(5) That bonds issued by a housing authority will not constitute an increase of bonded indebtedness of a city prohibited by Article 8, Section 7, and Article 10, Section 5, of the Constitution, since the Housing Authorities Law provides that "no indebtedness of any nature of any authority shall constitute a debt or obligation of a municipality, of the State, or any other subdivision or instrumentality thereof".

(6) That a city may donate land, money or services to a housing authority, since these projects are for a public purpose.

(7) That a contract between a city and a housing authority whereby a city obligates itself to furnish municipal services and facilities for tenants living in the improved areas in return for an annual payment in lieu of taxes and special assessments does not bind the future exercise of city's governmental powers in fixing water rates and street maintenance, etc.

(8) That a contract between a city and an authority whereby the city will bind itself to demolish unsound and unsanitary dwellings in number equal to the number of dwellings constructed by the housing authority would be subject to all constitutional and statutory limitations on a city's power; an equivalent elimination contract is valid, as merely an agreement to cooperate with the housing authority.

(9) That a slum clearance and low-cost housing project cannot be assailed as an invasion of the city's reserved powers or interference with its functions, since a housing authority is created pursuant to State legislation and State consent is necessary to the plan whereby the U. S. Housing Authority would make annual contributions.

(10) That delegation of power by the Legislature to City Council and Mayor is constitutionally valid, pursuant to State and Federal constitutions, in view of firm South Carolina precedents, and in view of the fact that the Housing Authorities Law expressly validates creation of housing authorities.

L. F. Rutherford, et al. v. The City of Great Falls, et al.,
86 P. (2d) 656 (January 21, 1939).

(1) That legislation for the purpose of eradicating slums and substituting safe and sanitary dwellings is for a public purpose for which public money may be spent and private property acquired.

(2) That the grant of the right of eminent domain in the Housing Authorities Law does not violate Article 3, Section 14, or Article 15, Section 9, of the State Constitution, assuming that just compensation will be made to the owners of property taken.

(3) That the public nature of the use to which housing property is devoted justifies the exemption from state and local taxation, as a housing authority's property and securities are essentially public property within the constitutional exemption of Article 12, Section 2, exempting public property of the United States, the State, counties, cities, and towns.

(4) That property of a housing authority, public property used for public purposes, is exempt from assessments for improvements and no express exemption law is needed.

(5) That the Act does not violate Constitution, Article 13, Sections 1, 2, 4 and 6, concerning particular limitations with regard to public indebtedness. Neither the Commissioners of the Authority nor any persons executing the bonds are liable personally thereon, nor are the bonds and other obligations of the Authority a debt of any city or municipality.

(6) That a city may constitutionally lend its credit or make donations to a housing authority to cover administrative expenses and overhead for the first year of existence, and may make other donations thereto from time to time.

(7) That the Housing Authorities Law may not be termed special or class legislation, because it singles out persons of low income for special treatment, since the Legislature is presumed to have acted on legitimate grounds of distinction, if any existed, in making the statutory classification.

(8) That the vesting of discretion in the Housing Commission to determine who are persons of low income singled out thereby for special treatment and to determine what is an unsanitary and unsafe building does not contravene the Constitution, Article 5, Section 36, prohibiting a delegation of legislative powers.

(9) That a city's contract with a housing authority to eliminate at least as many unsafe and unsanitary dwellings in the city as the number of new dwelling units erected by the Authority, and to cooperate generally in the program of low-cost housing or slum clearance, is valid.

Knoxville Housing Authority, Inc. v. City of Knoxville, et al.,
123 S. W. (2d) 1085 (January 21, 1939).

(1) That a housing authority, as an incident of its creation, has the power to acquire property by purchase, to borrow money, and to issue bonds. The Act's provision undertaking to force remedies upon obligees of housing authorities is germane to the general purpose of making its securities marketable.

(2) That the Housing Authorities Law, as amended, delegating to housing authorities legislative power to determine the type, nature and extent of projects to be undertaken, does not violate Constitution, Article 2, Sections 1 and 2, prohibiting the delegation of legislative power without definite standards as guides.

(3) That the power of a city council to declare that a housing authority shall be created after finding unsanitary dwelling accommodations exist is a constitutional delegation of power.

(4) That banks and trust companies are authorized to give securities for the deposits of the funds of a housing authority.

(5) That bonds issued by a housing authority are valid investments for all public bodies of the State, and are legal and valid investments for insurance companies, savings and loan associations, guardians, and others.

(6) That slum clearance is a public purpose and a housing authority serves a public use.

(7) That property and bonds of a housing authority shall be exempt from all state, county and city taxation and assessments, since Article 2, Section 28 of the Constitution provides that the Legislature may except property held by the State, counties, cities or towns and used exclusively for public or corporate purposes.

(8) That the housing authority, although incorporated, is an arm or agent of the city which created it.

Paul A. Krause, et al. v. Peoria Housing Authority, et al.

19 N. E. (2d) 193 (January 26, 1939)

(1) That a housing authority is a public charity whose property is to be devoted exclusively to a charitable purpose, and therefore its property is tax-exempt.

(2) That the establishment of housing authorities is for a public purpose, since the elements of public benefit are present.

(3) That slum clearance and low-rent housing are valid public purposes for the expenditure of public funds, or for condemnation.

(4) That bonds issued by a local housing authority are not obligations of the city, since they are not payable out of any funds or properties other than those of the State Authority, and do not constitute an indebtedness within the meaning of any constitutional or debt limitation or restriction. Obligations which are secured only against the revenue of specific revenue-producing properties are not within the constitutional restrictions on municipal indebtedness.

(5) That the obligation of a city to continue the performance of municipal functions as provided in its contract with a housing authority does not constitute an indebtedness within the terms of the Constitution.

(6) That the limitation of power to create a housing authority in cities having a population over 25,000, and counties, constitutes a valid classification, since there is a reasonable relation between the population and the objects and purpose of the Act. The provision referring to counties shows that slum clearance is a State-wide problem.

(7) That the Housing Authorities Act is a constitutional delegation of administrative power to local housing authorities, not in contravention to Article 4, Section 1, of the Constitution, necessitating standards to guide the exercise of delegated power.

(8) That the Act in providing housing to persons of low income does not grant special privileges to those entitled to housing, since the entire community will derive some benefit from the slum clearance projects, and all persons coming within the standards are eligible when there is sufficient shelter for them.

(9) That there is no arbitrary discretion in the choice of tenants as conferred on the local authority. Any administrative discretion here is guided by adequate standards. The pledging of annual contributions, funds received from the Federal Government, as security for the bonds of local housing authorities, is valid, since there is a reasonable basis for this classification.

(10) That no federal restriction is placed upon a city voluntarily contracting with an agency of the Federal Government in the creation of a local housing authority, since the agreement of the city commits it only to the performance of Governmental functions.

(11) That valid power existed to enter into contracts under housing legislation as an Act which is approved, but not in effect, will be given legal force. As the law existed, pursuant to which these contracts were entered into, merely the law's operation is postponed to a future date. Thus, although no contracts may exempt a project from taxation before the effective date of the statute, July 1, 1939, contracts may now be made to become operative on that date.

Edwards, et al. v. Housing Authority of the City of Muncie, Indiana, et al. Docket No. 27105, November Term, 19 N. E. 2nd 741, (March 13, 1939)

(1) That the Legislature has power to protect public health, safety, morals and welfare, and to exercise and to authorize the exercising of the power of taxation and eminent domain, and the raising and expenditure of public funds for housing purposes.

(2) That public interest justifies the undertaking of projects, since the need for low-rent housing and the dangers of slum conditions as found by the Legislature are not disputed.

(3) That public funds may be expended for housing purposes. Municipalities are authorized to pay the first year's administrative expense of these projects, and to furnish certain facilities such as streets, sanitary service, police and fire protection, and street lighting.

(4) That housing authorities may be legally vested with the power of eminent domain.

(5) That although one class of citizens are granted certain privileges or immunities which do not equally belong to all citizens, such private benefits are connected with all public, charitable, or quasi-charitable enterprises. No discrimination ensues, although incidental special benefits accrue to some individuals.

(6) That property and bonds involved may be lawfully exempted from taxation.

(7) That the Act authorizing housing authorities to issue bonds secured by mortgages upon the projects without limitation as to the value of taxable property within the housing authority does not contravene Article 13, Section 1, Indiana Constitution, prohibiting political or municipal corporations from becoming indebted in an amount in excess of 2% of the taxable property within the corporation. The bonds authorized do not become a debt of any city, town, county, the state, or

any political subdivision thereof. They are not payable out of taxes or any funds or properties other than the funds and properties of the housing authority issuing them.

(8) That although the Act takes effect only upon the declaration of the governing body of a city, town or county that there is need for a housing authority to function, the Act does not contravene Article 1, Section 25, Constitution, providing that no law shall take effect upon any authority, except as provided in the Consitution.

The emergency clause in the Act promulgates their effective date immediately on passage, so that their effective date does not depend upon the action of any other body.

(9) That the Act does not violate Article 4, Section 1, of the Constitution, regarding delegation of legislative authority to housing authorities, since the Legislature can always make a law and delegate power to determine the existence of some fact or situation upon which the law is intended to operate.

(10) That the Act does not invalidly surrender and alienate the Legislature's police and governmental power to the housing authority and the City of Muncie. Neither the city nor the housing authority acquired any vested right to exercise these powers, since the Legislature may withdraw the power at any time.

(11) That the Act does not invalidly attempt to vest two independent public corporations with the same or like powers within the same territory. If conflicts of jurisdiction arise between county authorities and city authorities, it will be time enough to decide the jurisdictional question when it is presented.

(12) That a housing authority can also exercise the power of eminent domain to acquire property outside the boundaries of a city for use in construction of a housing project.

(13) That the Act embraces public interest, since housing projects are devoted to public use and to public benefit.

PART II

TEXT OF ALL HOUSING DECISIONS IN THE STATE SUPREME COURTS

NEW YORK CITY HOUSING AUTHORITY
v. MULLER et al.

Court of Appeals of New York
March 17, 1936.

270 N.Y. 333, 1 NE (2d) 153

CROUCH, Judge.

The petitioner, a public corporation organized under the Municipal Housing Authorities Law (Laws 1934, c. 4, comprising sections 60 to 78, inclusive, of the State Housing Law, being Laws 1926, c. 823), seeks to condemn certain premises in the city of New York owned by the defendant Andrew Muller. The public use for which the premises are required is stated in the petition to be "the clearance, replanning and reconstruction of part of an area of the City of New York, State of New York wherein there exist, and the petitioner has found to exist, unsanitary and substandard housing conditions."

As part of its project the petitioner has acquired by purchase properties contiguous on both sides to the premises in question. Acquisition of the defendant's property is, therefore, necessary for the carrying out of the project. The premises consist of two old-law tenement houses. The owner resists condemnation upon the ground that the Municipal Housing Authorities Law violates article 1, section 6, of the State Constitution and the Fourteenth Amendment of the Federal Constitution, because it grants to petitioner the power of eminent domain for a use which is not a public use.

Briefly and broadly stated, the statute provides that a city may set up an authority with power to investigate and study living and housing conditions in the city, and to plan and carry out projects for the clearing, replanning, and reconstruction of slum areas and the providing of housing accommodations for persons of low income. It is empowered under certain limitations to issue and sell bonds which, however, shall not be

a debt of the state nor of the city; and it may not in any manner pledge the credit of the state or city or impose upon either any obligation. It is granted the power of eminent domain, to be exercised as provided, and it is exempted from the payment of certain taxes and fees. In enacting the statute, the Legislature, after thorough investigation, made certain findings of fact, upon the basis of which it determined and declared the necessity in the public interest of the provisions enacted and that the objects thereof were "public uses and purposes for which public money may be spent and private property acquired." Section 61. The facts found were that "in certain areas of cities of the State there exist unsanitary or substandard housing conditions owing to over-crowding and concentration of population, improper planning, excessive land coverage, lack of proper light, air and space, unsanitary design and arrangement, or lack of proper sanitary facilities; that there is not an adequate supply of decent, safe, and sanitary dwelling accommodations for persons of low income; that these conditions cause an increase and spread of disease and crime and constitute a menace to the health, safety, morals, welfare, and comfort of the citizens of the state, and impair economic values; that these conditions cannot be remedied by the ordinary operation of private enterprise."

It is true that the legislative findings and the determination of public use are not conclusive on the courts. Pocantico Water-Works Co. v. Bird, 130 N.Y. 249, 29 N.E. 246. But they are entitled at least to great respect, since they relate to public conditions concerning which the Legislature both by necessity and duty must have known. Block v. Hirsh, 256 U.S. 135, 41 S. Ct.458, 65 L.Ed. 865, 16 A.L.R. 165; People v. Charles Schweinler Press, 214 N.Y. 395, 108 N.E. 639, L.R.A. 1918A, 1124, Ann. Cas. 1916D, 1059. The existence of all the conditions adverted to by the Legislature was alleged in the petition and proved with reference to the area included in the project, of which the premises in question are a part. The public evils, social and economic, of such conditions, are unquestioned and

unquestionable. Slum areas are the breeding places of disease which take toll not only from denizens, but, by spread, from the inhabitants of the entire city and state. Juvenile delinquency, crime, and immorality are there born, find protection, and flourish. Enormous economic loss results directly from the necessary expenditure of public funds to maintain health and hospital services for afflicted slum dwellers and to war against crime and immorality. Indirectly there is an equally heavy capital loss and a diminishing return in taxes because of the areas blighted by the existence of the slums. Concededly, these are matters of state concern (Adler v. Deegan, 251 N.Y. 467, 477, 167 N.E. 705), since they vitally affect the health, safety, and welfare of the public. Time and again, in familiar cases needing no citation, the use by the Legislature of the power of taxation and of the police power in dealing with the evils of the slums, has been upheld by the courts. Now, in continuation of a battle, which if not entirely lost, is far from won, the Legislature has resorted to the last of the trinity of sovereign powers by giving to a city agency the power of eminent domain. We are called upon to say whether under the facts of this case, including the circumstances of time and place, the use of the power is a use for the public benefit -- a public use -- within the law.

There is no case in this jurisdiction or elsewhere directly in point. Governmental housing projects constitute a comparatively new means of remedying an ancient evil. Phases of the general subject were before the courts in Green v. Frazier, 44 N.D. 395, 176 N.W. 11, affirmed 253 U.S. 233, 40 S.Ct. 499, 64 L. Ed. 878, and in Willmon v. Powell, 91 Cal. App. 1, 266 P. 1029, where the power to spend public funds for such projects was upheld. See, also, Simon v. O'Toole, 108 N.J. law, 32, 155 A. 449, affirmed 108 N.J.Law, 549, 158 A. 543. In United States v. Certain Lands in City of Louisville, Jefferson County, Ky. (C.C.A.) 78 F. (2d) 684, it was held that while such a project might be within the scope of a state's activities, it was not one which the federal government had power to under-

take. The cases in this state, which, perhaps, afford the closest analogy are the drainage cases, where land was permitted to be taken by eminent domain in the interest of public health, even where there was incidental benefit to private interests. See e. g., Matter of Ryers, 72 N.Y. 1, 28 Am. Rep. 88; Board of Black River Regulating District v. Ogsbury, 203 App. Div. 43, 196 N.Y.S. 281, affirmed, 235 N.Y. 600, 139 N.E. 751. "To take," said the court, "for the maintenance and promotion of the public health, is a public purpose." Matter of Ryers, supra, 72 N.Y. 1, at page 7, 28 Am. Rep. 88. Over many years and in a multitude of cases the courts have vainly attempted to define comprehensively the concept of a public use and to formulate a universal test. They have found here as elsewhere that to formulate anything ultimate, even though it were possible, would, in an inevitably changing world, be unwise if not futile. Lacking a controlling precedent, we deal with the question as it presents itself on the facts at the present point of time. "The law of each age is ultimately what that age thinks should be the law." People ex rel. Durham Realty Corporation v. La Fetra, 230 N.Y. 429, 450, 130 N.E. 601, 608, 16 A.L.R. 152.

The fundamental purpose of government is to protect the health, safety, and general welfare of the public. All its complicated activites have that simple end in view. Its power plant for the purpose consists of the power of taxation, the police power, and the power of eminent domain. Whenever there arises, in the state, a condition of affairs holding a substantial menace to the public health, safety, or general welfare, it becomes the duty of the government to apply whatever power is necessary and appropriate to check it. There are differences in the nature and characteristics of the powers, though distinction between them is often fine. People ex rel. Durham Realty Corporation v. La Fetra, supra, 230 N.Y. 429, at page 444, 130 N.E. 601, 16 A.L.R. 152. But if the menace is serious enough to the public to warrant public action and the power applied is reasonably and fairly calculated to check it, and bears a reasonable relation to the evil,

it seems to be constitutionally immaterial whether one or another of the sovereign powers is employed.

The menace of the slums in New York City has been long recognized as serious enough to warrant public action. The Session Laws for nearly seventy years past are sprinkled with acts applying the taxing power and the police power in attempts to cure or check it. The slums still stand. The menace still exists. What objections, then, can be urged to the application of the third power, least drastic, but, as here embodied, probably the most effective of all?

It is said that private enterprise, curbed by restrictive legislation under the police power, is adequate and alone appropriate. There is some authority to that effect in other states. A sufficient answer should be the page of legislative history in this state and its result referred to above. Legislation merely restrictive in its nature has failed because the evil inheres not so much in this or that individual structure as in the character of a whole neighborhood of dilapidated and unsanitary structures. To eliminate the inherent evil and to provide housing facilities at low cost -- the two things necessarily go together -- require large scale operations which can be carried out only where there is power to deal in invitum with the occasional greedy owner seeking excessive profit by holding out. The cure is to be wrought, not through the regulated ownership of the individual, but through the ownership and operation by and under the direct control of the public itself. Nor is there anything novel in that. The modern city functions in the public interest as proprietor and operator of many activities formerly and in some instances still carried on by private enterprise.

It is also said that since the taking is to provide apartments to be rented to a class designated as "persons of low income," or to be leased or sold to limited dividend corporations, the use is private and not public. This objection disregards the primary purpose of the legis-

lation. Use of a proposed structure, facility, or service by everybody and anybody is one of the abandoned universal tests of a public use. Mount Vernon-Woodbery Cotton Duck Co. v. Alabama Interstate Power Co., 240 U.S. 30, 32, 36, S.Ct. 234, 60 L.Ed. 507; Strickley v. Highland Boy Gold Mining Co., 200 U.S. 527, 26 S.Ct. 301, 50 L.Ed. 581, 4 Ann.Cas. 1174; Rindge Co. v. County of Los Angeles, 262 U.S. 700, 43 S.Ct.689,67 L.Ed. 1186; Fallbrook Irrigation District v. Bradley, 164 U.S. 112, 161, 162, 17 S.Ct. 56, 41 L.Ed. 369. The designated class to whom incidental benefits will come are persons with an income under $2,500 a year, and it consists of two-thirds of the city's population. But the essential purpose of the legislation is not to benefit that class or any class; it is to protect and safeguard the entire public from the menace of the slums. The so-called limited dividend corporations referred to were provided for in the State Housing Law (Laws 1926, c. 823), and embody another and different attempt to solve the problem. The constitutionality of the scheme was unsuccessfully attacked in the courts. Mars Realty Corporation v. Sexton, 141 Misc. 622, 253 N.Y.S. 15; Roche v. Sexton, 238 N.Y. 594, 198 N.E. 420; cf. Mount Hope Development Corporation v. James, 258 N.Y. 510, 180 N.E. 252. After ten years of experiment, its use, for economic reasons, has proved inadequate as a solution.

Nothing is better settled than that the property of one individual cannot, without his consent, be devoted to the private use of another, even when there is an incidental or colorable benefit to the public. The facts here present no such case. In a matter of far-reaching public concern, the public is seeking to take the defendant's property and to administer it as part of a project conceived and to be carried out in its own interest and for its own protection. That is a public benefit, and, therefore, at least as far as this case is concerned, a public use.

The orders should be affirmed, with costs.

CRANE, C. J., and LEHMAN, HUBBS, and LOUGHRAN, JJ., concur.

FINCH, J., concurs in result.

O'BRIEN, J., dissents and votes to reverse.

COURT OF APPEALS OF KENTUCKY

SPAHN vs. STEWART
268 Ky. 97, 103 S. W. (2d) 651, (1937).

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February 19, 1937.
As extended March 26, 1937.

Charles R. Spahn, Et Al., Appellants

V. APPEAL FROM JEFFERSON CIRCUIT COURT
CHANCERY BRANCH, 1ST. DIVISION.

A. J. Stewart, Et Al., Appellees

OPINION OF THE COURT BY COMMISSIONER MORRIS

AFFIRMING

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The 1934 General Assembly enacted Chapter 113, authorizing cities of the first class to create a Municipal Housing Commission for the purpose of improving internal conditions by carrying out a plan for the clearance of slums, and to erect and maintain low cost houses in keeping with modern sanitary and safe methods.

The act and ordinance were so enacted and adopted that such cities might be entitled to the advantages of the provisions of Acts of Congress, extending to states and municipalities certain grants of money in furtherance of a purpose to better the standards of living.

Substantially the act provides that any city of the first class may establish an agency to investigate housing and living conditions; to plan and effectuate projects for the clearing of slum districts, and to furnish instead reconstructed homes at reasonable rentals to persons of low incomes. The Commission is authorized to sell tax exempted bonds, which are not to be obligations of the city, county or state. Power of exercising the right of eminent domain is given the Commission. It was also empowered after reconstruction, to rent the new habitations, applying the proceeds of such rentals to payment of interest on and for retirement of the bonds and obligations

of the Commission; to provide a sinking fund to be applied to upkeep, necessary improvements, and for deterioration; any surplus is to go to the sinking fund of the City for the meeting of its bonded or other governmental indebtedness. Under the Act the Commission may be paid limited compensation for services, either in form of a salary or per diem.

Conceiving both the act and ordinance to be invalid, appellants filed petition in the lower court seeking to perpetually enjoin the Commission from proceeding further under the ordinance mentioned. Appellant Spahn owns property within the subjected boundary; Silk, another appellant, is the owner of rentable property outside the proposed boundary. Both are taxpayers and sue not only for themselves and others owning property within and without the boundary, but for all taxpayers of the city. The relief sought was denied by the lower court, demurrer to the petition being sustained, followed by dismissal upon a declination to plead further.

The pleadings fully state jurisdictional and other facts to the extent that a case is presented. The right of Appellants to institute and prosecute such a suit is not challenged. The first contention of appellants is, that chapter 113 is void because in contravention of section 51 of the Constitution, which provides that no act shall relate to more than one subject, such subject to be expressed in the title, it being argued that there is nothing in the title of the act from which it might be inferred that there was to be extended the power of eminent domain, or that bonds were to be exempted from taxation. It is further asserted that the act undertakes to revise, amend or extend existing laws without reenacting such attempted revision or extension. We shall not quote the title; it may be observed by reference to Acts 1934, ch. 113, p. 507. The substance of the act in terms has been set out above.

The title to the act in question is not vulnerable to the aimed criticism. We have time and again in meeting such objections held that all

required by section 51 of the Constitution is that the contents of the act be so related to the title as to be clearly embraced within its terms, or as it is sometimes expressed "germane". Kelly v. Hardwick, 228 Ky. 349, 14 S.W. (2d) 1098. The section of the Constitution, supra, does not demand, nor is it intended thereby, that the title embrace a complete synopsis of the provisions of the act, nor that it set out details minutely. The title "need only indicate the general contents (purpose) and scope of the act, and if it gives reasonable notice thereof, it is sufficient." Russell v. Logan County Board of Education, 247 Ky. 703, 57 S.W. (2d) 681. The title of the act in question may be laid down by the side of the title of the act which was attacked on like grounds in Estes v. Highway Commission, 235 Ky.86, 29 S.W. (2d) 583, and the similarity (both of title and act) will be noted. In that case we held the title commensurate. The same may be said of Klein v. City of Louisville, 224 Ky. 624, 6 S.W. (2d) 1104. Reference is especially made to this court's opinion in the case of Talbott v. Laffoon, 257 Ky. 773, 79 S.W. (2d) 244, for a comprehensive exposition of the subject under discussion.

It is true that chapter 113 supra, comprises a diversity of details necessary to carry out its purpose and intent. These details do not differ materially from such as were contained in the acts involved in the cases mentioned above, the Estes and Klein cases being exemplary. The title here is amply broad in its scope to meet the requirements imposed by section 51 of the Constitution.

The act does not extend, revise nor amend any existing law. At the of its passage there was no law on our statutes in reference to slum clearance or cheaper housing. It is true we had laws, both constitutional and statutory, with relation to the power to condemn property for public use, and the exemption of property from taxation, but the act in question did not undertake to, nor did it amend, revise or repeal any of

these laws. City of Bowling Green v. Kirby, 220 Ky. 829, 295 S.W. 1004; Williams v. Raceland, 245 Ky 212, 53 S.W. (2) 370; Wheeler v. Board of Com'rs of Hopkinsville, 245 Ky. 388, 53 S.W.(2)740.

Appellants contend that Chapter 113, Acts of 1934, is void since it delegates legislative powers, in that the Commission is vested with power to determine the type, nature, character and extent of the projects to be undertaken under the ordinance, as well as to determine what properties may be acquired, the manner of acquirement, and use, and to later control that use.

The two objections may be considered together, and likewise answered. The act as we view it, does not delegate to the mayor of a city of the first class any legislative power. He is only given the power of appointment. This is not in any sense the exercise of more than an usual and ordinary executive power, such as filling any office created by appointment in a lawful manner. Neither do we find that the Commission is vested with legislative power. We need not again enumerate its functions.

The conclusion that there is no delegation of legislative power may well be based on the opinion in Estes v. State Highway Commission, supra, wherein the court held valid the Toll Bridge Act (Acts 1928, c.172), vesting powers in the Highway Commission to fix rates of toll, issue bonds, and fix their maturities and terms on which bids should be made and contracts accepted. The court held that no sections of the Constitution were violated by the act, the power vested being purely administrative. This case cited with approval Hunter v. Louisville, 204 Ky.562, 265 S.W. 277, which held valid an act creating a Commission to construct a memorial building in Louisville; to make and enforce rules and regulations in the management of its affairs, and to conduct its business. Klein v. Louisville, et al., 224 Ky. 624, 6 S.W. (2d) 1104, upheld an act authorizing the building of the municipal bridge, giving a commission power to fix tolls,

regulate rates, and issue and retire bonds. In Craig v. O'Rear, 199 Ky. 553, 251 S.W. 828, powers to certain agencies to select locations for teachers' colleges and other powers were delegated, and in this, and all the cases cited, the court held that the acts were valid, since they did not delegate powers other than administrative, hence they did not contravene the sections of the Constitution there and here invoked. Counsel for appellant has pointed to no authority from this or any other court which would militate against our conclusion that the point made is unmeritorious. Other cases in this jurisdiction may be noted as follows: Bell's Com. v. Board of Education of Harrodsburg, 192 Ky. 700, 234 S.W.311; Douglas Park Jockey Club, v. Talbott, 173 Ky. 685, 191 S.W. 474; Lawrence Co. v. Fiscal Court, 191 Ky. 45, 229 S.W. 139.

There are other objections urged as being sufficient to justify us in holding the act invalid. As we observe (and shall treat) them jointly and severally it occurs that each and all inevitably turn upon the question as to whether or not the ultimate result sought constitutes a public use or purpose. A determination of this question will to all intents and purposes dispose of most, if not all, of the objections forwarded, some of which are as follows:

"(a) The act and ordinances are both invalid because if carried into effect, the appellants and those for whom they speak will be deprived of their properties without due process of law, in contravention of the 14th Amendment of the Constitution of the United States, and the bill of rights as set up in our Constitution.

"(b) The condemnation of property as proposed under the empowering Acts cannot be legally effectuated because the purpose and intended use is not 'governmental.'

"(c) It is special or class legislation; for the benefit of one class of citizens to the exclusion of all others.

"(d) Neither the General Assembly nor the city possess the power to exempt from taxation the bonds issued by the Housing Commission to raise funds to carry out the project, because the purpose is not 'governmental'." Ky.Const. sections 171 and 174.

"A public purpose *** has for its objective the promotion of the public health, safety, morals, general welfare, security, prosperity and contentment of all the inhabitants or residents within a given political division *** the sovereign powers of which are exercised to promote such public purpose." Green v. Frazier, 176 N.W. 11, 44 N.D. 395, affirmed in the U. S. Supreme Court, 253 U.S.233, 40 S.Ct. 499, 64 L.Ed. 878, see infra. See also Carmen v. Hickman Co., 185 Ky. 630, 215 S.W. 408; Barrow v. Bradley, 190 Ky. 480, 227 S.W. 1016; Barker v. Crum, 177 Ky. 637, 198 S.W. 211, L.R.A. 1918 F, 673; Nourse v. City of Russellville, 257 Ky. 525, 78 S.W. (2d) 761.

The word "slum", harsh and objectionable to the aesthetic ear, has come to have a well defined meaning, applicable to sections of almost every city or town of proportions. It is usually taken to mean "a squalid, dirty street or quarter of a city, town or village, ordinarily inhabited by the very poor, destitute or criminal classes; overcrowding is usually a prevailing characteristic. The word is comparatively recent and is of uncertain origin. It has been doubtfully connected with a dialectal use of the word 'slump' in the sense of a swampy, marshy place." Ency. Br. 25, 246. Brewer, "Phrase and Fable" says, "Slums are purlieus of Westminster Abbey --- where the derelict may obtain a night's lodging for a few pence." Although the word may be of comparatively recent origin the matter of properly housing persons living in unclean, unsanitary houses in congested portions of cities, has been a subject of public concern for many years. The importance of properly housing had received public recognition in England for more

than 100 years; in 1909 it had reached considerable proportions. The motive was first purely philanthropic and the objective was to improve the condition of the working classes. As early as 1841 there existed at least two societies, one the "Metropolitan Association for Improving the Dwellings of the Industrial Classes". These societies after successfully operating for a time found that from better housing the moral improvement was almost "equal to the physical benefit." Legislation looking to the same end soon followed, and has at intervals continued to the present time. Encyc. Br. Vol. 13, p. 815. The requirements of public health are indeterminate and interminable; as knowledge increases standards of living, of health and of safety constantly rise. It is the changing standard which gives most concern; housing at one period thought eminently satisfactory is presently condemned. In the present age, as in the past, material conditions of environment takes a leading position. These truths are recognized just as strongly in this, as in other countries which have outstripped ours in looking to the welfare of those whose conditions of life might be bettered by a more healthful surrounding. Encyc. Br. under title "Housing".

In 1933, under a survey of the City of Louisville, including the territory selected for the purposes here, conditions existed worthy of consideration and action. The number of tubercular patients in the selected area bore the average proportion to 1 to 187 inhabitant; whereas the ratio in the whole city was 1 to 463. The ratio of major crimes committed in the spotted area was 1 to 63, while in the total area it was 1 to every 171; and in minor derelictions 1 to 82, and 1 to 129; in juvenile delinquencies, 1 to 50 as against 1 to 182.

It takes little argument, if such conditions as are described exist, and no doubt they do, to convince one that there is presented a situation which has not been ameliorated in the past by those who own

and control the properties, though aided by such safety and welfare measures as have been thus far adopted, and to some extent carried into effect by state and municipal governments. The solution of the problem calls for action in some way that may prove more efficacious.

The General Assembly, in empowering the city to undertake the clearance plan, declared the plan to involve "objects essential to public interest". Its conclusions are not at all binding, but they may be given considerable effect. They may be looked upon as being persuasive. New York City Housing Authority v. Muller, 105 A.L.R. 905, 1 N.E. (2d) 153, 270 N.Y. 333. The opinions of legislative bodies are entitled to respect. Block v. Hirsch 256 U.S. 135, 41 S. Ct. 458, 16 A.L.R. 165, 65 L. Ed. 865; People v. Charles Schweinler, 214 N.Y. 395, L.R.A. 1918 A, 1124, 108 N.E. 639, Ann. Cas. 1916 D, 1059.

The necessity, expediency and propriety of enacting measures looking to the end here hoped for, are of general interest, the policy vested solely in legislative bodies. "The motives that influenced it (the action) will not be inquired into, except in rare cases, where it is manifest that a flagrant wrong has been perpetrated upon the public." Henderson v. City of Lexington, 132 Ky. 390, 111 S.W. 318; First National Bank of Paducah, v. Paducah 202 Ky. 48, 258 S.W. 938; L&N R. Co. v. Louisville (2 cases) 131 Ky. 108, 114 S.W. 743; 190 Ky. 214, 227 S.W. 160.

The question of the necessity for the exercise of eminent domain is one primarily and almost exclusively, addressed to the legislative branch, while the question of whether or not the use to which the proposed condemned property be put is a public use or purpose, is one to be determined by the judiciary. Tracy v. Elizabethtown, & c. R.R. 80 Ky. 259; Henderson v. City of Lexington, supra; Bank v. Paducah, supra. In carrying out that part of the administration of government, this court has not infrequently been called upon to determine the question of use,

and has held that the power to condemn was rightfully conferred in many cases where the purpose was not as far reaching or as beneficial as it may prove to be here. A tramway, Chesapeake Stone Co. v. Moreland, 126 KY 656, 104 S.W. 762; a pipe line, Paine's Guardian v. Calor Oil & Gas Co., 31 Ky. L.R. 754, 103 S.W. 309; railroad rights of way, Riley v. Louisville H. & St. L. Ry. Co., 142 Ky. 67, 133 S.W. 971; drainage ditches, Carter v. Griffith, 179 Ky. 164; 200 S.W. 369.

In some of the earlier cases, e.g., Stone Co. v. Moreland, supra, a narrow view of the words "public use" was expressed. This view was somewhat extended in Carter v. Griffiths, supra, which was an undertaking by condemnation to take private property for the use of constructing a drainage canal. The Court therein indicated a benefit to public health was not the sole purpose for which property might be acquired by condemnation for ditch purposes, but that the reclamation of low and swampy lands for agricultural and other economic purposes, brought the exercised power within the scope of governmental functions.

In this case quoting from Wilson v. Compton Bond Co., 103 Ark. 452, 146 S.W. 110, we said:

> "Nor is it necessary that the entire state should directly enjoy or participate in an improvement of this nature in order to constitute it a 'public' use within the meaning of the words as used in our Constitution or the Federal Constitution, providing that property shall not be taken without consent of the owner except for a public use. In the broad and comprehensive view that has been taken of the rights growing out of these constitutional provisions, everything which tends to enlarge the resources and promote the productive power of any considerable number of the inhabitants of a section of the state contributes, either directly or indirectly, to

the general welfare and the prosperity of the whole community, and therefore to the public."

In L&N R. Co. v. Louisville, 131 Ky. 108, 114 S.W. 743, we said:

"It is probable that in every case where the right of eminent domain is exercised, private interests will be more or less benefited, but the existence of this fact will not be allowed to defeat the benefits that will accrue to the public."

In Rindge Co. v. Los Angeles, 262 U.S. 700, 43 S.Ct. 689, 67 L. Ed. 1186, condemnation of land for a road which appeared to serve no public purpose insofar as reaching one point from another was concerned, was upheld because "A road need not be for the purpose of business to create a public exigency; aid, exercise and recreation are important to the general health and welfare; pleasure travel may be accommodated as well as business travel; and highways may be condemned to places of pleasing natural scenery." See Cooley Const. Lim. 8th Ed. Vol. 2, p. 1131; Strickley v. Highland Boy Gold Mining Co. 200 U.S. 527; Green v. Frazier, 253 U.S. 233 40 S. Ct. 499; 64 L. Ed. 878; Block v. Hirsch, supra; Marcus Brown Co., v. Feldman, 256 U.S. 170; Green v. Frazier, supra, is of fitting application here; it had to do with a Home Building Act. The contention was that the act was contrary to both the State and Federal Constitution. The Supreme Court upheld the favorable decision of the North Dakota Supreme Court. See also Willmon v. Powell, 91 Cal. App. 1, 266 Pac. 1029; Village of Euclid v. Ambler Realty Co., 272 U.S. 365; Tenement House Department v. Moeschen, 179 N.Y. 325; N.Y. v. Rector, 145 N.Y. 32; Adler v. Deegan, 251 N.Y. 467, in which Justice Cardoza concurring said:

"The Multiple Dwelling Act is aimed at many evils, but most of all it is a measure to eradicate the slum. It seeks to bring about conditions whereby healthy

> children shall be born, and healthy men and women be reared. *** The end to be achieved is more than the avoidance of pestilence or contagion. *** If the moral and physical fibre of its manhood and its womanhood is not a state concern, the question is, what is? Till now the voice of the courts has not faltered for an answer."

The use here proposed, as argued by appellee, and admitted by appellants, may be more beneficial in the way of direct aid to a particular class, but it also operates to the benefit of the general public and its welfare. The act limits the ultimate use of the improved property to such persons as may be selected to occupy. This does not brand the purpose as class or special legislation. Whether or not the persons chosen to occupy are to be ultimately benefited more than those who are not, is a sociological question because of differing circumstances. Who can say that in the long run those who live in sumptous residences environed by the elite may not account themselves still more blessed, if by improved conditions of housing in another section they are relieved from the probabilities or possibilities of an epidemic of smallpox, typhoid fever, or other diseases, or that they may sleep more serenely because of a lessened fear of the commission of crime against their persons or property. "The essential purpose of the legislation is not to benefit that class or any class; it is to protect and safeguard the entire public from the menace of the slums." New York City Housing Authority v. Muller, supra. The fact that all individuals may not be elected to occupy the reconditioned premises is not material. A power plant, because of limited equipment, may not be able at all times to serve all the public, but it is none the less rendering public service. It is not essential to the validity of the proposal that all the public reap like direct benefits. Rindge v. Los Angeles, Supra, Fallbrook

Irrigation Dist. v. Bradley, 164 U.S. 112. The fact that those who may ultimately occupy the premises may have a preference is immaterial. Long Island Water Sup. Co., v. Brooklyn, 166 U.S. 685. It is not material that some reap more benefit than others. Strickley v. Highland Boy Mining Co., supra; Mt. Vernon Woodberry Cotton Duck Co. v. Alabama I.P. Co., 240 U. S. 30. Nor is the Government competing with private enterprise. Green v. Frazier, supra; Madera Water Works Co. v. Madera, 228 U.S. 454; Knoxville Water Co. v. Knoxville, 200 U.S. 22; Springfield Gas Co. v. Springfield, 257 U.S. 66.

The bonds proposed are to be issued to retire 55% of the total cost of the project. These bonds do not obligate the State, the County of Jefferson, nor the City of Louisville. They are payable, maturities and interest, from the revenues to be acquired from the rentals of the rehabilitated properties, secured by a first and prior lien on the properties. The plan of meeting the obligations in no material sense differs from plans which have heretofore been approved with regard to the building of interstate and intrastate toll bridges, financing certain educational institutions in the expanding and improvement of their properties, or in providing more adequate facilities for caring for tubercular patients, all under acts not dissimilar to the one in question. See Hughes v. State Board of Health, 260 Ky. 228, 84 S.W. (2d) 52; Williams v. Raceland, 245 Ky. 212, 53 S.W. (2d) 370; Wheeler v. Board of Com'rs of Hopkinsville, 245 Ky. 388, 53 S.W. (2d) 740; Estes v. Highway Commission, Supra; Bloxton v. Highway Commission, supra; Klein v. Louisville, supra; J. D. Van Hooser v. University of Kentucky, 262 Ky. 581, 90 S.W. (2d) 1029.

On both the dominant contentions here urged we are much persuaded by the able opinion of Justice Crouch of the New York Court of Appeals in New York City Housing Authority v. Andrew Muller, et al., supra. The act there questioned was similar to the act here attacked. Only two contentions were urged, or at least considered by the court, and these two

are common to the case here, i.e., power to condemn and exemption of the bonds from taxation. Both, there as here, turned on the question as to whether the intended use of the property was of such public nature as to permit the condemnation and exemption in face of a similar state constitutional prohibition, and the Fourteenth Amendment to the Constitution of the United States. We quote:

> "Slum area are the breeding places of disease which may take toll, not only from the denizens, but, by spread, from the inhabitants of the entire city and state. Juvenile delinquency, crime and immorality are there born, find protection, and flourish. Enormous economic loss results directly from the necessary expenditure of public funds to maintain health and hospital services for afflicted slum dwellers and to war against crime and immorality. **** Concededly, these are matters of state concern. (Adler v. Deegan, 251 N.Y. 467, 167 N.E. 705). *** Time and again, in familiar cases needing no citation, the use by the Legislature of the power of taxation and of the police power in dealing with the evils of the slums, have been upheld by the courts. Now, in continuation of a battle which, if not entirely lost, is far from won, the Legislature has resorted to the last of the trinity of the sovereign powers by giving to a city agency the power of eminent domain."

Quoting from Matter of Ryers, 72 N.Y. 1, 28 Am. Rep. 88, the New York Court said:

> "To take *** for the *** promotion of the public health, is a public purpose. *** Over many years and in a multitude of cases the courts have vainly attempted to define comprehensively the concept of a public use and to formulate a

universal test. They have found here as elsewhere that to formulate anything ultimate, even though it were possible, would, in an inevitably changing world, be unwise if not futile. Lacking a controlling precedent, we deal with the question as it presents itself on the facts at the present point of time. *** It is also said that since the taking is to provide apartments to be rented to a class designated as 'persons of low income,' or to be leased or sold to limited dividend corporations, the use is private and not public. This objection disregards the primary purpose of the legislation. Use of a proposed structure, facility, or service by everybody and anybody is one of the abandoned universal tests of a public use. Mt. Vernon Woodberry Cotton Duck Co. v. Alabama I.P. Co.*** Strickley v. Highland Boy Mining Co.***; Rindge v. Los Angeles County***; Fallbrook Irrigation Dist. v. Bradley *** (all supra)."

In commenting on the New York case (105 A.L.R. 905) we do not overlook U. S. v. Certain Lands, 78 Fed. (2d) 684, or U. S. v. Certain Lands (D.C.) 12 Fed. Sup. 345, and Id. (D.C.) 9 Fed. Sup. 137, in which the Circuit Court of Appeals held that the federal government could not enter a state and condemn lands for housing purposes, because, "The state and federal governments are district sovereignties," and "what is a public use under one sovereign may not be a public use under another." In short, the court apparently of the opinion that the use was for public purposes, held that the federal government could not condemn private property except for purely federal governmental purposes. The Attorney General of the United States recognized the propriety of these opinions, since certiorari in each was dismissed on his motion in the United States Supreme Court. The objectionable feature was abandoned by a more recent act of Congress. U.S.C.A. Title 40, S 421.

From what we have said above it is discernible that the property intended to be acquired here by condemnation, if such become necessary, is to be used for a public purpose. It follows that such condemnation, if undertaken, will not violate either the 14th Amendment to the Federal Constitution or any section of our own, assuming that just compensation be made to owners. This conclusion we think should dispose of the contention that the bonds issued in furtherance of the property cannot be exempted from taxation. If the purpose is public, they are in express terms exempted by provisions of our Constitution. We have had this question in perhaps other forms before us not infrequently, and have consistently held that where the bonds are to be issued in furtherance of a public purpose, the evidence of debt stands in the same light as other public property. Some of the cases where the contention of appellant has been adversely determined may be noted. Com. v. Covington, 128 Ky. 36, 107 S.W. 231; Com. v. Newport, 32 R. 820, 107 S.W. 232; Covington v. Dist. of Highlands, 33 Ky. L. R. 323, 110 S.W. 338; Dist. of Highlands v. Covington, 164 Ky. 815, 176 S.W. 192; City of Harlan v. Blair, 251 Ky. 51, 64 S.W. (2d) 434; Estes v. Highway Com., Bloxton v. Same; Klein v. Louisville, all supra. These cases and those added below, dispose of the contention that since the Housing Commission is merely an agency of the city, the bonds are obligations of the city, this notwithstanding the act and resolution distinctly provide otherwise. Board of Education v. City of Paducah, 108 Ky. 209, 56 S.W. 149; Board of Education of Bowling Green v. Townsend, 140 Ky. 248, 130 S.W. 1105; Klein v. City of Louisville and Hunter v. City, both supra.

It is contended that the resolution and ordinance are invalid because in such contract as the Housing Commission may make, certain prescribed wages for labor are to be paid and the laborers to be limited to so many working hours. This provision in the resolution is there placed because it is a condition upon which the grant of financial aid is proffered by

the government. It is said the resolution is contrary to public policy and violates such parts of the Act of 1934 (section 4, c. 113) as require that all contracts be let upon competitive bidding to the best bidder. Two principal features of the act must be considered: One, that the act has as one of its outstanding purposes the procurement of financial aid from the government; second, that the work contemplated is of a public nature, as we think we have sufficiently pointed out. The work done in the consummation of the plan is essentially public work. A distinction as between liberty in contracting where private enterprise or public work is concerned, was recognized by the Supreme Court in Morehead v. Tipaldo, ex rel, 298 U.S. 587, 56 S. Ct. 918, 80 L. Ed. 1347, 103 A.L. R. 1445.

Our General Assembly, ready to accept the benefit of the national laws offering grants in aid of public enterprises, began in 1934 to take advantage of such offers. In that year the Assembly enacted chapters 68, 69, 72 and 113, and at an Extraordinary Session in the same year, chapters 14 and 15 were enacted, each and all adopted for the purpose of aiding municipalities in obtaining federal aid in the erection of public buildings; these may be, as some of them were termed, "Financial Distress Acts." The last two chapters, supra, extended to counties the authority to obtain relief in the erection of adequate public school quarters. By these acts the Assembly has determined and announced a definite policy in relation to conditions upon which aid may be accepted and applied in the erection of public buildings. The general plan provided in chapters 68 and 69 was approved in Davis v. Board of Education of Newport, 260 Ky. 294, 83 S.W. (2d) 34. Chapters 14 and 15 were approved in the case of Roberts v. Fiscal Court of Graves County (denying an injunction). Chapter 72 was approved in Van Hooser v. University of Kentucky, 262 Ky. 581, 90 S.W. (2d) 1029. Likewise, the general plan was approved in Hughes v. State Board of Health, 260 Ky. 228, 84 S.W. (2nd) 52, 54, authorizing the improvement and expansion of Waverly Sanitorium on a plan similar to

the one here.

It is well settled that when the Legislature delegates a power to a municipal corporation, that body has the implied right to select the means by which the purpose may be accomplished, provided always that the adopted means do not transcend any constitutional inhibition. Overall v. Madisonville, 125 Ky. 684, 102 S.W. 278; Marz v. Newport, 173 Ky. 147, 190 S.W. 670; City of Springfield v. Haydon, 216 Ky. 483, 288 S.W. 337; Simrall v. McKenna, 195 Ky. 580, 242 S.W. 587, R.F.C. v. Richmond, 249 Ky. 787, 61 S.W. (2d) 631; 19 R.C.L. 768, 43 C.J. 190, p. 193.

There is no avoidance of competitive bidding here. We have defined "competitive bidding" to be such as "requires that all bidders be placed on a plane of equality, and that they bid upon the same terms and conditions." State Highway Commission v. King, 259 Ky. 414, 82 S.W. (2d) 443. "Competitive bidding means that the council must by due advertisement give opportunity for every one to bid." Blanton v. Town of Wallins, 218 Ky. 295, 291 S.W. 372. In City of Springfield v. Haydon, supra, we upheld a contract let on bid, in which the proposal called for a material possible, of being furnished by only one concern in the entire country, saying that there is competitive bidding "unless the advantage, by its terms, excludes other bidders." Gathright v. Bylesby and Co. 154 Ky. 106, 133, 157 S.W. 45, 57. In the case of Denton v. Carey-Reed Co., 169 Ky. 54, where only one bid was received for street reconstruction, we held that the contract was valid since there was a reasonable bid, "fairly made at a public letting, legally advertised and open to all." Appellants, or any party feeling aggrieved at any action taken by the commission in attempting to let proposed contracts, may in a proper proceeding raise any question of unfairness or illegal procedure.

The question here presented has arisen in courts of other jurisdictions, to decisions of which we may point for authority for our conclusion that the resolution is in keeping with the act, and is not contrary to its terms, or contrary to public policy. We refer to City of Milwaukee v. Raulf, 164 Wis.

172, 159 N.W. 819; Wagner v. Milwaukee, 177 Wis. 410, 188 N.W. 487; Jahn v. Seattle, 120 Wash. 403, 207 Pac. 667; Malette v. Spokane, 77 Wash. 205, 137 Pa. 496; Interstate Power Co. v. Cushing (D.C.) 12 Fed. Supp. 806; Iowa Southern Utilities Co. v. Lamoni (D.C.) 11 Fed.Supp. 581; Norris v. City of Lawton, 47 Okla. 213, 148 Pac. 123. These relate mainly to fixing of wage scale. The time schedule is upheld in Atkin v. Kansas, 191 U.S. 207; Jahn v. Seattle, supra; People v. Orange Co. Road Construction Co., 175 N.Y. 84, 67 N.E. 129; Norris v. Lawton, supra; Heim v. McCall, 239 U.S. 175; Cornelius v. Seattle, 123 Wash. 550, 213 Pac. 17, and in Ebbeson v. Board of Education of Wilmington, 18 Del. Ch. 37, 156 A. 286, it was held not to be a violation of the Constitution or any statutory law to give preference in employment to citizens of the state, where the employment was on public works. The provisions of chapter 113 directing competitive bidding in no wise prohibit the Commission from stipulating that bidders shall comply with a wage and labor scale set up by the Commission. To interpolate such an inhibition, as herein suggested by appellants, would require us to disregard the paramount purposes and intent of the act.

Nor is there any delegation of the powers of the state, the municipality or the Commission to the Federal Government. The commissioners in all things required by the act are free to conduct the scheme of furnishing low cost housing, without interference by the government. It may be presumed that the Commission has thus far exercised its free will and choice, and will continue to do so, even to the extent of accepting the government's proffer. It may so exercise its will in the acceptance or rejection of bids. The matter of contracting is one arising between the Commission and bidders. There is no attempt by the national government to control legislative functions, either of the state or municipality. When we say that the Legislature may not delegate its powers, we mean that it may not delegate the exercise of discretion as to what a law shall be, but not that it may not confer discretion in the administration of law

itself. Craig v. O'Rear, 199 Ky. 553, 251 S.W. 828; Douglas Park Jockey Club v. Talbott, 173 Ky. 685, 191 S.W. 474.

Lastly appellants contend that since section 4 of the act limits expenditures to the proceeds of the operation of the project, the Commission may not at the city's expense proceed with survey and mapping plans, and we assume, pay no salaries or expenses of the Commission except out of the money arising from rentals. We do not so construe the act. It is provided that the Commission shall not proceed to exercise the power given it to bind the Commission beyond the extent to which money has been provided under "the authority of this act." The act gives the city the power to fix and pay salaries to the Commission and to defray preliminary expenses. The resolution passed by the council did these things. The purpose being a public one, as we have shown, we see nothing in the act which would prevent the city from providing for compensation and necessary expenses of the Commission. There is shown no attempt on the part of the Commission to contract for or expend any money "which has not been (or may not be) provided under the Act."

From a careful survey of the record we are of the opinion that the act, the ordinance and the resolution, are not out of harmony with any fundamental laws or statutory provisions, hence conclude that the court below properly sustained the demurrer and dismissed appellants' petition.

Affirmed. The whole court sitting.

ATTORNEYS FOR APPELLANTS:

Wallace A. McKay, Louisville, Ky.

ATTORNEYS FOR APPELLEES:

H. O. Williams, Louisville, Kentucky,

Mark Beauchamp, Louisville, Kentucky.

THE STATE OF ALABAMA - - - JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

OCTOBER TERM, 1937-38

Honorable Bibb Graves,

Governor of Alabama,

Montgomery.

Sir:

Your inquiry relates to the one question of whether the real and personal property of Housing Authorities created under the Act of 1935 (page 126), will be exempt from ad valorem taxation, either (1) because it is not expressly made taxable by law, or (2) because, whether or not it may be otherwise taxable, it is exempt from the power of ad valorem taxation under section 91, Constitution.

If the property referred to is to be owned by a municipal corporation, since it is not to be that of the State or a county, it will be exempt from the ordinary ad valorem taxes imposed by any authority under this State. This does not mean that it shall be exempt from improvement assessments. - City of Huntsville v. Madison County, 166 Ala. 389, 52 So. 326; Jefferson County v. City of Birmingham, 178 So. 226. Nor that the taxing authorities may not impose excise taxes otherwise proper. - City of Birmingham v. State, 233 Ala. 138, 170 So. 64.

The purpose to impose such tax is not to be implied, but clearly expressed, otherwise it will be presumed not to be intended. - State v. City of Montgomery, 228 Ala. 93, 151 So. 856; City of Huntsville v. Madison County, supra.

The Housing Authority is to be a corporation brought into existence upon the order of a city government, public in nature, and charged with the duty of performing an important element of the police power of the city under whose sanction it shall come into existence. - Alabama State Bridge Corpora-

tion v. Smith, 217 Ala. 311, 116 So. 695; New York Housing Authority v. Muller, 1 N. E. (2d) 153 (N. Y.); Spahn v. Stewart, 103 S. W. (2d) 651 (Ky.); Carmichael v. Southern Coal & Coke Co., 301 U. S. 495, 81 L. ed. 1245.

It is clear that if the power conferred by the Act in question were conferred on the city proper, the property made subject to its terms would be exempt under section 91, Constitution. When the city is performing a governmental function, it is none the less so because it is done by the instrumentality of some administrative agency, such as a board, commission, or even a corporation set up for that purpose, created by or for the city's use in that connection.

The mere fact that it is a corporation does not deprive it of the qualities of a governmental agency, nor of the immunities of the government for which it operates. - Alabama Girls' Industrial School v. Reynolds, 143 Ala. 579, 42 So. 114; Alabama Industrial School v. Adler, 144 Ala. 555, 42 So. 116; Cox v. University of Alabama, 161 Ala. 639, 49 So. 814; White v. Alabama Insane Hospital, 138 Ala. 479, 35 So. 454.

The Housing Authority is an administrative agency of a city, and its property is therefore for certain purposes that of a municipal corporation and is entitled to the tax exemption of section 91, Constitution.

Respectfully submitted,

JOHN C. ANDERSON
Chief Justice

LUCIEN D. GARDNER

VIRGIL BOULDIN

JOEL B. BROWN

A. B. FOSTER

THOMAS E. KNIGHT
Associate Justices

C O P Y

IN THE SUPREME COURT OF NORTH CAROLINA * SPRING TERM, 1938.

Harold W. Wells, a resident and taxpayer of the City of Wilmington, North Carolina, suing for himself and in behalf of all other taxpayers similarly situated who desire to come in, make themselves parties to this cause and contribute to the cost thereof,	
v.	No. 609 - New Hanover
Housing Authority of the City of Wilmington, North Carolina, and the City of Wilmington, North Carolina	

Plaintiff appealed from Sinclair, J., at May Term, 1938, of New Hanover. Affirmed.

In his complaint, plaintiff admitted compliance with the procedure laid down in the Housing Authorities Act and the organization of the Commission themselves. He alleges, however, that the Act is unconstitutional, in that it comprehends no public purpose, and that the agency set up under it is not a municipal corporation within the meaning of the Constitution, but a corporation merely for private gain, engaged in a private enterprise; that its incorporation in the manner set out in the statute was unconstitutional; that the City of Wilmington cannot, under authority of Chapter 408, Public Laws of 1935, convey to the Housing Authority any of its property with or without consideration. That the Housing Authority is an agent of the City of Wilmington and the City will be responsible for its bonds and other obligations. That the defendant, Wilmington Housing Authority, has represented that its property will be exempt from taxation and has arranged to borrow about $700,000.00, and build apartments and dwellings for rent, and the City intends to make to it conveyances and donations of city property; that carrying into effect the scheme proposed will destroy the value of real estate in the city and take the property of plaintiff without due process of law, and do irreparable

injury to plaintiff and other taxpayers like situated.

Plaintiff asked for a permanent injunction to restrain defendants from proceeding under the cited laws.

The Answer denies the parts of the complaint alleging unconstitutionality in the Housing Authorities Act and in the operation of Chapter 408, Public Laws of 1935, and avers that defendant Housing Authority is a municipal corporation under the Constitution; that its property will be free from taxation by the State, County, and municipalities; that it is an independent municipality and the City of Wilmington will not be liable for its obligations.

Upon the hearing, Sinclair, Judge, found all the facts and legal inferences in favor of the defendants and dismissed the action, and plaintiff appealed.

Aaron Goldberg - For Plaintiff, Appellant

William B. Campbell
Alan A. Marshall - For Defendants, Appellees

Seawell, J. -

The plaintiff contends that Chapter 456 of the Public Laws of 1935, known as the Housing Authorities Act of 1935, is unconstitutional since the purposes sought to be accomplished by the Act are not of a public nature, that the body created under it has not been given any governmental function and is not a municipal corporation; that the City of Wilmington is without power to convey any of its property to this corporation, and that the property, in the hands of the corporation, if conveyed, would not be exempt from taxation.

These contentions are somewhat sketchily supported by argument and citations in the brief, and counsel for plaintiff made no oral argument. Perhaps, as sometimes happens in "friendly suits", his function in this case is similar to that of the "devil's advocate" at the canonization of a saint. But the decision of the case will have an effect beyond the immediate

litigation, and the matters involved must have that careful consideration their importance demands.

Is the Act under consideration constitutionally valid, and is the agency set up for its administration a municipal corporation within the meaning of the Constitution?

The case of Webb v. Port Commission, 205 N.C. 663, is very similar to the case at bar, and must be considered as decisive of most of the questions raised, but there is a difference in the declared purpose of the two acts which merits attention.

The Court accepted without question that the purpose of the Port Commission Act was public in its nature and a proper subject for the exercise of governmental power, stating the proposition as follows: "—the Port Commission of Morehead City, is not a private or business corporation, but is a public corporation created by the General Assembly as an agency of the State, <u>to perform a well recognized governmental function, to-wit: to provide facilities for the transportation of goods, wares, and merchandise, both into and out of the State by means of carriers over land and water</u>." Webb v. Port Commission, <u>supra</u>.

The purpose of the Housing Authorities Act is to accomplish "slum clearance", - to rehabilitate crowded and congested areas in cities and towns where unsanitary and other conditions exist conducive to disease and public disorder, menacing the safety and welfare of society. In this the plaintiff insists there is no public purpose justifying the exercise of the governmental function.

Our attention is directed to the fact that in the statute the Housing Authorities Act is declared to be "a public body and body corporate and politic, exercising public powers". Ordinarily, courts will not permit a simple declaration of the Legislature to give a character to a body, or a transaction, which appears to be inconsistent with the facts of the case. In an analogous matter, the courts have declined to permit the Legislature

to declare what is "a necessary purpose" under Article VII, Section 7, of the Constitution, holding this to be a matter for the courts. Sing v. Charlotte, 213 N.C., 60; Glenn v. Commissioners, 201 N.C., 233.

In the same manner the court will determine what is a "public purpose", looking to the end sought to be reached and to the means to be used, rather than to statutory declarations to aid in its decision. Webb v. Port Commission, supra.

The powers given to the agency created under the Housing Authorities Act are not dissimilar to those given to towns and cities in the Constitution and Laws, particularly Chapter 56 of the Consolidated Statutes, relating to municipal corporations. Under the powers given such municipal corporations to enact ordinances for the welfare and safety of their inhabitants, a town, within reasonable limitations, may zone its territory and designate what areas may be devoted to business and what to residence; where noisome or offensive occupations may be carried on and where they may not; may close places where practices are carried on in violation of law; may designate what kind of buildings may be erected in given localities; and, generally, may regulate numerous matters where necessary to the public welfare or safety. Any or all of these powers might be vested in a separate municipal authority, if convenience required, without offending against any constitutional principle of which we are aware.

The same necessity that prompted the subdivision of political authority, in the creation of cities and towns, to the end that government should be brought closer to the people in congested areas, and thus be able to deal more directly with problems of health, safety, police protection, and public convenience, progressively demands that government should be further refined and subdivided, within the limits of its general powers and purposes, to deal with new conditions, constantly appearing in sharper outline, where community initiative has failed and authority alone can prevail.

It is not questioned that it is a proper function of government to promote the health, safety, and morals of its citizens. The Housing Authorities Act depends for its validity, as a proper exercise of governmental authority, upon its declared objective in removing a serious menace to society, not disconnected with political exigency, in the populous areas to which it applies.

It differs in one particular from the usual type of municipality, - the ownership of the instrumentalities by which the public purpose is to be served. But we cannot see that such ownership detracts from the public or municipal character of the agency employed. Webb v. Port Commission, p. 673; Willnon v. Powell, 91 Cal. Ap. 1, 266 P. 1029.

The State cannot enact laws, and cities and towns cannot pass effective ordinances, forbidding disease, vice, and crime to enter into the slums of overcrowded areas, there defeating every purpose for which civilized government exists, and spreading influences detrimental to law and order; but experience has shown that this result can be more effectively brought about by the removal of physical surroundings conducive to these conditions. This is the objective of the Act, and these are the means by which it is intended to accomplish it.

The written Constitution has no direct pronouncement as to the scope of governmental authority, - does not define the field in which it must be exercised. It is far from comprehensive of the governmental power of the State. Our Constitution, as has been so frequently pointed out, is a constitution of limitations, where powers not surrendered expressly or by necessary implication are reserved to the people, to be exercised through their representatives in the General Assembly. Yarborough v. Park Commission, 196 N.C. 284, 291. An attempt by the Legislature to assert those powers must be treated liberally to effectuate its purpose. No matter from what source the power may be derived, the Court, by precedent, at least, is not permitted to declare an Act of the General Assembly void where there is

reasonable doubt. Coble v. Commissioners, 184 N.C., 342; Gunter v. Sanford, 186 N.C., 452; Webb v. Port Commission, supra, 677.

If, then, the Act comprehends a public purpose, the agency created under it falls within the authority of Webb v. Port Commission, supra. While the term "municipal corporation" is not directly applied by the Court to the Port Commission in that case, it is very clear that the Court meant to include it within that term as used in the Constitution. This is the interpretation put on the opinion of the Court in a strong dissenting opinion written by Justice Brogden, at page 687. Indeed, the Court could not have arrived at its conclusion without so holding.

In the Port Commission case there is set up an extensive parallel between the powers and functions and corporate incidents of the Port Commission on the one hand and the elements of an approved definition of a public corporation on the other, and in the light of that comparison the constitutionality of the Act was sustained. We can find no substantial indicia of a public corporation listed in that case that are not present in the Act now under consideration, and in this respect we consider Webb v. Port Commission as an authoritative precedent in the case at bar.

The Act under which the Housing Authority is created provides for notice and hearing of its creation, - C.S. 6243 (4), - and an investigation of the facts in order to ascertain whether or not the conditions exist under which the public authority may be exercised; the appointment of the membership of the authority under C.S. 6243 (5) is made by the mayor of the town or city, and those members are given definite terms of 1, 2, 3, 4, and 5 years to begin with, with a following term of five years each, and there are provisions for filling vacancies. They are charged with the general duty of enforcing all the provisions of the Authorities law, which are far from strictly proprietary in their character. Effective measures are taken under C.S. 6243 (7) to prevent fraudulent practices or advancement of self interest; members of the Commission are subject to removal for misconduct

in office; C.S. 6243 (8). Attention is directed to C.S. 6243 (9), defining the powers of the "Authority". The paragraph is far too long to be quoted, but a reading of it assures us that powers exercised by this Authority are more than those which might be given by the Legislature in aid of any private enterprise. They have to do with investigations and reports regarding conditions existing in any part of the territory within their jurisdiction, form practically a planning board to work in cooperation with the city or municipality, as to the installation, opening or closing of streets, roads, roadways, alleys, sidewalks or other places and facilities in connection with a project, and are authorized to acquire municipal property, to be devoted to the Housing Project; and to arrange with the city or municipality for zoning or rezoning any part of the city or municipality in aid of the project. It is further authorized to deal with the Federal Government with regard to projects; to issue bonds; to buy, lease, and construct buildings, with other powers incident to the legal ownership and control of the properties operated, not necessary to mention here. Under C.S. 6243 (11), and C.S. 6243 (38), and C.S. 6243 (40), the Authority has the right to acquire property by eminent domain.

The selection of the membership on the board, in the manner provided in the Act, does not constitute an unconstitutional delegation of authority.

In plaintiff's brief, Southern Assembly v. Palmer, 166 N.C., 75, is cited as authority for the position that the term "municipal corporation" in the Constitution must be confined to municipal corporations proper, - so-called, - as cities and towns, and to quasi municipal corporations such as counties, school districts, etc. This case was strongly presented in Webb v. Port Commission, supra, and not found as authority for this position. The distinction was not necessary in the Southern Assembly case, since the Court was pointing out the difference between corporations created essentially for a private purpose and corporations created for a

public purpose, holding that the Southern Assembly belonged to the former class and, therefore, was not entitled to the tax immunity afforded municipal corporations under the Constitution.

In Smith v. School Trustees, 141 N.C., 143, 150 in which the opinion was written by the same eminent jurist who wrote the opinion in Southern Assembly v. Palmer, a broader significance is insisted upon and Currier v. District Township, 62 Iowa, 102, is quoted with approval as follows: "The word 'municipal', as originally used in its strictness, applied to cities only, but the word now has a much more extended meaning, and when applied to corporations, the words 'political', 'municipal', and 'public' are used interchangeably."

In further support of this view, as pointed out in the same case, Article VII of the Constitution includes with the category of municipal corporations not only municipal corporations as cities, towns, and counties, but "other municipal corporations" as well. So, also, the title of Article VIII, Section 1, which must be read into the text to give the intended classification significance, refers to "corporations other than municipal", thus classifying all public corporations as municipal.

Referring to Article V, Section 5, of the Constitution, there is nothing in the context which suggests the necessity of a departure from the ordinary rule of construction requiring that the same meaning shall be given to a term wherever used in the same Act, since all the provisions of the Constitution were enacted and adopted at the same time and are supposed to be interrelated.

But we need not become lost in a maze of definitions and lose the object of pursuit. The principle on which the exemption rests requires that we apply the broader interpretation of the term "municipal", as laid down in Smith v. School Trustees, supra. It was intended that the government in its public service should not be embarrassed or impeded by any

duty levied upon the instruments used to carry its purposes into effect, and to give that intention effect the exemption must be extended to all municipal corporations without legalistic distinction.

Applying again the principle that courts may not declare an act of the Legislature unconstitutional in a case of doubt, we find that the Housing Authorities Act under consideration is a constitutional exercise of a legislative power and that the agency therein set up is a municipal corporation within the meaning of the provisions of the Constitution which we have discussed. Webb v. Port Commission, supra; Block v. Hirsch, 256 U.S. 135; New York City Housing Authority v. Muller, 1 N.E. (2) 153.

It follows as a corollary to this that the property of the Housing Authority is exempt from state, county, and municipal taxation. Under this decision, the property of the Housing Authority would be held for a public purpose.

Does the City of Wilmington have authority to convey to the Housing Authority its property, with or without consideration?

The powers of cities and towns in this respect are governed by statute. Chapter 408 of the Public Laws of 1935 was enacted to adjust the relationships and regulate the dealings between housing authorities and the municipalities to which their benefits may be, in part at least, extended. Section 3 of this chapter directly gives to cities and towns within the territory of the Housing Authority the power to convey or lease property to such Authority with or without consideration. We think the phrase "without consideration" must be taken to mean a consideration of monetary value.

The Legislature had the right to consider the benefit received by the municipality in carrying out the purposes of the Act as supplying such want of monetary consideration.

Will the City of Wilmington be liable for the payment of indebtedness and obligations of the Housing Authority?

There is an express provision to the contrary in Section 14 (b) of the Act, in which it is provided that neither the state nor the city or municipality shall be liable. We find no implications of agency between the city and the Housing Authority which would contravene this express provision. Williamson v. High Point, 213 N.C., 96; Brockenburg v. Charlotte, 134 N.C., 1.

For the reasons foregoing, the plaintiff is not entitled to injunctive relief, and the judgment of the court below is

Affirmed.

#34935

STATE EX REL. GASTON L. PORTERIE,

ATTORNEY GENERAL, STATE OF LOUISIANA

Versus

HOUSING AUTHORITY OF NEW ORLEANS ET AL.

Appeal from the Civil District Court, Parish of Orleans, Division "D"; Hon. Walter L. Gleason, Judge.

ODOM, J.

The purpose of Act 275, page 697, of 1936, according to its title, is:

> "To declare the necessity of creating public bodies corporate and politic to be known as housing authorities to engage in slum clearance and projects to provide dwelling accommodations for families of low income; to create such housing authorities in the cities having a population of more than 20,000; to define the powers and duties of housing authorities and to provide for the exercise of such powers, including acquiring property by purchase, gift or the exercise of the power of eminent domain, and including borrowing money, issuing bonds and other obligations, and giving security therefor; to confer remedies on obligees of housing authorities; to provide that housing authorities, their property and securities shall be tax exempt; to provide that the bonds of the authority shall be legal investments."

By Section 4 of that act, the Legislature created in every city of the State having a population exceeding 20,000 inhabitants a public corporation or body politic to be known as "Housing Authority" of said city, to have boundaries coterminous with those of the city. It is provided, however, that such "Housing Authority" shall not transact any business or exercise such powers as are granted by the act until and unless the council of the city shall, by proper resolution, declare that there is need for such housing authority to function in said city.

This section of the act provides that, if a petition is filed, signed by twenty-five residents of the city, asserting that there is need for a housing authority and requesting that the council so declare,

the council shall promptly determine whether there is need for such housing authority. It is further provided that the council shall adopt a resolution so declaring, if it shall find "(1) that unsanitary or unsafe inhabited dwelling accommodations exist in the city or (2) that there is lack of safe or sanitary dwelling accommodations in the city available to families of low income at rentals they can afford."

It is further provided that in determining whether dwelling accommodations are unsafe or unsanitary "said council shall take into consideration the degree of overcrowding, the percentage of land covered, the light, air, space and access available to the inhabitants of such dwelling accommodations, the size and arrangement of the rooms, the sanitary facilities, and the extent to which conditions exist in such buildings which endanger life or property by fire or other cause. When the council adopts a resolution as aforesaid, it shall promptly notify the Mayor of such adoption".

The Council of the City of New Orleans adopted a resolution declaring that there was need in the City for a housing authority to function therein, and notified the Mayor. Section 5 of the act provides that, upon receiving notice of the adoption of such resolution by the Council the Mayor shall appoint five persons to serve as commissioners of said housing authority and file with the city clerk a certificate of such appointment. The power and the duties of the housing authority are vested in the commission thereof.

Section 8 of the act provides that an authority (which means a housing authority) "shall constitute a public body corporate and politic", and shall have all the powers necessary or convenient to carry out and effectuate the purpose and provisions of the act, including the following among others:

"(b) Within its area of operation: to prepare, carry out and operate housing projects: to provide for the construction, reconstruction, improvement, alteration or repair of any housing project or any part hereof; to take over by

purchase, lease or otherwise any housing project undertaken by the city or by any municipality or government; and to act as agent for the city or any municipality or government in connection with the acquisition, construction, operation or management of a housing project or any part thereof."

"(d) To lease or rent any dwellings, houses, accommodations, lands, buildings, structures or facilities embraced in any housing project and to establish and revise the rents or charges therefor; to purchase, lease, obtain options upon, acquire by gift, grant, bequest, devise, or otherwise any real or personal property or any interest therein from the city or any person, firm, corporation, municipality or government; to acquire by the exercise of the power of eminent domain any real property; x x x to procure insurance or guarantees from the Federal Government of the payment of any debts or parts thereof (whether or not incurred by said authority) secured by mortgages on any property included in any of its housing projects; to invest any funds held in reserve or sinking funds, or any funds not required for immediate disbursement in property or securities in which savings banks may legally invest funds subject to their control; and to purchase its bonds at a price not more than the principal amount thereof and accrued interest, all bonds so purchased to be cancelled."

"(e) Within its area of operation; to investigate into living, dwelling and housing conditions and into the means and methods of improving such conditions; to determine where unsafe, or unsanitary dwelling or housing conditions exist; and to study and make recommendations concerning the plan of the city or any municipality or government in relation to the problem of clearing, replanning and reconstructing of areas in which unsafe or unsanitary dwelling or housing conditions exist, and the problem of providing dwelling accommodations for families of low income, and to co-operate with the city or any municipality or government in action taken in connection with these problems."

The Attorney General of the State, alleging that he was authorized under the terms and provisions of Section 56, Article VII, of the Constitution of Louisiana to institute and prosecute any or all suits or other proceedings as he may determine necessary for the assertion or the protection of the rights or interests of the State of Louisiana, brought the present suit, alleging that the Commissioners appointed by the Mayor of the City of New Orleans, pursuant to Act 275 of 1936, have organized themselves under the title of "Housing Authority of New Orleans", and, as such Housing Authority, have planned to, and are now planning to, construct within the City of New Orleans "a low-rent housing and slum clearance project" located within certain described boundaries within the

City; that said Commissioners acting for the Housing Authority are threatening to acquire, both by purchase and by the exercise of the power of eminent domain, all the property within certain boundaries and "to demolish all structures thereon and to erect on said property certain structures for residential purpose which shall be leased at rentals sufficient merely to defray the maintenance and operating expenses and to discharge principal and interest on any obligations which may be incurred by said Housing Authority of New Orleans as a means of financing the acquisition of the necessary lands and the construction of dwelling units thereon".

It is further alleged that the estimated cost of said project is approximately $10,000,000.00; that, as a means of financing said project, the defendants "have entered into a contract with the United States Housing Authority, (hereinafter sometimes referred to as U.S.H.A.), dated March 18, 1938, whereby the said USHA has agreed to purchase bonds of the said Housing Authority of New Orleans in the sum of $8,411,000 to bear interest at the rate of 3% per annum, and to be payable serially over a period of years beginning with 1954 and ending in 1998, all as more fully appears by referring to a copy of said Loan Contract hereto annexed, and identified as 'Exhibit A'".

It is further alleged that the defendants have entered into an agreement with the City of New Orleans, represented by its Mayor and Council, "whereby the Housing Authority of New Orleans agrees to pay annually unto the City of New Orleans the sum of $16,000 over a period of 60 years in consideration of certain services to be rendered by the City of New Orleans and the further consideration of the City of New Orleans agreeing to relieve the Housing Authority of New Orleans and the said project from all liability for any fees, charges, or other assessments made or levied by said City for a period of sixty years".

It is further alleged that the Housing Authority through its Com-

missioners has entered into an agreement with the City of New Orleans "whereby the City of New Orleans shall agree to purchase bonds of the Housing Authority of New Orleans in the principal sum of $1,050,000, maturity (maturing) serially over a period of approximately 15 years".

It is further alleged that the City of New Orleans has appropriated out of public funds of the City the sum of $25,000.00 to pay the expenses of the said Housing Authority of New Orleans, and that approximately $11,000.00 has actually been expended for such purposes and that further sums will be expended for such purposes unless the City of New Orleans is restrained from doing so.

Paragraph 12 of the petition reads as follows:

> "That the development, operation and maintenance of a low-rent housing and slum clearance project as planned by said defendants and as defined in Act 275 of the Regular Legislative Session of Louisiana of 1936 is neither a public purpose, city purpose or public use for which the City of New Orleans is or may be authorized to expend public funds, and, that, therefore, the Housing Authority of New Orleans should be restrained from further expenditure of any funds appropriated by the City of New Orleans for that purpose."

It is further alleged that Act 275 of 1936 does not authorize the City of New Orleans to make any appropriation for the benefit of the Housing Authority of New Orleans and that, "even if said appropriation is authorized by Act 275 of 1936, it is utterly invalid and void as a loan or grant of the funds of one political corporation of the State to a public corporation in violation of Article IV, Section 12 of the Constitution of the State of Louisiana."

The Attorney General alleges that Act 275 of 1936 is unconstitutional, utterly void and of no effect, and sets out seventeen specific reasons why the act should be declared unconstitutional. These specific points made by the Attorney General will be discussed and disposed of later in this opinion.

The Housing Authority, through its Commissioners, and the City

of New Orleans filed a joint answer in which it is admitted that the Housing Authority has been organized and that it has proceeded, and intends to proceed, with the housing project as alleged by the Attorney General. On behalf of the city it is admitted that an appropriation of $25,000.00 was made for the purpose of financing the Commission and that a portion thereof has already been spent and that the remainder will be spent if the City is not restrained. It is further admitted that the City has entered into a contract with the U.S. H.A. as alleged by the Attorney General.

It is especially denied, however, that the appropriation made and the contract entered into are illegal, and especially denied that Act 275 of 1936 is unconstitutional.

The Housing Authority and the City admit that the Authority is actively engaged in carrying out the plans for the construction of the low-rent housing and slum clearance project outlined in the petition of the Attorney General. The answer sets out that their acts are with full authority of law and in discharge of their duties, and that, "unless enjoined by this Court, they intend to continue their activities in the construction, maintenance and operation of such low-rent housing and slum clearance projects in the City of New Orleans under the provisions of said Act 275 of 1936, and that they have secured an additional earmarking of Ten Million Dollars ($10,000,000) from the United States Housing Authority to finance the construction of such additional projects".

The answer specifically sets out that an investigation of conditions which exist in the City of New Orleans shows that in certain sections thereof many inhabitants on account of their low income

> "x x x are crowded together and compelled to live in insanitary and unsafe dwelling accommodations or so-called slums. These slums are the breeding places of disease which takes its toll not only in the immediate neighborhood, but also among the inhabitants of the entire city and State. Juvenile delinquency

> and crime and immorality are born there, find protection and flourish. Enormous economic losses result directly from the unnecessary expenditure of public funds to maintain health and hospital services for afflicted slum dwellers and to war against crime and immorality. The dwellings, themselves, are fire hazards causing excessive expenditure of funds for fire-fighting and endanger the lives and property of the rest of the citizens of the City. These conditions have existed for some time. The enormous economic losses caused to the state and city by these areas and the responsibility of the state and city to bring about conditions in these areas whereby the moral and physical fibre of its manhood and womanhood may be strengthened is a matter of governmental concern. It is a public purpose for which the city's funds may be expended and a public use for which private property may be taken in expropriation proceedings."

From a judgment rejecting the Attorney General's demands and dismissing his suit, he prosecutes this appeal.

The purpose of the Attorney General's suit is to have it declared that Act 275 of 1936, known as the "Slum Clearance" or "Housing Authority" Act, is unconstitutional, and to enjoin the City and the Housing Authority from proceeding further with the project contemplated.

Before discussing the many points raised by him, it is pertinent to say that Section 2 of the act sets out at length the purpose of the law and the necessity for its enactment. It is declared that unsafe and unsanitary dwelling accommodations generally exist in the cities of the State having a population of more than 20,000, and that such unsafe and unsanitary conditions "arise from over-crowding and concentration of population, the obsolete and poor conditions of the buildings, improper planning, excessive land coverage, lack of proper light, air, space and access, unsanitary design and arrangement, lack of proper sanitary facilities, and the existence of conditions which endanger life of property by fire and other causes".

It is further declared in Section 2 of the act that in such cities many families of low income are forced to reside in unsanitary or unsafe dwelling accommodations; that in such cities there is lack of safe or sanitary dwelling accommodations "available at rents which families of low income can afford"; that for these reasons such families are forced to occupy over-

crowded and congested dwelling accommodations, and further declared that:

> "x x x the aforesaid conditions cause an increase in and spread of disease and crime and constitute a menace to the health, safety, morals and welfare of the residents of the State and impair economic values; x x x that these conditions cannot be remedied by the ordinary operations of private enterprises;"

that the clearance, replanning and reconstruction of such areas

> "x x x and the providing of safe and sanitary dwelling accommodations for families of low income are public uses and purposes for which public money may be spent and private property acquired; that it is in the public interest that work on such projects be instituted as soon as possible in order to relieve unemployment which now constitutes an emergency; and the necessity in the public interest for the provisions hereinafter enacted, is hereby declared as a matter of legislative determination."

At the trial the defendants offered in evidence several affidavits, one by Miss Wilmer Shields, Executive Secretary of the Council of Social Agencies of the City of New Orleans; another by Dr. James M. Batchelor, President of the Orleans Parish Board of Health; another by M. B. DePass, City Architect, and one by Alvin M. Fromherz, Consulting Engineer and Executive Secretary of the "Housing Authority of New Orleans".

The affidavit of Miss Shields shows that for ten years she has been connected with agencies having to do with social conditions in cities, and that she has been called upon to make an extensive study of social conditions in the City of New Orleans; that she has had occasion to study the conditions existing in the congested areas of the City, particularly in those areas commonly classified as slums; that those areas in the City of New Orleans included in one of the housing projects to be undertaken by the Housing Authority "represent two of the most congested sections in the City of New Orleans and two sections that call for immediate and prompt action in respect to any program of slum clearance and low-rent housing".

Her affidavit further sets out that it has been found from studies made by herself and those in similar fields "that there is a greater prevalence of juvenile delinquency, crime, disease and immorality existing in such congested or slum areas, that in any other sections of the city; that such juvenile crime, disease and immorality impose a disproportionate

expense upon the community in the matter of rendering social service to the said communities as compared with other sections of the city; and that one of the effective means of improving conditions in such areas is through better housing".

Dr. J. M. Batchelor, President of the Orleans Parish Board of Health, stated in the affidavit made by him that he has had occasion to make a study of the health conditions existing in the various sections of the City of New Orleans, and that his study and investigations have disclosed to him "the greater prevalence of disease and insanitary conditions in the congested and slum areas than in other sections of the City; that this greater prevalence of disease and insanitary conditions has resulted in a greater expenditure of governmental funds for health work in connection with such areas than for other areas of the City". He stated further that it is his belief from his studies that such prevalence of disease and insanitary conditions would be removed by improving housing conditions in such areas.

Mr. DePass, City Architect of the City of New Orleans, stated in his affidavit that he has had occasion to examine and inspect the various buildings occupied as dwellings throughout the City, with the view of determining whether such structures were unsafe, unsanitary or constructed in violation of the various building codes of the City; that in connection with such examination and investigation he had learned "of the greater prevalence of unsafe, insanitary and improperly constructed dwellings existing in the congested and slum areas of the city as compared with other sections of the city, and that such unsafe, insanitary and poorly constructed buildings have represented constant danger to the general public as well as the occupants of such structures". He stated further that the areas of the City which the Housing Authority proposes to take over as projects "represent two of the most congested sections in the City of New Orleans and two sections that call for immediate and prompt action in respect to any program

of slum clearance and low-rent housing".

Mr. Fromherz, Consulting Engineer and Executive Director of the Housing Authority of the City of New Orleans, stated in the affidavit made by him that the areas of the City of New Orleans which the Housing Authority of the City proposes to take over for the establishment of one of its projects "represent two of the most congested sections in the City of New Orleans and two sections that call for immediate and prompt action in respect to any program of slum clearance and low-rent housing".

It is pertinent to state here that the act says in Section 8 that a "Housing Authority" shall "constitute a public body corporate and politic, exercising public powers" and shall "have perpetual succession"; and to state also that, according to Section 6, "No commissioner or employee of an authority shall acquire any interest direct or indirect in any housing project or in any property included or planned to be included in any project". (Italics ours).

1. The first point raised by the Attorney General is that Section 23 of the act authorizes any city or municipality and the State to invest in bonds of a housing authority, and to expend public funds in furtherance of the aims and purposes of housing authorities. It is argued that this authorization violates Section 12, Article IV, of the Constitution, which provides that:

> "The funds, credit, property or things of value of the State or of any political corporation thereof, shall not be loaned, pledged or granted to or for any person or persons, association or corporation, public or private; nor shall the State, nor any political corporation, purchase or subscribe to the capital stock or stock of any corporation or association whatever, or for any private enterprise."

That portion of Section 23 of the act referred to provides that:

> "All public officers, municipal corporations, political subdivisions, public bodies, insurance companies and associations, savings banks and institutions, savings and loan associations, executors, administrators, tutors, curators, trustees and other fiduciaries, in the State may legally invest funds within their control in bonds of an authority when they are secured by a pledge of the revenues of, or first mortgage lien on, property", etc.

Clearly this provision of the act does not relate to "the funds, credit, property or things of value of the State". Included among those who may "legally invest funds within their control in bonds of an authority" when properly secured are "public officers". But the Legislature did not intend by that provision to authorize public officers of the State who are by law intrusted with the custody of public funds to invest such funds in the bonds of the Housing authorities created by the act, because such public funds as go into the custody of certain public officers of the State are not "within their control". They are "earmarked" for, and specifically dedicated to, certain purposes. The public funds of the State are derived from taxation in some form prescribed by legislative enactments, which enactments dedicate all taxes levied by the taxing statutes to some specific purpose. Certain public officers are designated custodians of such funds, but they must use them as directed; such funds are not "within their control".

But Section 23 of the Housing Act does specifically provide that "municipal corporations, political subdivisions, public bodies" may legally invest funds within their control in the bonds of an authority. It is argued that this violates that portion of Section 12, Article IV, of the Constitution, which says that the funds or credit of any political corporation of the State "shall not be loaned, pledged or granted to or for any x x x corporation, public or private; nor shall x x x any political corporation, purchase or suscribe for the capital stock or stock of any corporation".

The pleadings and the evidence show that the City of New Orleans, a political corporation created by the State, has already spent approximately $11,000.00 of the public funds of the city in furtherance of the slum clearance and housing project undertaken by the "Housing Authority" of the City and, if not restrained, will spend an additional sum up to $25,000.00 for the same purpose. And it is admitted that the City has agreed to, and will, purchase, if not restrained, bonds of the "Housing Corporation" in the principal sum of $1,050,000.00.

Now the question is whether the expenditures made and to be made and the proposal of the City to purchase these bonds are prohibited by the Constitution.

We do not think they are. It is our opinion that Section 12, Article IV, of the Constitution does not prohibit municipal corporations from using public funds for the purposes here contemplated. The framers of the Constitution did not intend to debar municipal corporations from using public funds to protect the health, morals and safety of all their inhabitants, and, according to what is clearly the primary purpose of Act 275 of 1936, that is precisely what a municipal corporation is doing when it uses public funds to assist in promoting these slum clearance and housing projects.

The fundamental purpose of all government, whether state or municipal, is to protect the morals and the health of the people and to provide for their safety. All governmental activities, complicated as they are, have that simple end in view.

The Legislature declared, and its declaration is supported by the testimony submitted by defendants, that so-called slum districts, where there is overcrowding, lack of light, ventilation and sanitary facilities, and therefore filth, constitute a menace not only to those who dwell therein, but to all other inhabitants of the city as well. The reason why such districts are menaces to all the inhabitants of the city is that they tend to breed disease, crime and immorality. The dangers arising from such conditions spread. They cannot be confined to the localities where they originate. They affect injuriously not only those who, on account of low incomes, must live in slum districts, but those who reside in the more favored districts as well. The most dangerous and menacing immoralities and debaucheries are practiced in the overcrowded and neglected areas of cities.

It is not denied -- nor can it be -- that it is the city's duty to all its inhabitants to eradicate these evils if possible, and to that end, make use of public funds.

The primary purpose of housing authorities is to eradicate the slum menace. In doing so, they lighten the burden of cities in discharging the municipal duty of protecting all citizens indiscriminately against disease, crime and immorality.

It is therefore perfectly clear that, when a city uses public funds for the establishment of a housing authority, whether the funds be used for organization expenses or in the purchase of a small percentage of the housing authority's bonds, the city is performing, indirectly through a public agency created by the State and sanctioned by its own governing authority, one of the primary functions of municipal government.

It is not suggested in this case that the amounts already used by the city and that to be used for these purposes are out of proportion to the benefits to be received. Nor is it suggested that these amounts are in excess of the amounts the City would have to expend during the next few years to accomplish the same purposes.

The holding in the cases of LeBourgeois v. City of New Orleans, 145 La. 274, 82 So. 268, and State ex rel. Henry Orr v. City of New Orleans, 50 La. An. 880, 24 So. 666, are in point and sustain our view in this case. See also Saucier v. City of New Orleans, 119 La. 179, 43 So. 999, and Benedict v. City of New Orleans, 115 La. 645, 39 So. 792.

The act does not violate that clause of Section 12, Article IV, of the Constitution, which prohibits political corporations from purchasing or subscribing "to the capital stock or stock of any corporation or association whatever". The act provides that municipal corporations "may legally invest funds within their control <u>in bonds of an authority</u> when they are secured by a pledge of the revenues of, or first mortgage lien on, property" of housing authorities. Housing authorities created by the act are public corporations which have no capital stock.

(2) The second objection raised by the Attorney General does not involve the validity of Act 275 of 1936. It is alleged that the City

of New Orleans is planning to close certain streets of the City within the area of the housing project and to sell the land comprised therein to the Housing Authority. The City admits this allegation but alleges in its answer that this will not be done "until after the Housing Authority of New Orleans shall have acquired title to the privately owned property within the respective areas. At such time the closing of said streets will be with the approval and consent of the then owner of the abutting property."

Section 8 of the Charter of New Orleans, as amended by Act 338 of 1936, authorizes the Commission Council "by a two-thirds vote to sell or change the destination of any street x x x which is no longer necessary for the public use to which it was originally destined". The right of the City Council of New Orleans to sell streets which are no longer necessary for the public use to which they were originally destined has been recognized by this court. See Schernbeck v. City of New Orleans, 154 La. 676, 98 So. 84; State ex rel. Ruddock Orleans Cypress Co. v. Knop, Civil Sheriff, 147 La. 1057, 86 So. 493. The closing or selling of such streets rests within the sound discretion of the Commission Council. We cannot assume that the Commission Council will abuse its discretion.

(3)
(4) The validity of Act 275 of 1936 is further attacked on the ground that it was not "duly and properly passed, approved and promulgated" as required by the Constitution.

Under this heading the only point stressed by the Attorney General is that the act is a "local or special law" and that no notice of intention to apply for its passage was published as required by Section 6, Article IV, of the Constitution. If, as the Attorney General contends, the act is a local or special law, it is invalid, because the act itself does not recite that the requirement of the above cited article and section was complied with. See Federal Land Bank v. John D. Nix, Jr., Enterprises, 166 La. 566, 117 So. 720.

It is argued that the act is a local or special law because by its

express terms its application is limited to cities of the State having a population of more than 20,000, there being only five such cities in the State.

If there were but one city in the State having a population exceeding 20,000, there might be merit in the argument. In the case of Federal Land Bank v. Nix Enterprises, supra, it was said that Act 76 of 1910, authorizing municipalities of more than 100,000 population to adopt ordinances relating to the construction, equipment, repair and removal of buildings, was a local law, because the classification adopted was fictitious, there being at the time of the act's adoption only one city in the State having a population of over 100,000; so that the act was evidently intended to operate in only one locality, the City of New Orleans.

Act 275 of 1936 is different. It operates in all cities having a population exceeding 20,000, regardless of where they are located in the State. In view of the primary purpose of the act, which is slum clearance and the eradication of the evils engendered by slums, the classification is a reasonable one. The Legislature found -- and it is common knowledge -- that so-called slum districts are more prevalent in cities with a population exceeding 20,000 than in smaller ones. Therefore, there is more need for the operation of this law in the cities designated than in smaller ones and in towns. The law operates uniformly and equally upon all brought within the relations and circumstances for which it provides. All persons residing in the territory designated by the act, wherever located, are similarly affected.

In the so-called "Blind Tiger Law", which was Act 8, Extra Session of 1915, it was made a misdemeanor for any person to operate a blind tiger in "any place in those subdivisions of the State where the sale of spirituous, malt or intoxicating liquors is prohibited". In the case of State v. Nejin, 140 La. 793, 74 So. 103, the defendant was prosecuted for conducting a blind tiger, and the validity of the act was assailed on the ground that it was a

local or special law in that it operated and could have effect only in those parts of the State where the sale of spirituous or malt liquors was prohibited. It was held that the act was not a local or special law because:

> "The statute applies in every organized community in the state where, in the exercise of the right of local option, the people have prohibited the sale of liquor, and is applicable to every other community, in the sense that, should any other choose to prohibit such sale, it will come immediately under its dominion. It is not therefore either a special or a local law within the meaning of either of the articles invoked."

The following cases are also directly in point: State v. Donato, 127 La. 393, 35 So. 662; City of Shreveport v. Nejin, 140 La. 785, 73 So. 996; State v. McGue, 141 La. 417, 75 So. 100; Clark v. City of Opelousas, 147 La. 1, 84 So. 433; State ex rel. Porterie v. Smith, 184 La. 263, 166 So. 72.

Our conclusion is, and we hold, that Act 275 of 1936 is not a local or special law.

(5) & (6) The fifth and sixth points raised by the Attorney General are (1) that the title to the act includes more than one object or subject, and (2) that the body of the act includes more than one object or subject.

Section 16, Article III, of the Constitution provides that:

> "Every law enacted by the Legislature shall have but one object, and shall have a title indicative of such object."

Clearly the act has but one object, and its title indicates that it is to set up machinery for the establishment and operation of public corporations to be known as "Housing Authorities". It is conceded that its title is indicative of that object. But it is suggested that it "steps over the line" when it (a) confers remedies on obligees of housing authorities, (b) provides that housing authorities, their property and securities shall be tax exempt; and (c) provides that the bonds of the authority shall be legal investments.

Section 15 of the act confers upon each housing authority certain specific powers, included among which is the power to vest in the holders and owners of its bonds or other obligations the right, in event of default

by said authority, to cure any such default by advancing any moneys necessary for such purpose, the moneys so advanced to be additional obligations of the authority; and further, in case of default, to vest in the holders or owners of such obligations the right to operate, to collect and receive rents, fees and revenues arising from the operation of the property and to dispose of the money so collected in accordance with agreement; to foreclose, through judicial proceedings, the mortgages granted by the authority to secure its bonds, and to foreclose such mortgages as to all or such part of the property covered by the mortgage as such obligee shall elect, and finally to provide the terms and conditions upon which an obligee may exercise such rights.

The housing authorities being corporations and bodies politic in law with full power to issue bonds and other obligations and to secure them by mortgage on their real property or by pledge of their revenue, it follows that they may confer upon their creditors reasonable remedies for enforcing such obligations. The remedies which the authorities are empowered to confer are not only reasonable, but are the same as individuals and corporations usually confer upon their creditors.

The purpose of declaring that the property and securities of the authorities should be exempt from taxes was to express the legislative intent that, in carrying out the objects for which they were to be organized, the housing authorities should be relieved of a burden which might hamper them in their operations; and the purpose of the provision that their bonds should be legal investments was to aid them in carrying out the one object for which they were created. We find no merit in this objection.

The further objection is made that the body of the act goes beyond its title, in that it undertakes to legislate on certain subjects which are not within the scope of the primary object of the act.

After enumerating in his brief several instances in which the body of the act goes beyond its title, counsel says that "practically all of its manifold provisions meet this test" -- that is, are embraced within the title. "However", says counsel, "at least four of the eight matters mentioned above clearly fail to do so". And he especially mentions: (1) the authority given banks and trust companies to give security for the deposits of housing authorities; (2) the vesting of additional powers in municipalities conferred by Section 22; (3) the vesting in public officers, financial institutions, fiduciaries, etc., the legal right to invest funds within their control in the bonds of the authority, as conferred by Section 23; and (4) the vesting in the housing authorities the right to acquire, by purchase or its power of eminent domain, property for any housing project being constructed by a government, and to convey the same, with or without consideration, to such government for use in connection with such housing project, authorized by Section 11 of the act. We take it that the other points are abandoned.

If it be conceded that the authority conferred upon banks and trust companies to give security for deposits of housing authorities goes beyond the scope of the title, that does not in any sense affect the constitutionality of the act with respect to its main object and purpose as expressed in the title. This clause may be eliminated from the act without affecting its validity. The same may be said concerning the authority of financial institutions, such as banks and savings associations, to invest funds within their control in the bonds of housing authorities.

Concerning the objections listed under (2) and (4), these are embraced within the title. Section 22 of the act provides that the real property, bonds and notes of the housing authorities are exempt from taxes, and provides further that the city or municipality may fix a sum which shall be paid to it annually by a housing authority or agree upon a sum to be

paid by the authority to the corporation in lieu of such taxes. This entire section relates to the exemption of the housing authorities from taxation, which exemption is especially provided for in the title.

The full meaning of Section 11 of the act, referred to under specification (4), is not quite clear. However, it is clear that it refers to the acquisition of property by the housing authority, and that is germane to that portion of the title which provides that such authorities may acquire property by exercise of the power of eminent domain.

After a careful reading of the act, our conclusion is that, with the one slight and minor exception stated above, all the provisions in the body of the act are germane to the object expressed in the title.

In Southern Hide Co., Inc., v. Best et al., 176 La. 347, 145 So. 682, we said:

> "It is not the purpose of this article to require that the title be an index to the contents of the act, or that every end and means convenient or necessary for the accomplishment of the general object of the act be set out at length in the title, but it is deemed sufficient, under the article, that the act contain but one object and that the object be fairly stated, although it be expressed in general terms, in the title of the act. All things proper or necessary to carry out the general object, so stated in the title, are deemed to be within the scope of the title. Thornhill v. Wear, 131 La. 479, 59 So. 909; State v. Hincy, 130 La. 620, 58 So. 411; Succession of Lanzetti, 9 La. Ann. 329."

This language has been repeated in at least three subsequent cases; Chauvin v. Louisiana Power & Light Co., 177 La. 193, 148 So. 23; Tichenor v. Tichenor, 184 La. 743, 167 So. 427; Peoples Homestead & Savings Ass'n v. Masling, 185 La. 800, 171 So. 36.

(7) Article X, Section 1, of the Constitution declares that tax funds may be expended for public purposes only, and Section 5 of the same article declares that all taxes levied by the Legislature or by municipal governments must have purposes "strictly public in their nature".

Article I, Section 2, of the Constitution authorizes the taking of land by expropriation proceedings only where the land is to be taken for

"public purposes".

As we have stated in discussing the first objection raised by the Attorney General, the City of New Orleans has made available for the payment of the expenses in organizing the "Housing Authority of New Orleans" the sum of $25,000.00 and has actually expended approximately $11,000.00 and will, if not restrained, spend the balance for the same purpose.

The Attorney General argues that such use of the public funds of the City of New Orleans violates Sections 1 and 5 of Article X, because it is argued that the expenditure of this money is not for a public purpose. The act provides that the Housing Authority may acquire property by expropriation under its power of eminent domain, and it is argued that the statute which grants this power violates Article I, Section 2, of the Constitution because the taking of such property is not for "public purposes".

We have already shown (See discussion under heading #1) that the Housing Authority authorized by the act subserves a public purpose in the truest sense. At Page 25 of the Attorney General's brief he says that:

> "x x x the State of Louisiana, through one of its subdivisions, is going into the real estate rental business to provide homes for certain types of families described as 'low-income families'."

There is no merit in the argument that either the Housing Authority or the City of New Orleans is going into the real estate business. It is true that the Housing Authority is authorized to erect and lease houses to persons of low income. But that is a mere incident to the main purpose of the act, which, as we have already said, is to clear the slums and thereby to protect the lives, the health and the morals, not merely of those who presently live in the slum sections and who will ultimately occupy the buildings to be erected, but of the entire population of the City. That the City may expend its public funds for such purposes we think cannot be questioned.

It being true that these housing authorities subserve a public purpose,

it follows necessarily that the acquisition by them of private property for their uses is for public use. In view of many of our own decisions, as well as decisions of the courts of other states and numerous cases decided by the Supreme Court of the United States, it is hardly necessary to indulge in further discussion of this point, except to cite the cases.

In New Orleans Land Co. v. Board of Levee Commissioners, 171 La. 718, 132 So. 121, this court held that the improving of the lake front and providing for the safety, health and welfare of the inhabitants of the City of New Orleans were a public benefit justifying the levee board in appropriating lake bottom and adjacent swamp lands.

With reference to the lands sought to be appropriated, we said:

> "Their improvement for the avowed purpose of providing for the safety, health, and welfare of the inhabitants of the city of New Orleans is distinctly such a public benefit as justifies the appropriation of the lands for such purpose by the defendant levee board under its constitutional authority."

In City of New Orleans v. New Orleans Land Co., 173 La. 71, 136 So. 91, it was held that the "taking of land for enlargement of public park is for 'public use'".

See also Dalche v. Board of Commissioners of Orleans Levee Board, 49 Fed. (2d) 374.

Other cases of similar import decided by this court might be cited.

In the case of New York Housing Authority v. Muller, 270 N. Y. 333, 1 N.E. (2d) 153, the only question involved was whether the expropriation of private property for use of the New York Housing Authority (similar to, and organized for the same purpose as, the New Orleans Housing Authority) was a taking of property for public use. In that case the court stated that the purpose of the expropriation was "the clearance, replanning and reconstruction of part of an area of the City of New York, State of New York wherein there exist, and the petitioner has found to exist, unsanitary and substandard housing conditions."

It was found that the Housing Authority had purchased property contiguous on both sides to the premises sought to be condemned. The owner of the property resisted the condemnation proceedings on the ground "that the Municipal Housing Authorities Law violates article 1, section 6, of the State Constitution and the Fourteenth Amendment of the Federal Constitution, because it grants to petitioner the power of eminent domain for a use which is not a public use".

The court said that the objection disregarded the primary purpose of the legislation, and held that the taking of the property was for a public use.

In support of its holding the New York court cited the following decisions of the Supreme Court of the United States: Mt. Vernon-Woodberry Cotton Duck Co. v. Alabama Interstate Power Company, 36 Sup. Ct. 234, 240 U.S. 30, 60 Law Ed. 507; Strickley v. Highland Boy Gold Mining Company, 26 Sup. Ct. 301, 200 U. S. 527, 50 Law Ed. 581; Rindge Co. v. Los Angeles County 43 Sup. Ct. 689, 262 U.S. 700, 67 Law Ed. 1186; Fallbrook Irrigation Dist. v. Bradley, 17 Sup. Ct. 56, 164 U.S. 112, 41 Law Ed. 369.

We shall not review the cited decisions of the Supreme Court of the United States. It suffices to say that they support the ruling made in the Muller case, supra.

The benefits derived from the establishment of the housing projects, authorized by Act 275 of 1936, do not inure solely to the benefit of the persons who may ultimately occupy the houses to be built. The primary purpose of the legislation is not to benefit that class alone or any particular class; it is to protect and safeguard the entire public from the menace of the slums, and for that reason the acquisition of the property is for a public use.

See Willmon v. Powell, 91 Cal. App. 1, 266 Pac. 1029.

(8) In Section 22, Act 275 of 1936, it is declared that the notes, debentures, bonds and other evidences of indebtedness of a housing authority

"are issued for a public purpose and to be public instrumentalities and, together with interest and income thereon, shall be exempt from taxes". The same section further provides that housing authorities shall be exempt from the payment of taxes to the State or any subdivision thereof, including municipalities.

The Attorney General raises the point that this provision of the act violates Section 4, Article X, of the Constitution, which says that:

> "The following property, and no other, shall be exempt from taxation: All public property."

Then follows a long list of the special kinds of property which are exempt.

The property of housing authorities does not fall within any of the classes specially exempted; so that, unless this kind of property is included within the general term "Public Property", it is not exempt.

Section 22 of the act amounts to nothing more than a mere declaration by the Legislature that the property of housing authorities is, and should be classed and regarded as, public property. Property which is constitutionally subject to taxation cannot be exempted by legislative fiat. The members of the Legislature are presumed to have known this. But it is declared in Section 22 that the notes, bonds and other obligations of these specially created public corporations "are issued for a public purpose and to be public instrumentalities". Section 2 of the act sets out the Legislature's "Finding and Declaration of Necessity" for the establishment of housing authorities for the protection of the general public from the menace of slums, and it is declared:

> "x x x that these conditions cannot be remedied by the ordinary operations of private enterprise."

The affairs of the housing authorities are administered by Commissioners appointed by the Mayor of the City. No member of the City Council can be a commissioner, and "A commissioner shall receive no compensation for his services". Section 6 of the act provides that "No commissioner or employee

of any authority shall acquire any interest direct or indirect in any housing project or in any property included or planned to be included in any project, nor shall he have any interest direct or indirect in any contract or proposed contract for materials or services to be furnished or used in connection with any housing project". And Section 7 provides that any commissioner found guilty of such misconduct may be removed by the Mayor.

The housing authorities are public bodies corporate and politic and are given perpetual succession. Their purpose is clearly defined and limited to one: The clearance of slums and the eradication of slum evils. They cannot, under the act, subserve a private interest of any nature or character. But they do in fact subserve a public interest. Hence the declaration in Section 22 relative to taxation.

It is suggested, and we think must be conceded, that a mere declaration by the Legislature that certain property is for a public use or for a public purpose is not conclusive. The determination of such question is a judicial and not a legislative function. But courts should, and do, have great respect for legislative declarations concerning the public policy of the State.

The specific declarations and provisions of this act leave us in no doubt as to the legislative intent concerning the character of the property of these housing corporations. These declarations, as we have said, are not conclusive or binding upon the courts. But, to say the least, they are persuasive.

Independently, however, of the legislative intent, our opinion is that such property is for public use and is "public property", within the meaning of that term as used in the Constitution.

In discussing this point, the Attorney General says at Page 32 of his brief:

"If its purposes are not public purposes, but, on the

contrary, are private purposes, then the essential nature of the corporation and its property become private and not public."

And on Page 33 he says:

> "Therefore, it would only be reasonable to hold that property devoted to a private use is not 'public property' within the tax exemption provisions of the Constitution."

Such property is not devoted to private use. In Green v. Frazier, 44 N. Dak. 395, 176 N.W. 11, the Supreme Court of North Dakota, in discussing the difference between private property and property dedicated to public use, said:

> "A private business or enterprise is one in which an individual or individuals, an association, copartnership, or private corporation have invested capital, time, attention, labor, and intelligence for the purpose of creating and conducting such business, for the sole purpose that those who make such contributions may, from the conducting and operating of it, make, gain, and acquire a financial profit for their exclusive benefit, improvement, and enjoyment, and exclusively for their own private purposes and use."

> "A public purpose or public business has for its objective the promotion of the public health, safety, morals, general welfare, security, prosperity, and contentment of all the inhabitants or residents within a given political division, as, for example, a state, the sovereign powers of which are exercised to promote such public purpose or public business."

No person or corporation can make, gain or acquire any financial profit for his or its exclusive benefit through the establishment and operation of a housing authority, and it follows that property acquired by such authorities is not private property. Private property is that which one owns, something that belongs absolutely and exclusively to an individual. "Private estates and fortunes are things which belong to individuals." (Revised Civil Code, Article 459). The property of housing authorities is in no sense private property. But in a real sense it is public property because it is employed for the sole benefit and advantage of all members of society.

It is true that such property will not and cannot be used personally by all the inhabitants of the City any more than could all of them use the John Dibert Tuberculosis Hospital of New Orleans. But that hospital is a

public institution. LeBourgeois v. City of New Orleans, 145 La. 274, 82 So. 268.

To say that, because the property of these housing authorities is to be leased to a class designated as persons of low income, the use of it is private and not public, is to disregard entirely the primary purpose of the legislation--the purpose for which housing authorities are organized, which we have already explained in detail and at length under headings (1) and (7).

Our conclusion is, and we hold, that the property of these housing corporations is public property and therefore exempt from taxation.

(9) The Attorney General propounds the question whether the contract between the City of New Orleans and the Housing Authority surrenders, suspends or contracts away the power of taxation, in violation of Article X, Section 1, of the Constitution, which provides that the power of taxation "shall never be surrendered, suspensed or contracted away".

For the reasons already stated, our answer is "No".

(10) The Attorney General raises the objection that Act 275 of 1936 unconstitutionally delegates legislative powers to the councils of cities to determine when and if a housing authority shall transact business or exercise its powers, and to housing authorities to determine the amount of income which shall bring families within the definition of "families of low income".

In State v. Guidry, 142 La. 422, 76 So. 843, the same objection was levelled at Act 54 of 1914, in that it delegated to the Conservation Commission the right to ascertain and determine, as a matter of fact, whether any particular area does or does not contain a natural oyster reef as defined in the statute. Answering that objection, we said:

> "To ascertain and determine such facts is not a legislative function. The authority of the Legislature to delegate to the administrative boards and agencies of the State the power and authority of ascertaining and determining the facts upon which the laws are to be applied and enforced cannot be seriously disputed."

To the same effect are the cases of State v. Harper, 42 La. An. 312, and State v. Westmoreland, 133 La. 1015, 63 So. 502.

The right of a city to investigate and determine whether such conditions exist as warrant the organization of a housing authority and the right of the housing authority to determine the question as to what persons are to be considered those of low income as prescribed in the act, are not legislative functions.

(11) A further objection to the act is that it attempts to amend statutes relating to certain subjects without re-enacting and publishing such laws at length, in violation of Section 17, Article III, of the Constitution.

The answer to this objection is that Act 275 does not pretend to amend any statutes. See discussion under headings (5)-(6).

(12) &(13) Section 10 of the act provides that:

> "When an authority by resolution has found and determined that certain real property described therein is necessary for a housing project, such resolution shall be conclusive evidence that such property is necessary therefor and that said housing project is planned or located in the manner which will be most compatible with the greatest public good and the least private injury."

The Attorney General interprets this provision to mean that the right of the courts to determine the question as to whether the taking of the private property of individuals is in fact for a public use, is taken away and vested in the Housing Authority. If his interpretation is correct, this provision is unconstitutional because the determination of such a question is a judicial function which the Legislature could not delegate to the Housing Authority. Courts are always open to private citizens to have such questions determined.

But we do not agree with the Attorney General in his interpretation of the meaning of this provision. What this provision means is that a housing authority, and not the administrative or executive department of a city, is to determine the propriety of locating a project in any particular part of the city, and that, as to that, the decision of the housing

authority is conclusive.

The act says that, when an authority by resolution has found and determined that certain real property described therein "is necessary for a housing project" and that said housing project is "planned or located in the manner which will be most compatible with the greatest public good and the least private injury", such resolution is conclusive as to those matters. This provision does not relate to the taking of private property which may happen to be included within the area designated for the establishment of a "project".

Under our interpretation of this provision, it is not objectionable and does not deprive the individual property owners of due process of law relating to expropriation proceedings.

(14) & (16) The Attorney General propounds the question whether a housing authority is such an agency of the State or the City as to make the State or the City liable for its debts and whether the constitutional limitations as to the amount of indebtedness which may be contracted by any political corporations are violated by the act.

The answer to these questions is found in the last clause of Section 13 of the act, which reads as follows:

> "Neither the commissioners of an authority nor any person executing the bonds shall be liable personally on the bonds by reason of the issuance thereof. The bonds and other obligations of an authority (and such bonds and obligations shall so state on their face), shall not be a debt of the city, any municipality or the State and neither the city, any municipality nor the State shall be liable thereon, nor in any event shall they be payable out of any funds or properties other than those of said authority. The bonds shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction. Bonds may be issued under this Act notwithstanding any debt or other limitation prescribed by any statute."

(15) The last contention made by the Attorney General is that in effect the Housing Authority is a municipal corporation within the meaning of Article XIV, Section 14, of the Constitution of Louisiana, and that therefore it may issue bonds only in the manner set forth in subdivisions (a)

and (m) of the said Article XIV, Section 14, and that neither is being complied with.

A housing authority is not a municipal corporation.

> "A municipal corporation is a body corporate and politic, established by law to share in the civil government of the country, but chiefly to regulate and administer the local or internal affairs of the city, town or district incorporated."

> "A municipal corporation is defined by Bouvier to be a public corporation created by government for political purposes, and having subordinate and local powers of legislation."

(See Words and Phrases, under the general heading "Municipal Corporations".)

For the reasons assigned, the judgment in favor of the defendant Housing Authority of New Orleans et al. and against Relator Gaston L. Porterie, Attorney General, rejecting relator's demands and dismissing his suit is affirmed.

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IN THE SUPREME COURT OF PENNSYLVANIA
Eastern District

ANNA M. DORNAN v. THE PHILADELPHIA HOUSING AUTHORITY, CITY OF PHILADELPHIA, SCHOOL DISTRICT OF PHILADELPHIA.	:	No. 235, January Term, 1938. Original Jurisdiction.

OPINION OF THE COURT

STERN, J.

This is a taxpayer's bill in equity, of which this court has assumed original jurisdiction, to test the constitutionality of two acts of Assembly, the one, that of May 26, 1937, P.L. 888, known as the "Housing Cooperation Law," and the other, that of May 28, 1937, P.L. 955, known as the "Housing Authorities Law." In order fully to understand the purport of these statutes, which are more or less similar to acts passed in thirty-one other states, they should be read in connection with the "State Board of Housing Law" of June 5, 1937, P.L. 1705, and the Act of Congress of September 1, 1937, known as the "United States Housing Act of 1937," 50 Stat. 888, 42 U.S.C.A., sec. 1401 et. seq. They are designed to accomplish, or at least facilitate, through the instrumentality of public agencies, the elimination in Pennsylvania of unsafe, unsanitary, inadequate and overcrowded dwellings, and to substitute in their stead decent habitations for persons heretofore compelled to live in slum areas.[1]

A legislative project of this nature goes beyond anything heretofore attempted in this State. It naturally invites, therefore, the attack of

1. A "slum" is defined in the Housing Authorities Law as "Any area in which there is a predominance of structures which, by reason of dilapidation, overcrowding, faulty arrangement or design, lack of ventilation, light or sanitary facilities, or any combination of these factors, are detrimental to safety, health, and morals."

those who are inclined to regard all experiments in our social and economic life as presumptively unconstitutional. Such challenges must fail, however, if, upon analysis, it appears that the only novelty in the legislation is that approved principles are applied to new conditions. Neither our State nor our federal constitution forbids changes, merely because they are such, in the nature or the manner of use of methods designed to enhance the public welfare; they require only that the new weapons employed to combat ancient evils shall be consistent with the fundamental scheme of government of the Commonwealth and the nation, and shall not violate specific constitutional mandates.

Before discussing the legal problems here involved it is necessary briefly to summarize the provisions of this legislation. The Housing Authorities Law make the factual declaration that there exist in communities throughout the Commonwealth numerous slums, together with an acute shortage of safe and sanitary dwellings within the financial reach of persons of low income, and that these conditions encourage the spread of disease, impair public health and morals, increase the hazards of fire and accidents, subject the moral standards of the people to bad influences, and increase the violation of the criminal laws. It states that, because of the prevailing stagnation of business activity, private industry is unable to cope with this situation. The act therefore provides for the creation of "corporate and politic bodies" to be known as "Housing Authorities," which shall operate for the clearance, replanning, and reconstruction of the areas in which slums exist, and the providing of safe and sanitary dwelling accommodations for persons of low income.[2] Such purposes are declared by the act to be "public uses for which public money may be spent, and private property acquired by the exercise of the power of eminent

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2. "Persons of low income" are defined in the act as persons or families whose aggregate annual income shall not exceed six times the annual rental of the quarters to be furnished them.

domain." The Authorities are to come into existence in and for any city or county when the governing body thereof declares by resolution that there is need for such an Authority.[3] An Authority "shall in no way be deemed to be an instrumentality of such city or county, or engaged in the performance of a municipal function." The members of an Authority, five in number, are to be appointed by various public officials as specified in the act. Each Authority is to "constitute a public body . . . exercising public powers of the Commonwealth as an agency thereof." Among these powers are enumerated the following: To investigate into housing conditions and the means and methods of improving them; to study and make recommendations concerning city planning with reference to the housing problem; to acquire, construct, improve and operate housing projects; to co-operate with municipalities and with federal agencies in order to effectuate the purposes of the act; to clear areas of unsafe or unsanitary housing, and to provide for the use of cleared sites for community facilities and for any other public purpose authorized by the act; to rent any of the dwellings and accommodations embraced in any housing project, and to establish and revise the rents or charges therefor; to acquire any real or personal property by gift or purchase from any person, corporation, municipality or government; to acquire by eminent domain any real property "for the public purposes" set forth in the act; to sell or assign any property when the Authority determines that it is not needed for the purposes of the act. It is specified that the projects are not to be constructed or operated for profit; therefore, the Authority is to fix rentals for dwellings in its projects at no higher rates than necessary to produce revenues sufficient to pay the principal and interest of its bonds and to provide for the cost of maintaining and operating the projects and for the administrative

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3. On certain prescribed conditions the Governor may, by certificate, create an Authority for a city or county.

expenses of the Authority. It may rent dwelling accommodations only to persons of low income as defined in the act. Title to any property acquired by an Authority through eminent domain shall be an absolute or fee simple title, unless a lesser title shall be designated in the proceedings. An Authority may issue bonds for any of its corporate purposes, but such bonds or other obligations of the Authority "shall not be a debt of any city, county, municipal subdivision or of the Commonwealth, . . . nor shall any city, county, municipal subdivision or the Commonwealth, nor any revenues or any property of any city, county municipal subdivision or of the Commonwealth be liable therefor." To secure its bonds an Authority may pledge its revenues and mortgage its housing projects or other property. It is empowered to borrow money or accept grants or other financial assistance from the federal government in aid of any housing project within its area of operation. The property of an Authority is "declared to be public property used for essential public and governmental purposes and such property and an Authority shall be exempt from all taxes and special assessments, except school taxes, of the city, the county, the Commonwealth, or any political subdivision thereof." In lieu of such taxes or special assessments, an Authority may agree to make payments to the city or the county, or any such political subdivision, for improvements, services and facilities rendered for the benefit of a housing project or its tenants, but not exceeding their estimated cost.

The Housing Cooperation Law provides that, for the purpose of aiding and cooperating in the construction or operation of housing projects, any State public body[4] may, upon such terms as it shall determine,

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4. The act defines "State Public Body" as "any city, borough, town, township, county, municipal corporation, commission, district authority, other subdivision or public body of this Commonwealth."

with or without consideration, dedicate, sell or lease any of its property to a Housing Authority, furnish playgrounds and recreational facilities, and provide and pave streets and roads, for the benefit of the Authority's housing projects. It is further provided that when any Authority becomes authorized to transact business and exercise its powers, the city council or the county commissioners, as the case may be, may appropriate to the Authority an amount of money necessary for its administrative expenses and overhead during the first year thereafter, to be paid to the Authority as a donation, and any city, borough, town or county, located in whole or in part within the field of operation of a Housing Authority, shall have the power, from time to time, to lend or donate money to it.

In the determination of one fundamental question will be found also the answer to the more important of the specific objections raised by plaintiff to the constitutionality of this legislation. Does the use to which the property acquired by the Housing Authorities will be devoted constitute a "public use" within the legal definition of that term? It is plaintiff's contention that the buildings to be erected by the Housing Authorities will not be used by the general public but only by a comparatively few persons of a class limited to those of low income, and, while conceding that the construction and renting of the new dwellings to such persons may constitute a public benefit, plaintiff maintains that their use will not be a public one, and that, therefore, the land upon which they are to be erected cannot be acquired under the power of eminent domain, without which power, it is conceded by defendant Housing Authority, it will be impossible to make the legislation practically operative.

Scattered here and there throughout the decisions of the courts of various jurisdictions are suggestions of a distinction, in regard to the right of eminent domain, between the taking of property for a public use and the taking of it for a public benefit. In Nichols on Eminent Domain, 2d ed., vol. 1, sec. 40, pp. 129, 130, 131, it is said: "The

disagreement over the meaning of 'public use' is based largely upon the question of the sense in which the word 'use' in the constitution was intended to be understood, and has developed two opposing views, each of which has its ardent supporters among the text writers and courts of last resort. The supporters of one school insist that 'public use' means 'use by the public', that is, public service or employment, and that consequently to make a use public a duty must devolve upon the person or corporation seeking to take property by right of eminent domain to furnish the public with the use intended, and the public must be entitled, as of right, to use or enjoy the property taken. . . . On the other hand, the courts that are inclined to go furthest in sustaining public rights at the expense of property rights contend that 'public use' means 'public advantage,' and that anything which tends to enlarge the resources, increase the industrial energies, and promote the productive power of any considerable number of the inhabitants of a section of the state, or which leads to the growth of towns and the creation of new resources for the employment of capital and labor, manifestly contributes to the general welfare and the prosperity of the whole community, and, giving the constitution a broad and comprehensive interpretation, constitutes a public use."

It would be quite difficult to determine the exact point at which the courts of our own State have taken their position in this controversy. The leading case adhering to the stricter conception of public use is Pennsylvania Mutual Life Insurance Co. v. Philadelphia, 242 Pa. 47. There, an act was held unconstitutional which authorized cities to appropriate private property adjoining parkways, and to resell it subject to building restrictions intended to insure the erection of abutting buildings of a satisfactory size and type. The court held that the property thus taken would not be for a public use. After saying (p. 53) that "There is no constitutional or statutory definition of the words 'public use', and none of the adjudicated cases has given a definition of the words which can have universal application,"

the court proceeded (p. 55) to adopt and apply the doctrine that "to constitute a public use for which private property may be appropriated there must be a use or right of use by the public," and, since the property was not to be retained by the public, but was to be taken only for immediate resale for private use, the appropriation was not for a public use justifying the exercise of the right of eminent domain.[5] In Waddell's Appeal, 84 Pa. 90, an act giving to persons owning anthracite coal in lands on both sides of any river a right of way across the river from their lands on one side to those of the other, either upon or under the surface, for the purpose of mining and removing their coal, upon paying the owner of the land passed over or under, was held to be unconstitutional as involving the taking of private property for a private, as distinguished from a public, use.[6] In Twelfth-Street Market Company v. Philadelphia & Reading Terminal R.R. Co., 142 Pa. 580, it was held that maintaining and operating a market house and renting out the stalls to tenants was a private business, and did not constitute a public use of the property. In the opinion of the court below, affirmed by this court, it was said (pp. 586, 587): "The test whether a use is public or not is whether a public trust is imposed upon the property, whether the public has a legal right to the use, which cannot be gainsaid, or denied, or withdrawn, at the pleasure of the owner. A particular enterprise, palpably for private advantage, will not become a public use because of the theoretical right of the public to use it. The question is, whether the public have a right to the use. . . The true criterion by which to judge of the character of the use is whether the public may enjoy it by right, or only by permission. . . . To constitute a public use, the property must be under the control of the public, or of public agencies, or the public must have a right to the use." The court admitted (p. 589) that

5. The object sought by the act in that case could have been, and frequently since has been, accomplished by the enactment, under the police power of the State, of zoning ordinances.

6. See also Philadelphia Clay Co. v. York Clay Co., 241 Pa. 305, and Poland Coal Company's Case, 58 Pa. Superior Ct. 312.

"In a market established, managed, and controlled by the municipal authorities, and governed by municipal laws, there may be no doubt a public use."

On the other hand, there are cases in Pennsylvania which greatly broaden the interpretations thus given to the phrase "public use." In Jacobs v. Clearview Water Supply Co., 220 Pa. 388, it was held that a water company for the supplying of water and water power for commercial and manufacturing purposes functioned for a public use and could properly be invested with the right of eminent domain, notwithstanding the fact that the principal consumer of the water was to be a railroad company, and that very few, if any, persons within the sphere of the company's operations were engaged in commercial or manufacturing enterprises. The court (pp. 393, 394) quoted with approval a statement from Mills on Eminent Domain, section 12, that: "If the proposed improvement tends to enlarge the resources, increase the industrial energies, and promote the productive power of any considerable number of the community, the use is public." So, in Pioneer Coal Co. v. Cherrytree & Dixonville R.R. Co., 272 Pa. 43, in holding that the defendant company could build an extension of a branch road which the plaintiff contended was a mere spur or siding facility for the private use and benefit of a competing coal company, the court said (pp. 52, 53): "What constitutes public use is a point not free from difficulties, but wherever it appears from the attending circumstances that a section of road about to be constructed will in some direct way tend to contribute to the general public welfare, or the welfare of a considerable element of the public, it cannot be said that it will not serve a public use; this principal is now too well established in Pennsylvania to be questioned: (citing cases) . . . Here, . . .since it must. . .be conceded that the life, happiness and prosperity of the people of Pennsylvania depend to a very large degree upon getting the coal supply of the State out of the mines, on its way to the consumer, this in itself, on the facts at bar, stamps a project like that before us as one

for public use, sufficiently to justify the exercise of the right of eminent domain."[7] In Wentz v. Philadelphia, 301 Pa. 261, it was held that the city might acquire by condemnation land for the purpose of establishing and maintaining municipal airdromes or aviation landing fields.[8]

On the whole, although the cases on this subject in Pennsylvania have been comparatively few in number, it may fairly be stated that, while firmly maintaining the principle that private property cannot be taken by government for other than a public use, they justify the conclusion that judicial interpretation of "public use" has not been circumscribed in our State by mere legalistic formulas or philological standards. On the contrary, definition has been left, as indeed it must be, to the varying circumstances and situations which arise, with special reference to the social and economic background of the period in which the particular problem presents itself for consideration. Moreover, views as to what constitutes a public use necessarily vary with changing conceptions of the scope and functions of government, so that to-day there are familiar examples of such use which formerly would not have been so considered. As governmental activities increase with the growing complexity and integration of society, the concept of "public use" naturally expands in proportion.

Some of the factors involved in the proposed operation of the new housing projects which are emphasized by plaintiff as being opposed to the theory of a public use prove, upon analysis, to be of little or

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7. See also C. O. Struse & Sons Co. v. Reading Co., 302 Pa. 211.

8. The Supreme Court of the United States has been extremely liberal in uniformly holding that where the appropriation of property under the right of eminent domain subserves a large public purpose it is justified as being for a public use: Fallbrook Irrigation District v. Bradley, 174 U. S. 112, 160-164; Mt. Vernon Cotton Co. v. Alabama Power Co., 240 U. S. 30 See Block v. Hirsh, 256 U.S. 135, 155, for a judicial recognition by that court of the evolutionary change of an industry from a status of private to one of public interest. See also, as to what constitutes a public purpose for which taxes may be levied, Jones v. City of Portland, 245 U. S. 217, and Green v. Frazier, 253 U. S. 233.

no weight in the consideration of that subject. Thus the fact that the dwellings cannot and will not be occupied by all, but only by a few of the public having the prescribed qualification of poverty, is wholly lacking in legal significance, because the same may be said as to jails, poor-houses, and indeed many other institutions which are necessarily confined to a use, voluntary or involuntary, by certain selected portions of the population. An occupancy by some may promote, or even be vital to, the welfare of all. Nor is importance to be ascribed to the circumstance that some persons - the tenants - will from time to time receive more benefit from the use of the dwellings than the general public. The same observation would apply to hospitals and schools. The taking of land for a public golf course or playground would be for a public use although, while some players are using it, all other members of the public are necessarily excluded from utilizing and enjoying the facilities. The difference in the duration of occupancy in these various instances is one of degree. It is not essential that the entire community or even any considerable portion of it should directly enjoy or participate in an imporvement in order to make its use a public one: _Fallbrook Irrigation District_ v. _Bradley_, 164 U.S. 112, 161, 162; _Mt. Vernon Cotton Co._ v. _Alabama Power Co._, 240 U.S. 30, 32; _Talbot_ v. _Hudson_, 16 Gray (Mass.) 417, 425. "An enterprise does not lose the character of a public use because that use may be limited by circumstances to a comparatively small part of the public": _Jacobs_ v. _Clearview Water Supply Co._, 220 Pa. 388, 394. It is to be noted, too, that the Housing Authorities Law declares the purposes of the act to be "public purposes for which public money may be spent and private property acquired by the exercise of the power of eminent domain," and, while such a legislative declaration is not conclusive - it being for the ultimate decision of the courts as to whether a proposed use is a public one - it is entitled not only to respect but to a prima facie acceptance of its correctness: _Block_ v. _Hirsh_, 256 U.S. 135, 154; _Jacobs_ v. _Clear-_

view Water Supply Co., 220 Pa. 388, 393; Philadelphia Clay Co. v. York Clay Co., 241 Pa. 305, 310. Furthermore, a stronger presumption arises in favor of the public nature of the use where the taking is by the government itself instead of by a private corporation endowed with the right of eminent domain. While the Housing Authorities are not part of the Government, they are public bodies created and organized solely to promote the general welfare and without any motive or possibility of private profit accruing to anyone, since the rentals are to be fixed at rates no higher than necessary to pay principal and interest on the Authority's bonds and its operating costs and administrative expenses.

In addition to all that has heretofore been said, there is, in the legal situation here presented, a factor which conclusively determines that the use for which these housing projects are designed is a public one, namely, that the construction of the new dwellings as authorized by these statutes is to be an aid to, and indeed a necessary adjunct of, the demolition of dangerous and unsanitary dwellings, which, in turn, is an exercise of the police power of the Commonwealth. The fallacy involved in plaintiff's position is in viewing the right given to the Authorities to take private property by eminent domain in order to provide housing accommodations as though it were an independent and unrelated grant of the power, without regard to the major and primary object of the legislation, which is the eradication of the slums. We are not prepared to say, and are not to be considered as holding, that the Commonwealth or any of its political subdivisions may engage generally in the housing business for supposed public benefit or welfare, although there is authority for the proposition that, unlike the federal government, which is one of restricted powers, the State, or its municipalities if authorized by it, may engage, at

least under some circumstances, in certain business enterprises.[9] Here, however, the construction and the operation of housing projects are merely ancillary to the underlying purpose of slum clearance. The elimination of unsafe and dilapidated tenements is a legitimate object for the exercise of the police power. Apart from the declarations in the Housing Authorities Law itself, the veriest tyro in the study of social conditions knows that the existence of slums is a menace to the health and happiness of the community in which they exist. Not only are they the focal centers of disease, and the likely sources of fires and accidents due to overcrowding, but they exert a pernicious moral influence upon those unfortunate enough to be obliged to live in them, and thereby engender those proclivities of youth to crime which have been characterized by many in high places as a disgrace to our civilization. Physical, as well as spiritual, environment is a potent influence in the development of character. Because of such considerations, our statute books, from the beginning of the Commonwealth to the present time, have been repleat with enactments designed to insure the safety and the sanitary conditions of dwellings, and individual houses have now and then been condemned as unsafe and been torn down by public authority, while a comparatively recent legislative development has been the passage of acts providing for zoning and building restrictions de-

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9. Linn v. Chambersburg Borough, 160 Pa. 511, 521; Wentz v. Philadelphia, 301 Pa. 261, 275; Rohrer v. Milk Control Board, 322 Pa. 257, 269 (quoting from the opinion of Mr. Justice ROBERTS in Nebbia v. New York, 291 U.S. 502; Commonwealth v. Stofchek, 322 Pa. 513, 520; Albritton v. City of Winona, Miss. , 178 So. 799)(appeal to United States Supreme Court dismissed for want of a substantial federal question, 58 Sup. Ct. Rep. 766); Jones v. City of Portland, 245 U.S. 217; Green v. Frazier, 253 U.S. 233. In the last-named case the Supreme Court of the United States upheld as legitimate governmental activities, and as public in purpose, a series of acts that have come to be known as the North Dakota experiment in state socialism. These acts authorized a state industrial commission to engage in many enterprises, among which were the establishment of a state bank, a state mill and grain elevator program, and housing under a Home Building Act. It is to be noted that the Housing Authorities Law declares, and it must be accepted prima facie as true, that "the construction, pursuant to this act, of housing projects for persons of low income would . . . not be competitive with private enterprise."

signed to insure light and air, and thereby health, for people in their homes. All of this has been done by virtue of the police power, which is the greatest and most powerful attribute of government, for upon it the very existence of the State depends. Its relation to the measures provided in the Housing Authorities Law is as direct as it is obvious.[10] It appearing that all previous attempts to rid communities of their unsafe and objectionable dwellings have proven ineffective, it is now found necessary to resort to the more drastic and comprehensive method of demolishing such structures simultaneously and over more extended areas. But, as indicated in the Housing Authorities Law - and indeed it is self-evident - this cannot be done and the ultimate aim be achieved unless at the same time provision is made for sanitary and wholesome accommodations for those who will lose their homes in the process. Certainly such persons cannot be left wholly without shelter, yet their financial resources are insufficient to enable them to lease any existing dwellings outside of other slum districts, since private industry has not been able to furnish acceptable accommodations at a rental cost as low as that now paid for rooms in slum properties. For the State or a municipality to tear down objectionable houses without providing better ones in their stead would be merely to force those ejected into other slums or compel them to create new ones, and the cardinal purpose of the legislation would thus be frustrated. As a necessary concomitant of slum elimination, therefore, provision is made in the Housing Authorities Law for the erection, without profit, and through the enjoyment of federal subsides, of low-cost housing projects in which to shelter the evicted inhabitants of slum areas. True, it cannot be definitely proved that those who live in the tenements to be demolished will be those who, in whole or in part, will occupy the new dwellings, but the legislation is evidently planned to ac-

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10. The State may, and probably will, supplement the exercise of its police power by taking title to slum areas, when cleared, and converting them into public parks and playgrounds.

complish that result, and whether the object will be attained or not is a matter for the judgment and responsibility of the legislature. That body has the right to make the experiment. Courts determine power, not policy.

What we have here, then, is a situation in which the proposed construction of new housing is vital to the clearance of the slums through the exercise of the police power, but the necessary sites for the housing projects can be justly and practically acquired only by means of the power of eminent domain, and what we now decide is that when the power of eminent domain is thus called into play as a handmaiden to the police power and in order to make its proper exercise effective, it is necessarily for a public use. "The promotion of the public health is undoubtedly a public use within the meaning of the Constitution, and private property may be taken for the construction of drains, levees and other works in order to accomplish this object": Lewis, Eminent Domain, 3d ed., vol. 1, page 569, sec. 286.[11] It is indeed conceivable that, wholly apart from any factor of slum elimination, abnormal social and economic conditions might arise which would cause an acute shortage of houses in a community, that private industry would be impotent to cure the deficiency, that, under such circumstances, the exercise of the police power might be required in order to furnish shelter and thereby prevent epidemics and immoral and crime-breeding conditions of living, and that the utilization of the right of eminent domain would then be justified in order to acquire the necessary land upon which to erect the needed dwellings.[12]

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11. See in the Matter of the Application of David R. Ryers et al., 72 N.Y. 1, 7.

12. In Cooley's Constitutional Limitations, 8th ed., vol. 2, p. 1131, it is said that a public use can be considered to exist "where the government is supplying its own needs, or is furnishing facilities for its citizens in regard to those matters of public necessity, convenience, or welfare, which, on account of their peculiar character, and the difficulty - perhaps impossibility - of making provision for them otherwise, it is alike proper, useful and needful for the government to provide." Mr. Justice HOLMES said in Block v. Hirsh, 256 U.S. 135, 156, that "Housing is a necessary of life," and the Housing Authorities Law declares that at present there is a difficulty in adequately furnishing it because of the prevailing stagnation of business activity.

However, we need not speculate as to this, because here the eradication of slum areas by the demolition of objectionable dwellings is the dominant background of the Housing Authorities Law.[13] Since all other restrictive measures have proved inadequate, it would mean, if plaintiff's viewpoint be correct, that, so far as any remedies now known are concerned, the abolition of slum districts is beyond the present constitutional power of the State. Such a conclusion should be avoided unless inescapable. The marked tendency of modern decisions is in aid of city planning and the improvement of housing conditions. Acts similar to those here under consideration have been held constitutional in Willmon v. Powell, 91 Cal. App. 1, 266 Pac. 1029; New York City Housing Authority v. Muller, 270 N. Y. 333, 1 N.E. (2d) 153; Spahn v. Stewart, 268 Ky. 97, 103 S.W. (2d) 651.

It being thus demonstrated that the use to which the housing projects will be devoted is a public one, it follows that the grant in the Housing Authorities Law of the right of eminent domain does not violate Article I, section 9 of the Declaration of Rights in the Constitution of Pennsylvania, nor the 14th Amendment to the federal Constitution. Nor can valid objection be made to the permission given the Housing Authorities to acquire, when exercising the power of eminent domain, an absolute or fee simple title, and to sell and convey any property, even if thus acquired, when it determines that it is no longer needed for the purposes of the act: Haldeman v. Pennsylvania R.R. Co., 50 Pa. 425, 436, 437; Wyoming Coal & Transportation Co. v. Price, 81 Pa. 156, 174, 175; Lazarus v. Morris, 212 Pa. 128, 131; Foust v. Dreutlein, 237 Pa. 108, 112-114.

The public nature of the use of the property also justifies the

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13. In the two Massachusetts cases relied upon by plaintiff, namely, In re Opinion of the Justices, 211 Mass. 624, 98 N.E. 611, and Salisbury Land & Improvement Co. v. Commonwealth, 215 Mass. 371, 102 N.E. 619, the statutes did not provide for the clearance of slum areas.

exemption granted by the act from state and local taxation.[14] Indeed, in the absence of any statute to the contrary, public property used for public purposes is exempt from taxation and from assessments for improvements, and no express exemption law is needed: Directors of the Poor v. School Directors, 42 Pa. 21; County of Erie v. City of Erie, 113 Pa. 360; Philadelphia v. Barber, 160 Pa. 123, 128; Pittsburg v. Sterrett Subdistrict School, 204 Pa. 635; Wilkinsburg Borough v. School District, 298 Pa. 193, 197, 198; Commonwealth v. Pure Oil Co., 303 Pa. 112, 117, 118. However, there is a succession of statutes, culminating in the General County Assessment Law of May 22, 1933, P.L. 853, section 204 (g), which have expressly exempted all public property used for public purposes from local taxation.[15]

It is contended by plaintiff that the provision of the Housing Cooperation Law authorizing local subdivisions of government to lend or donate money to an Authority is a violation of Article IX, section 7 of the Constitution which prohibits the General Assembly from authorizing any county, city, borough, township or incorporated district to appropriate money for, or to loan its credit to, any corporation, association, institution or individual. This raises an important question which need not be passed upon at this time.

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14. The case of Chadwick v. Maginnes, 94 Pa. 117, cited by plaintiff, was distinguished in County of Erie v. Commissioners of Water Works, 113 Pa. 368, 370, 371, and Commonwealth v. Philadelphia Rapid Transit Co., 287 Pa. 70, 74, on the ground that the property there taxed was not public property but was held for the pecuniary profit of a limited group of taxpayers.

15. Clause (L) of section 204 of the General County Assessment Law subjects to taxation property not in actual use and occupation for the purposes there specified. The projects under the Housing Authorities Law, however, will be in actual use and occupation for public purposes. That clause also subjects to taxation property from which any income or revenue is derived, but numerous decisions make clear that this does not apply to revenue from the very activities which constitute the public purposes of the institution where there is no element of private profit.

Does the Housing Authorities Law violate Article III, section 7 of the Constitution, forbidding special legislation regulating the affairs of counties, cities, townships, wards, boroughs or school districts? Plaintiff's challenge on this point is based upon the provisions in the act that in third class counties the appointments of members of the Authorities are to be made by the county commissioners and the Governor, in other counties only by the county commissioners, in cities of the first class by the mayor and the city controller, in cities of the third class by the mayor and the Governor, and in all other cities by the mayor alone. However, the method of appointment within such group of cities or counties of the same class is the same, and the objections here raised are unfounded: Tranter v. Allegheny County Authority, 316 Pa. 65, 76, 77; Commonwealth ex rel. Kelly v. Cantrell, 327 Pa. 369, 379, 380. See also Commonwealth v. Wert, 282 Pa. 575, 580, 581; Retirement Board of Allegheny County v. McGovern, 316 Pa. 161, 166, 167. The latitude allowed in classification has been broadened by the constitutional amendment of November 6, 1923, now section 34 of Article III, and the provision that the members of the Authorities shall be appointed differently in cities and counties of different classes comes well within the intent and scope of that amendment.

Does the Housing Authorities Law involve any unconstitutional delegation of legislative power? In our opinion it does not. While administrative discretion is necessarily confided to the Authorities with regard to the areas to be cleared, the projects to be constructed, and the tenants to be selected, the standards by which these various processes are to be controlled are laid down with reasonable exactitude. The act defines the term "persons of low income," and rental charges are confined to the factors of operating costs and carrying charges without any profit item. There is no express prescription of a maximum cost of construction, but by reason of its statement of purposes and its whole organic scheme the act impliedly imposes upon the Authorities the duty of seeing to it that the

structures shall be as modest and inexpensive as reasonably possible from a practical standpoint. Moreover, it is well known that the Authorities will not be able to operate without federal assistance, and by the United States Housing Act of 1937, under which such aid is authorized, it is provided that no federal loans, contributions or capital grants shall be made with respect to any project costing more than the amounts therein specified. Any extended discussion as to the permissible limits of delegation of legislative power is unnecessary in view of the comprehensive treatment of that subject in Gima v. Hudson Coal Co., 310 Pa. 480, and Rohrer v. Milk Control Board, 322 Pa. 257, 277-279. See also Tranter v. Allegheny County Authority, 316 Pa. 65, 76; Kelley v. Earle, 325 Pa. 337, 352, 353.

Will the proposed Housing Authorities constitute special commissions within the meaning of Article III, section 20 of the Constitution which prohibits the General Assembly from delegating to such a commission any power to make, supervise or interfere with any municipal improvement, money, property or effects, or to perform any municipal function whatever? In Tranter v. Allegheny County Authority, 316 Pa. 65, 77-79, it was shown that the mandate of this provision of the Constitution was not violated by the creation and operation of Authorities such as those contemplated by the present legislation. See also Poor District Case (No. 1), 329 Pa. 390, 404-406.

Does the act violate Article IX, section 8 of the Constitution creating a debt limit for counties, cities, boroughs, townships, school districts, and other municipalities and incorporated districts, or Article IX, section 10, requiring that provision be made for the collection of an annual tax when any county, township, school district or other municipality incurs any indebtedness, or Article XV, section 2, which forbids the incurring of liability by any municipal commission, except in pursuance of an appropriation previously made therefor by the municipal government? The Housing Authorities Law expressly declares that the bonds and other obli-

gations of an Authority shall not constitute a debt of any city, county, municipal subdivision or of the Commonwealth, nor shall any city, county, municipal subdivision or the Commonwealth, or any of its revenues or property, be liable therefor. In view of that declaration, it is difficult to understand how the act in any way impinges upon these constitutional provisions. It is true that, by the terms of the Housing Cooperation Law, the various local units of government are authorized to dedicate any of their property to a Housing Authority and lend or donate money to it, but, even if the validity of this provision should be upheld later, the making of a legally authorized loan or gift would not constitute an increase of debt. The Housing Authorities are not themselves municipalities, and the Housing Authorities Law declares that they shall in no way be deemed to be instrumentalities of any city or county or engaged in the performance of a municipal function, but shall constitute public bodies exercising public powers of the Commonwealth as agencies thereof. In the light of the decisions in Tranter v. Allegheny County Authority, 316 Pa. 63, 81-83, and Kelley v. Earle, 325 Pa. 337, it cannot be successfully contended that the Commonwealth or any of its governmental subdivisions will become involved in, or can be made responsible for, the obligations of these Housing Authorities.

Finally, the acts are attacked on the ground that their titles do not each contain one clearly expressed subject. There is no justification for this criticism, or for any other directed to alleged defects or inadequacies of the titles: Kelley v. Earle, 325 Pa. 337, 353-355. In fact, the titles seem to be remarkably compact and unified, and, without attempting to be indices of the contents of the acts, which they need not be, they give a clear and comprehensive indication of the enactments to which they severally relate, and comply with all the requirements referred to in Commonwealth v. Stofchek, 322 Pa. 513, 518. There is no substantive matter included in either statute which is wholly disconnected

with the legislation named in the title: Commonwealth ex rel. Schnader v. Liveright, 308 Pa. 35, 82. Nor are the titles vulnerable because of their failure to recite the duties incidentally imposed by the acts upon county commissioners, councils, mayors and other officers: Idem, p. 81. Complaint is made that the title of the Housing Cooperation Law refers to "housing projects of a Housing Authority," although this act having been signed by the Governor two days before the Housing Authorities Law, there were no "housing projects" or "Housing Authorities" at the time it went into effect; it is therefore contended that these references vitiate the title. This argument loses sight of the fact that statutes pari materia must be construed together so as to give effect, as far as possible, to both: Nyce v. Board of Commissioners, 319 Pa. 353, 358, 359. This is especially true in the case of companionate acts adopted during the same session of the legislature: Cresson Borough v. Seeds, 286 Pa. 288, 294, 295. It may be observed, in passing, that the Housing Authorities Law and the Housing Cooperation Law were in the hands of the Governor for signature at the same time.

Curiously enough, there happens to be one provision of the Housing Authorities Law as to which the roles of the parties litigant are reversed, plaintiff contending that section 23 of the act, which exempts Authorities and their property from all taxes and special assessments, "except school taxes," effectively and validly imposes school taxes, whereas defendants claim that this section brings about no such result, and that, if it were construed to do so, the imposition of such taxes would involve a violation of Article III, section 3 of the Constitution. The general exemption by section 23 from all taxes and assessments is, as previously pointed out, not only valid, but its statutory expression is unnecessary since it would have resulted from the public nature of the use of the housing projects. The exception of school taxes from the exemption, therefore, is meaningless, because, had it been intended that such taxes

should be levied, it would have been necessary for the legislature not merely to "except" them from an existing exemption but affirmatively to impose them, since a tax cannot arise by implication. Thus in Directors of the Poor v. School Directors, 42 Pa. 21, 25, it was said: "No exemption law is needed for any public property, held as such. And declaring the poor-house exempt from all but state and road taxes. . . is really saying nothing unless state and road taxes be also expressly laid. They are not imposed by implication." And in County of Erie v. City of Erie, 113 Pa. 360, 367, it was said: "Such (public) property was not taxable (before the Constitution of 1874) because there was no law which made it so. . . . The new Constitution might have made it taxable but did not, . . . It is true the legislature of 1874 did exercise its power and exempt certain property which does not include this, but the fact still remains that they did not impose taxation upon this and hence there is none." But even if the exception of the school taxes from the exemption were to be regarded as an affirmative imposition of such taxes, the provision would be invalid, because the title of the act contains no reference to imposing taxes but only to exempting the Authorities and their property from them. In Sewickley Borough v. Scholes, 118 Pa. 165, an act was entitled, "An act to exempt from taxation public property used for public purposes," etc. It enumerated certain kinds of property which were to be exempt, and closed with a proviso that all property other than that in actual use and occupation for such purposes, and from which any income or revenue was derived, should be subject to taxation. It was held that since the title disclosed merely a purpose to exempt from taxation, while the proviso in the act purported to impose it, there was a violation of Article III, section 3 of the Constitution, and the proviso was void. If, here, the property were otherwise taxable, the notice in the title of its exemption would no doubt be sufficient to lead a reasonably cautious reader to inquire into the extent

of the exemption,[16] but inasmuch as the property, being for public use, was not taxable in the absence of a positive enactment to that effect, one reading the title would not be expected to infer from the expression of an exemption (which was unnecessary) the fact that certain taxes were imposed by one of the provisions of the act. Our conclusion is, therefore, that section 23 of the Housing Authorities Law is not to be construed as effectively excepting school taxes from the tax exemption of the Authorities and their property, nor as imposing such taxes.

The bill is dismissed; the parties to bear their respective costs.

Mr. Justice Schaffer and Mr. Justice Drew dissent.

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16. See Commonwealth v. Lehigh Valley R.R. Co., 244 Pa. 241, 346.

IN THE SUPREME COURT OF FLORIDA,

JUNE TERM, A. D. 1938

EN BANC.

WILLIAM MARVIN, as administrator of the Estate of John L. Marvin, deceased, Appellant, v. THE HOUSING AUTHORITY OF JACKSONVILLE, FLORIDA, a public body corporate and politic of the State of Florida, FRED B. BRADSHAW, as Chairman and member of the Commission of the Housing Authority of Jacksonville, Florida, LOUIS R. FENDIG, as Vice-Chairman and member of the Commission of the Housing Authority of Jacksonville, Florida, WM. A. STANLY, GEORGE W. SIMONS, Jr., and JAMES T. DANIELS, as members of the Commission of The Housing Authority of Jacksonville, Florida, RAY O. EDWARDS, as Secretary and Executive Director of The Housing Authority of Jacksonville, Florida, and CITY OF JACKSONVILLE, A municipal corporation, Appellees.	**	DUVAL COUNTY.

Opinion filed July 27, 1938

An appeal from the Circuit Court for Duval County, DeWitt T. Gray, Judge

W. C. Johnson, for Appellant;

Kent, Kassewitz, Wheeler & Crenshaw and Austin Miller, for Appellees.

CHAPMAN, J.

On June 15, 1938, plaintiff, as a tax payer, filed in the Circuit Court of Duval County, Florida, his bill of complaint alleging, among other things, that The Housing Authority of Jacksonville, Florida, was organized pursuant to Chapter 17981, Laws of Florida, Acts of 1937; that the Housing Authority selected a site for a municipal low cost housing project and authorized the acquisition of land and a survey of slum conditions in the City of Jacksonville that for the purpose of obtaining capital the Housing Authority entered into a loan contract with the United States Housing Authority whereby it was provided that a loan would be made by it to the Housing Authority of Jacksonville, Florida, in the sum of $1,027,000.00, being 90% of the estimated cost of the project; that the Housing Authority of Jacksonville agreed to issue debentures or bonds for said amount purchasable by the United States Housing Authority for the purpose of retiring the indebtedness represented by the loan. The bill of complaint also described the lands by meets and bounds and alleged that it is situated within the City of Jacksonville and commonly known as Brentwood Park Housing Project, and that the plaintiff's decedent owned an interest, in part, in and to the lands therein described.

The Housing Authority of the City of Jacksonville proposed to issue additional bonds in the sum of $125,000.00 to be absorbed by investors of the City of Jacksonville and vicinity. The $125,000.00 represented the remaining 10% of the estimated cost of the project. The Authority had entered into a contract with the United States Housing Authority whereby,

over a period of sixty years, the bonds of the Housing Authority of Jacksonville are to be amortized, and the U. S. H. A. will make to the Housing Authority of Jacksonville annual contributions of $43,925.00 as a part of the retirement or sinking funds whereby the principal and interest of said bonds will be paid.

The Housing Authority of the City of Jacksonville entered into a contract with the City of Jacksonville providing for the elimination of unsafe and unsanitary dwelling units of said City and other services were pledged by the City of Jacksonville to the Housing Authority of said City. The U. S. H. A. agreed to advance to the Housing Authority of Jacksonville $80,000.00 for the purpose of paying preliminary expenses in connection with the project; the Authority proposes to issue its said bonds for said project and to do so without obtaining the approval of the qualified freeholders of said City prior to the issuance; the Authority represents that the real and personal property owned and administered by the authority is exempt from all State, County and Municipal ad valorem taxes under the terms and provisions of Chapter 17983, Laws of Florida, Acts of 1937.

The bill of complaint further alleges that the trust indenture to be signed by the Authority and the U. S. H. A. will not constitute a lien upon the corpus of the real estate or the physical property of the Authority, but merely creates and constitutes a lien on the rentals and revenues derived from the operation of the completed project. It is likewise alleged that the proposed "low cost housing project" is not for a public purpose, as contemplated by law, and that the power of eminent domain should not be exercised by said Authority to acquire property, because it is not for a public purpose and that to permit it so to do would be in contravention with the Constitution of Florida; and that the proposed issuance of the debentures or bonds of the Authority without

a vote of the freeholders is likewise in contravention with the Constitution of Florida.

The prayer of the bill of complaint is for a temporary and permanent injunction against the City of Jacksonville: (a) from carrying out the contracts between the Housing Authority of Jacksonville and the City of Jacksonville identified as Exhibits 5 and 6; (b) that the Housing Authority be enjoined temporarily and permanently from issuing any of the bonds or debentures for the purposes named in the bill of complaint; (c) that it be temporarily and permanently enjoined from acquiring title to lands and property within the City of Jacksonville for a slum clearance low cost housing project; (d) that the power of taking over property under Chapter 17981 is not a public purpose; (e) that the proposed bonds are obligations of the City of Jacksonville within the meaning of Amended Section 6 of Article IX of the Constitution of Florida. Other allegations are a part of the bill of complaint but are unnecessary to recite. Exhibits numbered from 1 to 7, inclusive, are attached to and by appropriate language made a part of the bill of complaint.

On June 15, 1938, the Housing Authority of Jacksonville filed a motion to dismiss the bill of complaint on the grounds: (a) that there is no equity in the bill; (b) that it affirmatively appears from the bill of complaint that the purposes of Chapter 17981, Acts of 1937, are public purposes; (c) that Chapter 17981, Acts of 1937, Laws of Florida, providing for the exercise of the power of eminent domain will not violate the Declaration of Rights of the Constitution of Florida; (d) it appears upon the face of the bill of complaint that the bonds or debentures of the Housing Authority are not obligations of the City of Jacksonville within the meaning of Section 6, Article IX of the Constitution of Florida; (e) that Chapter 17983, Laws of Florida, Acts of 1937, exempting real and personal property of the Housing Authority of Jacksonville does not violate Section 1 of Article IX of the Constitution of

Florida; (f) the bill of complaint shows that the taxing power of the City of Jacksonville is not pledged, nor any of its revenues obligated, but that the lien affects the income only of the Housing Authority of Jacksonville.

The City of Jacksonville filed a motion to dismiss the bill of complaint on the grounds, viz: (a) that the City of Jacksonville was not a proper party to the suit; (b) the bill of complaint states no equitable grounds for relief against the City of Jacksonville.

Upon a hearing on the part of counsel for the respective parties, the court below made and entered an order sustaining the motions to dismiss and did dismiss the bill of complaint on June 16, 1938, and an appeal was perfected from said order of dismissal and the cause is here for review on a number of assignments of error. The parties will be referred to in this opinion as they appeared in the court below as plaintiff and defendants.

1. It is contended that Chapter 17981, Laws of Florida, Acts of 1937, is invalid because the low cost housing and slum clearance is not a public purpose within the meaning of the law. In construing a statute, resort may be had, if necessary, to the history of the legislation and to public history of the times in which it was passed in order to determine its purpose, meaning and effect, as an aid in determining its validity. See Sheip Co. v. Amos, 100 Fla. 863, 130 So. 699. The 1937 Legislature made a finding and declaration of necessity when enacting Chapter 17981, and in so doing employed the following language:

"Section 2. FINDING AND DECLARATION OF NECESSITY.--It is hereby declared:

(a) that there exist in the State insanitary or unsafe dwelling accommodations and that persons of low income are forced to reside in such insanitary or unsafe accommodations; that within the State there is a shortage of safe or sanitary dwelling accommoda-

tions available at rents which persons of low income can afford and that such persons are forced to occupy overcrowded and congested dwelling accommodations; that the aforesaid conditions cause an increase and spread of disease and crime and constitute a menace to the health, safety, morals and welfare of the residents of the State and impair economic values; that these conditions necessitate excessive and disproportionate expenditures of public funds for crime prevention and punishment, public health, welfare and safety, fire and accident protection, and other public services and facilities; (b) that slum areas in the State cannot be cleared, nor can the shortage of safe and sanitary dwellings for persons of low income be relieved, through the operation of private enterprise, and that the construction of housing projects for persons of low income (as herein defined) would therefore not be competitive with private enterprise; (c) that the clearance, replanning and reconstruction of the areas in which insanitary or unsafe housing conditions exist and the providing of safe and sanitary dwelling accommodations for persons of low income (including the acquisition by a housing authority of property to be used for or in connection with housing projects or appurtenant thereto) are exclusively public uses and purposes for which public money may be spent and private property acquired and are governmental functions of public concern; (d) that it is in the public interest that work on projects for such purposes be commenced as soon as possible in order to relieve unemployment which now constitutes an emergency; and the necessity in the public interest for the provisions hereinafter enacted, is hereby declared as a matter of legislative determination."

The objective here is clearly shown by the above finding and declaration of the Legislature.

Section 12 of the Declaration of Rights of the Constitution of

Florida provides:

> "Sec. 12. No person shall be subject to be twice put in jeopardy for the same offence, nor compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property without due process of law; nor shall private property be taken without just compensation."

Likewise Section 29 of Article XVI of the Constitution of Florida provides:

> "Section 29. No private property nor right of way shall be appropriated to the use of any corporation or individual until full compensation therefor shall be first made to the owner, or first secured to him by deposit of money; which compensation, irrespective of any benefit from any improvement proposed by such corporation or individual, shall be ascertained by a jury of twelve men in a court of competent jurisdiction, as shall be prescribed by law."

Section 6042 C. G. L., read in connection with the quoted provisions, means that when private property is sought to be taken it must be taken for a public use or purpose and not a private use or purpose, but when taken as provided by law, it must be fully compensated for. See Demeter Land Co. v. Florida Public Service Co., 99 Fla. 954, 128 So. 402; State ex rel. Moody v. Jacksonville, T. & K. W. R. Co., 20 Fla. 616; Wilton v. County of St. Johns, 98 Fla. 26, 123 So. 527; Isleworth Grove Co. v. County of Orange, 79 Fla. 208, 84 So. 83; Spafford v. Brevard County, 92 Fla. 617, 118 So. 451.

An examination of the Constitution and Statutes of Florida and the decisions of this Court, <u>supra</u>, shows that the sum clearance and low cost housing project provided for by Chapter 17981, Acts of 1937,

presents an entirely new question for the consideration of this Court, and authorities from other jurisdictions must be examined into.

In the case of Green v. Frazier, 253 U. S. 233, 40 Sup. Ct. 499, 64 L. Ed. 878, the Court had before it the constitutionality of a series of Acts passed by the Legislature of the Sate of North Dakota. One of the Acts gave a Commission power to operate by the State of North Dakota penal, charitable or educational institutions, and to accomplish its objectives certain powers of eminent domain were provided; likewise to fix the buying and selling prices of utilities, industries and business projects and with power to negotiate bonds thereof, and $200,000.00 from the Treasury of the State of North Dakota was appropriated to carry out the provisions of the Acts. The law was sustained by the Supreme Court of the State of North Dakota and upon an appeal to the United States Supreme Court the following language was used:

> "In the present instance under the authority of the constitution and laws prevailing in North Dakota the people, the legislature, and the highest court of the State have declared the purpose for which these several acts were passed to be of a public nature, and within the taxing authority of the State. With this united action of people, legislature and court, we are not at liberty to interfere unless it is clear beyond reasonable controversy that rights secured by the Federal Constitution have been violated. What is a public purpose has given rise to no little judicial consideration. Courts, as a rule, have attempted no judicial definition of a 'public' as distinguished from a 'private' purpose, but have left each case to be determined by its own peculiar circumstances. Gray, Limitations of Taxing Power, par. 176, 'Necessity alone is not the test by which the limits of State authority in this direction are to be defined, but a wise

statesmanship must look beyond the expenditures which are absolutely needful to the continued existence of organized government, and embrace others which may tend to make that government subserve the general well-being of society, and advance the present and prospective happiness and prosperity of the people.'"***

In the case of New York City Housing Authority v. Muller, 270 N. Y. 333, 1 N.E. (2nd) 153, the New York Housing Act was before that Court. In that case the New York Housing Authority brought suit to acquire title to certain property for the purpose of altering, clearing, remodeling and reconstructing dwelling accommodations for persons of low income within the City of New York, and the suit was resisted upon the ground that the purpose for which the property was to be taken was not for a public use or public purpose and the lower court in the State of New York permitted or allowed the taking of the property for this purpose and the same was appealed to the Supreme Court of the State of New York where the same was affirmed and the following language used:

". . . The public evils, social and economic, of such conditions, are unquestioned and unquestionable. Slum areas are the breeding places of disease which take toll not only from denizens, but, by spread from the inhabitants of the entire city and state. Juvenile delinquency, crime, and immorality are there born, find protection, and flourish. Enormous economic loss results directly from the necessary expenditures of public funds to maintain health and hospital services for afflicted slum dwellers and to war against crime and immorality. Indirectly there is an equally heavy capital loss and a diminishing return in taxes because of the areas blighted by the existence of the slums. Concededly, these are matters of state concern (Adler v. Deegan, 251 N. Y. 467,

477, 167 N. E. 705), since they vitally affect the health, safety, and welfare of the public. Time and again, in familiar cases needing no citation, the use by the Legislature of the power of taxation and of the police power in dealing with the evils of the slums, has been upheld by the courts. Now, in continuation of a battle, which if not entirely lost, is far from won, the Legislature has resorted to the last of the trinity of sovereign powers by giving to a city agency the power of eminent domain. We are called upon to say whether under the facts of this case, including the circumstances of time and place, the use of the power is a use for the public benefit- a public use- within the law. **** It is also said that since the taking is to provide apartments to be rented to a class designated as 'persons of low income', or to be leased or sold to limited dividend corporations, the use is private and not public. This objection disregards the primary purpose of the legislation. Use of a proposed structure, facility, or service by everybody and anybody is one of the abandoned universal tests of a public use. Mount Vernon-Woodberry Cotton Duck Co. v. Alabama Interstate Power Co., 240 U. S. 30, 32, 36 S. Ct. 234, 60 L. Ed. 507; Strickley v. Highland Boy Gold Mining Co., 200 U. S. 527, 26 S. Ct. 301, 50 L. Ed. 381, 4 Ann. Cas. 1174; Rindge Co. v. County of Los Angeles, 262 U. S. 700, 43 S. Ct. 689, 67 L. Ed. 1186; Fallbrook Irrigation District v. Bradley, 164 U. S. 112, 161, 162, 17 S. Ct. 56, 41 L. Ed. 369."***

In Spahn v. Stewart, 268 Ky. 97, 103 S. W. (2nd) 651, the court had before it an Act passed by the Legislature of the State of Kentucky having as its objective the clearance of slums and to erect and maintain low cost houses in keeping with modern, sanitary and safety

methods. These houses when completed were to be rented to persons of low incomes. The Act authorized the issuance and sale of tax exempt bonds of the Authority; it had the power of exercising the right of eminent domain, and the rents when collected were to be used in retiring the said bonds of cost of construction. That Act in many essential details is similar to Chapter 17981, Acts of 1937, Laws of Florida, now before this Court. The legal sufficiency of Chapter 113, Acts of 1934, Laws of the State of Kentucky, was assailed on many grounds unnecessary to recite but the Act was by the Supreme Court of the State of Kentucky sustained and in so doing, in part, said:

"'A public purpose * * * has for its objective the promotion of the public health, safety morals, general welfare, security, prosperity, and contentment of all the inhabitants or residents within a given political division * * * the sovereign powers of which are exercised to promote such public purpose.' Green v. Frazier, 44 N. D. 395, 176 N. W. 11, affirmed in the U. S. Supreme Court, 253 U. S. 233, 40 S. Ct. 499, 64 L. Ed. 878, see infra. See, also, Carman v. Hickman County 185 Ky. 630, 215 S. W. 408; Barrow v. Bradley, 190 Ky. 480, 227 S. W. 1016; Barker v. Crum, 177 Ky. 637, 198 S. W. 211 L. R. A. 1918, 673; Nourse v. City of Russellville, 257 Ky. 525, 78 S. W. (2nd) 761.

The word 'slum', harsh and objectionable to the aesthetic ear, has come to have a well-defined meaning, applicable to sections of almost every city or town of proportions. It is usually taken to mean, 'A squalid, dirty street or quarter of a city, town or village, ordinarily inhabited by the very poor, destitute or criminal classes; overcrowding is usually a prevailing characteristic. The word is comparatively recent and is of uncertain origin. It has been doubtfully

connected with a dialectal use of the word 'slump' in the sense of a swampy, marshy place.' Ency. Br. 25, 246. Brewer, 'Phrase and Fable' says, 'Slums are purlius of Westminster Abbey & c. * * * where the derelict may obtain a night's lodging for a few pence.' Although the word may be of comparatively recent origin, the matter of properly housing persons living in unclean, unsanitary houses in congested portions of cities, has been a subject of public concern for many years. The importance of proper housing had received public recognition in England for more than 100 years; in 1909 it had reached considerable proportions. The motive was first purely philanthropic and the objective was to improve the condition of the working classes. As early as 1841 there existed at least two societies, one the 'Metropolitan Association for Improving the Dwellings of the Industrial Classes.' These societies, after successfully operating for a time, found that from better housing the moral improvement was almost 'equal to the physical benefit.' Legislation looking to the same end soon followed and has at intervals continued to the present time. Encyc. Br. vol. 13, p. 815. The requirements of public health are indeterminate and interminable; as knowledge increases standards of living, of health, and of safety, constantly rise. It is the changing standard which gives most concern; housing at one period thought eminently satisfactory is presently condemned. In the present age, as in the past, material conditions of environment takes a leading position. These truths are recognized just as strongly in this, as in other countries which have outstripped ours in looking to the welfare of those whose conditions of life might be bettered by a more healthful surrounding. Encyc. Br. under title 'Housing'".

In the case of Wilmon v. Powell, 91 Cal. App. 1, 266 Pac, 1029, the Supreme Court of California had before it an Act, in many respects, similar to Chapter 17981, Laws of Florida, Acts of 1937, and that court in sustaining the California Act said, in part:

"Primarily, it is necessary to determine whether the objects and purposes of the housing commission are within the description of a public purpose. If the public nature of the enterprise is recognized, there remains little difficulty in accepting it as a municipal public purpose. In Veterans' Welfare Board v. Jordan, 189 Cal. 124, 208 P. 284, 22 A. L. R. 1515, the Supreme Court had before it for consideration the statute enacted for the purpose of creating a fund to carry on the operations of veterans' welfare board which had been created to carry out the provisions of the Veterans' Welfare Act (St. 1921, p. 969). For the determination of the questions arising in that case, the court found it necessary to consider at length the field of judicial decision wherein it has been attempted to determine what is a public purpose. We refer to that case, beginning at page 141 (208 P. 284) thereof, without making extensive quotations here. Grounding its decision upon the liberal views of the courts to which it referred, our Supreme Court took into consideration the legislative assumption that the legislation in question tended to make 'for better citizenship, better notions of necessity for law and order, and a sounder and saner patriotism,' and concluded that the provisions of the statute authorizing a bond issue for the purpose of acquiring, subdividing, improving, acquiring water rights for, and selling the land so improved at cost, were valid as authorizing the expenditures of public money for a public purpose. If those observations were justified in that case, with equal reason it may be said that an enterprise of the kind contemplated by the charter provisions concerning the municipal housing

commission, which has for its purpose the elimination of overcrowded tenements, unhealthy slums, and congested areas, thereby tending to ward off epidemics of disease and preserve the health of all of the inhabitants of a city, is a public purpose."

In the case of Simon v. O'Toole, 108 N. J. L. 32, 155 Atl. 449, the Supreme Court of New Jersey had before it Chapters 201 and 202, Laws of 1929, Laws of the State of New Jersey, and an ordinance adopted or enacted by the City of Newark providing for the acquisition of real estate in said city upon which was to be constructed modern housing facilities, thereby providing for the public health, safety and morals of certain citizens by removing unsafe and unsanitary buildings. The lower court sustained the ordinance against a number of objections and the same was affirmed on appeal to the Supreme Court of New Jersey, when the following language was used:

"In this respect they resemble the well-known decision of our own Court of Errors and Appeals in Tide- Water Co. v. Coster, 18 N. J. Eq. 518, 90 Am. Doc. 634, in which the power of taxation had been exercised for reclaiming large tracts of meadow land. As to the purpose in view, Chief Justice Beasley said (page 521 of 18 N. J. Eq.): 'To make this vast region fit for habitations and use, seems to me plainly within the legitimate province of legislation; and to effect such ends, I see no reason to doubt that both the prerogatives of taxation and of eminent domain may be resorted to. *** It is the resulting general utility which gives such enterprises a kind of public aspect, and invests them with privileges which do not belong to mere private interests.' The Chief Justice then goes on to illustrate the nature and define the extent of the principle that empowers the Legislature to determine what is a public use and to authorize the taking of private property for such use. He says (page 521 of 18 N. J. Eq.): 'It is one of the legislative

prerogatives to decide the important question, whether an enterprise or scheme of improvements be of such public utility as to justify a resort, for its furtherance, to the exercise of the power of taxation or eminent domain. Primarily, the judiciary has no concern in such matter. And not only this, but if the public interest be involved, to any substantial extent, and if the project contemplated can, in any fair sense, be said to be promotive of the welfare or convenience of the community, the legislative adoption of such project is a determination of the question from which there is no appeal, and over which no other branch of the government has any supervision whatever.' And at page 523 of 18 N. J. Eq.: 'The object proposed, and for which provision is made in the statute under review, being, then, one tending to the benefit of the community at large, must be regarded, upon principles which are too valuable to social interests to be disturbed, as coming exclusively under legislative control.'"

See State ex rel. Porterie, Attorney General of Louisiana, v. Housing Authority of New Orleans, ______ La. _____, _______ So. _______, decided June 27, 1938, and yet unreported; Anna M. Dorman v. The Philadelphia Housing Authority, ___ Pa. ______, ________ Atl. ______, decided at the June Term, 1938, and unreported; Wells v. Housing Authority of Wilmington, _____N. C. _____, ________ S. E. ________, decided June 15, 1938, and unreported.

It is next contended that Section 12 of Chapter 17981, Acts of 1937, Laws of Florida, violates Section 12 of the Declaration of Rights of the Constitution of Florida and Section 29 of Article XVI of the Constitution of Florida. Section 12 of Chapter 17981, _supra_, provides:

Section 12. EMINENT DOMAIN.-An authority shall have the right to acquire by the exercise of the power of eminent domain any real property which it may deem necessary for its purpose under this Act

after the adoption by it of a resolution declaring that the acquisition of the real property, described therein is necessary for such purposes. An authority may exercise the power of eminent domain in the manner provided in Sections 3276 to 3295, both inclusive, Revised General Statutes of Florida, 1920, as amended by Chapters 15927 to 15928, Laws of Florida, Acts of 1933, and Acts amendatory thereof or supplementary thereto; or it may exercise the power of eminent domain in the manner provided by any other applicable statutory provisions for the exercise of the power of eminent domain. Property already devoted to a public use may be acquired in like manner, provided that no real property belonging to the city, the County, the State or any political sub-division thereof may be acquired without its consent."

The right to appropriate private property for public use lies dormant in that State until legislative action is had pointing out the occasion, modes, conditions and agencies for its appropriation. Private property can be taken only pursuant to law; but a legislative act declaring the necessity, being the customary mode in which that fact is determined, must be held to be for this purpose "the law of the land", and no other finding or adjudication can be essential, unless the Constitution of the State has expressly required it. Whenever action is had for this purpose, there must be kept in view that general as well as reasonable and just rule, that, whenever in pursuance of law the property of an individual is to be divested by proceedings against his will, strict compliance must be had or the proceedings will be ineffectual. See Cooley's Constitutional Limitations, Volume Two (8th Ed.) pages 1119-20; also Demeter Land Co. v. Florida Public Service Co., 99 Fla. 954, 128 So. 492; State ex rel. Moody v. Jacksonville, T. & K. W. R. Co., 20 Fla. 616; Wilton v. County of St. Johns, 98 Fla. 26, 123 So. 527; Isleworth Grove Co. v. County of Orange, 79 Fla. 208, 84 So. 83; Spafford v. Brevard County, 92 Fla. 617, 118 So. 451.

2. The second question for consideration is: Are the bonds or debentures issued by The Housing Authority of Jacksonville under the provisions of Chapter 17981, Laws of Florida, Acts of 1937, such obligations of the City of Jacksonville or Duval County as to require a vote of the freeholders thereof within the meaning of Amended Section 6 of Article IX of the Constitution of the State of Florida? The essential or material portions of the bonds or debentures to be issued by The Housing Authority of Jacksonville, Florida, are, viz:

"No. ________________ $________________

UNITED STATES OF AMERICA

STATE OF FLORIDA

COUNTY OF DUVAL

THE HOUSING AUTHORITY OF JACKSONVILLE, FLORIDA

HOUSING REVENUE DEBENTURES (FIRST ISSUE)

SERIES __________

The Housing Authority of Jacksonville, Florida (hereinafter called the 'Authority'), a body corporate and politic organized under and by virtue of the laws of the State of Florida, acknowledges itself to owe and for value received hereby promises to pay, but only out of the special funds hereinafter mentioned, to the bearer, or, if this Debenture be registered as to principal as hereinafter provided, to the registered holder hereof, on the first day of __________ 1938 (unless this Debenture shall have been duly called for previous redemption and payment made or provided for, as provided in the Indenture herein referred to), the principal sum of ________________ DOLLARS ($____________) and to pay interest on such principal sum, but only out of such special funds, from the date hereof, at the rate of __________percentum (______%) per annum semi-annually on the first day of June and the first day of December in each year until payment of such principal sum, but

until maturity hereof only in accordance with and upon presentation and surrender of the respective interest coupons hereto attached as they severally mature, both the principal of and interest on this Debenture to be payable at the office of ________________ in the City of Jacksonville, State of Florida, the Trustee under the Indenture hereinafter referred to, or, at the option of holder, at the principal office of ______________in the Borough of Manhattan, City and State of New York, in such coin or currency as may be, on the respective dates of payment thereof, legal tender for the payment of public and private debts.

This Debenture is one of a series of debentures of the Authority known as 'Series ________' in the aggregate principal amount of ____________ Dollars ($____________) and, together with the 'Series ____________' debentures of the authority in the aggregate principal amount of ________________Dollars ($____________) constitute an issue of Housing Revenue Debentures (First Issue) of the Authority in the aggregate principal amount of ________________Dollars ($________________). The Housing Revenue Debentures (First Issue) both Series A and Series B, are herein referred to as the Debentures and the Issue. All debentures of the Issue are issued pursuant to the provisions of the Constitution and laws of the State of Florida, particularly Chapter 17981, Act No. 275, General Laws of Florida, approved June 1, 1937 (known as the 'Housing Authorities Law') and Chapter 17983, Act No. 277, General Laws of Florida, approved June 1, 1937, and Resolution No. __________ of the Authority adopted on the _______day of ___________1938. Debentures of the Issue are also issued under, and secured by, an Indenture dated as of June 1, 1938 (herein called the 'Indenture') executed and delivered by the Authority to ____________________of ______________________ Florida, (herein called the 'Trustee') as

Trustee.

This Debenture and all other debentures of the Issue are special obligations of the Authority, payable solely from and secured by a first and exclusive pledge of an lien on the rents, revenues, fees and income of the Authority derived from or in connection with the administration of a low rent housing project, commonly known as 'Brentwood Park Housing Project', located in Jacksonville, Florida, and from annual contributions payable to the Authority pursuant to a certain contract dated May 6, 1938, between the Authority and the United States Housing Authority, all to the extent and in the manner more particularly described in the Indenture, to which Indenture reference is made for a description of the nature and extent of such pledge and the application of such rents, revenues, fees, income and annual contributions and of the security and rights of the holders of the Debentures with respect thereto and the terms and conditions upon which the Debentures are issued and secured.

****

The Debentures shall not be a debt of the City of Jacksonville, the County of Duval, the State of Florida, or any political subdivision thereof, and neither the City, the County, the State or any political subdivision thereof shall be liable thereon, nor in any event shall the Issue of which this Debenture is one be payable out of any funds or properties other than those of the Authority. The Issue of which this Debenture is one shall not constitute an indebtedness within the meaning of any constitutional or statutory debt or bond limitation or restriction.

* * * * * * * * * *

IN WITNESS WHEREOF the Housing Authority of Jacksonville, Florida has caused this Debenture to be executed in its name by its Chairman and the corporate seal of said Authority to be impressed hereon and attested by its Secretary, and the interest coupons hereto attached to be executed by the Facsimile signature of its Secretary, all as of the first day of

________________, 19____.

THE HOUSING AUTHORITY OF JACKSONVILLE, FLORIDA.

By____

Chairman.

(SEAL)

ATTEST:

____

Secretary."

Under Section 14 of Chapter 17981, Laws of Florida, Acts of 1937, the debentures and other obligations of an authority shall <u>not</u> be a debt of the city, the county, the State or any political subdivision thereof, and neither shall the city, county, etc., be liable thereon. The exact language of the Section is as follows:

"Section 14. DEBENTURES.-An authority shall have power to issue debentures from time to time in its discretion, for any of its corporate purposes. An authority shall also have power to issue refunding debentures for the purpose of paying or retiring debentures previously issued by it. An authority may issue such types of debentures as it may determine, including debentures on which the principal and interest are payable; (a) exclusively from the income and revenues of the housing project financed with the proceeds of such debentures, or with such proceeds, together with a grant from the Federal Government in aid of such project; (b) ex-

clusively from the income and revenues of certain designated housing projects whether or not they were financed in whole or in part with the proceeds of such debentures; or (c) from its revenues generally. Any of such debentures may be additionally secured by a pledge of any revenues of any housing project, projects or other property of the authority.

Neither the commissioners of an authority nor any person executing the debentures shall be liable personally on the debentures by reason of the issuance thereof. The debentures and other obligations of an authority (and such debentures and obligations shall so state on their face) shall not be a debt of the city, the county, the State or any political subdivision thereof, and neither the city or the county, nor the State or any political subdivision thereof shall be liable thereon, nor in any event shall such debentures or obligations be payable out of any funds or properties other than those of said authority. The debentures shall not constitute an indebtedness within the meaning of any constitutional or statutory debt or bond limitation or restriction."

In the case of Hopkins v. Baldwin, 123 Fla. 649, 167 So. 677, the State Board of Control proposed to borrow $900,000.00 from the Federal Emergency Administration Public Works, giving as sole security therefor certain revenue certificates in the nature of limited debentures on the income and revenues to be derived by the obligor, State Board of Control for "fees, rentals and other charges" from students, faculty members and others using or being served by or having a right to use, or having the right to be served, by certain dormitories and dining halls proposed to be constructed with the aforesaid borrowed money (supplemented by a 45 per cent grant from the U. S. Government in aid of same) at the University of Florida and State College for Women and the school

for colored people at Tallahassee. This Court held that Amended Section 6 of Article IX of the Constitution of Florida was inapplicable, and, in part, said:

"Furthermore, the fees, rentals and other charges provided to be imposed and collected for the use of the proposed new buildings, will constitute a proprietary fund in esse from the very moment the new buildings are constructed and put into use, and therefore may be anticipated and funded in the form of revenue anticipation certificate debentures in like manner as the water revenues considered and dealt with in the case of State v. City of Miami, 113 Fla. 280, 152 Sou. Rep. 6, and in Board of County Commissioners of Pinellas County, 123 Fla. 619, 167 So. 386, were held to be fundable in the form of revenue anticipation certificates that do not involve nor contemplate the obligation of any part whatever of the State's sovereign revenue raising powers in order to make them effectual and complete for the purposes for which they are provided to be issued, and which do not amount to a mortgage or lien or any charge whatever upon any physical property or franchise held, owned or inuring to the benefit of the State or any of its political subdivisions or agencies.

Upon the considerations aforesaid, and upon the authority of Board of County Commissioners of Pinellas County v. Herrick, supra (123 Fla. 619, 167 So. 386) and the several authorities therein cited, we hold that neither Chapter 16981, Acts of 1935, supra, nor the Resolution adopted by the State Board of Control as hereinbefore quoted and referred to, will result in the creation of any illegal bonded or other debt of the State of Florida in violation of Amended Section 6 of Article I of the State Constitution, and that therefore the Chancellor below committed no error in denying the injunction

prayed for in appellant's bill of complaint."

In the case of State and Diver v. City of Miami, 113 Fla. 280, 152 So. 6, this Court had before it the same question as is now under consideration, and in deciding it said:

"So the substance of what we decide in this case is that the contemplated certificates of indebtedness issued, or to be issued, by the City of Miami, which are payable out of the income of proprietary municipal property possessing a fixed earning capacity, to - wit: a municipal water plant, which said property is to be repaired, reconstructed and improved for the necessary preservation of the facilities of the plant, as well as the incidental protection of the public health and public safety, out of the proceeds derived from the sale of such certificates, and which certificates, according to their express phraseology, and according to the statutes and ordinances under which they are authorized and issued, are payable as to both principal and interest solely out of the net earnings derived from the operation of said municipal water plant, which constitutes a net revenue derived and to be derived solely from the sale of water, and which certificates do not create, nor purport to create, a general obligation upon, or debt against, the city, and cannot be enforced or collected by levy of an ad valorem, or other municipally imposed tax upon property or business transactions situated, or carried on within said City of Miami, or make a charge of any kind upon the property of taxpayers, or upon the tax resource of the City of Miami, are not municipal bonds within the purview of Section 6, of Article IX of the Constitution of the State of Florida, as amended in 1930, nor are they 'debts' of the city within the purview of the city's statutory debt limit. Such water revenue Certificates are not held to be so exempt from the restrictions of the Constitution because they are designated

as 'Certificates' instead of 'bonds', but because of the nature of the actual obligations created thereby, and the manner in which payment is to be made and enforced, as hereinbefore stated."

See State v. City of Miami, 113 Fla. 280, 152 So. 6; State v. City of Lake City, 116 Fla. 10, 156 So. 924; State v. City of Daytona Beach, 118 Fla. 29, 158 So. 300; Wilson v. City of Bartow, 124 Fla. 356, 168 So. 545; State v. City of Clearwater, 124 Fla. 354, 168 So. 546; State v. City of Punta Gorda, 124 Fla. 512; 169 So. 835; Leon County v. State, 122 Fla. 505, 165 So. 666; Tapers v. Pichard, 124 Fla. 549, 169 So. 39; Roach v. City of Tampa, 125 Fla. 62, 169 So. 627; Boykin v. Town of River Junction, 124 Fla. 827 169 So. 492; State ex rel. City of Vero Beach v. MacConnell, Number 1, 125 Fla. 130, 169 So. 628.

The record shows that The Housing Authority of Jacksonville, Florida, pursuant to Chapter 17981, Laws of Florida, Acts of 1937, was organized; that The Housing Authority of Jacksonville, Florida, was organized pursuant to the terms of and provisions of said Act by the Mayor of the City of Jacksonville, after resolution duly passed by the City Council and City Commission of said City; that pursuant to its organization, The Housing Authority of Jacksonville, Florida did select a site for a municipal low-cost housing project, and did authorize action to be taken for the acquisition of land and for a survey of slum and housing conditions in said City; that for the purpose of obtaining capital to undertake and complete said project, The Housing Authority of Jacksonville, Florida entered into a loan contract with the United States Housing Authority, whereby it was provided that the said U. S. H. A. would lend to The Housing Authority of Jacksonville the sum of One Million Twenty-seven Thousand ($1,027,000.00) Dollars, said amount being 90% of the estimated cost of said project, and said Authority therein agreed to issue debentures or bonds in the sum of $1,027,000.00 to be purchased by the U. S.

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H. A. for the purpose of retiring the indebtedness represented by said loan; that the said Authority further proposes to issue bonds in the sum of $125,000.00 for the purpose of sale to local investors, which said bond issue of $125,000.00 represents the remaining ten per cent of the cost of said project; that the said Authority has further entered into a contract with the U. S. H. A. wherein and whereby the U. S. H. A., throughout the entire period of sixty years, during which the bonds of said Authority are to be amortized, will make to the said Authority, annual contributions in the sum of $43,925.00 per annum, said grant to be used as a part of a retirement or sinking fund, and to be applied from time to time to the discharge of the principal and interest of said bonds; that pursuant thereto, the said Authority has further entered into a contract with the City of Jacksonville providing for the elimination of unsafe or insanitary dwelling units in the City of Jacksonville, equal in number of units to be constructed in said low-cost housing project; and it further entered into a separate contract with the City of Jacksonville, wherein and whereby the said City agreed to furnish certain services to the Authority at certain rates therein set forth, in connection with the development of said low-cost housing project; that said U. S. H. A. has further agreed to advance to the Authority the sum of $80,000.00 for purposes of paying preliminary expenses in connection with the development of said project, and the Authority has, by resolution, authorized issuance of its note or notes in the aggregate principal amount of not to exceed $85,000.00 for said purposes.

Chapter 17981, supra, creates or establishes a corporation known as The Housing Authority. It has been granted power so that its objectives may be accomplished, viz: the clearance of slums and the eradication of slum evils in the different areas of Florida, and to erect in their places low-cost houses so that persons with low incomes can be more abundantly

cared for and the attendant evils of slum conditions reduced to a minimum. We have examined the loan contract dated May 6, 1938, between The Housing Authority of Jacksonville, Florida, and the United States Housing Authority; the annual contribution contract dated May 6, 1938, between The Housing Authority of Jacksonville, Florida, and the United States Housing Authority; the form of the Housing Revenue Debenture of The Housing Authority of Jacksonville, Florida; the agreement between the City of Jacksonville, Florida and The Housing Authority of Jacksonville, Florida; and the Co-operation Agreement between the City of Jacksonville, Florida and The Housing Authority of Jacksonville, Florida. We hold that each of these agreements are legal and binding obligations and each within the powers conferred by Chapter 17981, supra, on The Housing Authority of Jacksonville, Florida; that the bonds or debentures of The Housing Authority of Jacksonville, Florida, when issued, will be the debt or obligation of The Housing Authority of Jacksonville, Florida, and not the debt or obligation of the City of Jacksonville, a municipal corporation, or the County of Duval, or the State of Florida; and that the bonds or debentures of The Housing Authority of Jacksonville, Florida, are not bonds within the meaning of Amended Section 6 of Article IX of the Constitution of Florida, and a vote of the freeholders is not necessary.

3. The third and last question for decision here is: Is the real and personal property of The Housing Authority of Jacksonville, Florida, owned and held under Chapter 17981, _supra_, exempt from all _ad valorem_ taxes? The claim of exemption here is based on Chapter 17983, Laws of Florida, Acts of 1937, and the following described portion thereof: "that such housing projects (including all property of a housing authority used for or in connection therewith or appurtenant thereto) are exclusive public uses and municipal purposes and not for profit, and are governmental functions of State concern. As a matter of legislative determination, it is

hereby found and declared that the property and debentures of a housing authority are of such character as may be exempt from taxation." If Chapter 17981, supra, does not violate Section 1 of Article IX of the Constitution of Florida, then all property owned by a housing authority is exempt from all ad valorem taxes. If Chapter 17893, supra, contravenes Section 1 of Article IX of the Constitution of Florida, then it is void and ad valorem taxes are assessable and collectible. Section 1 of Article IX provides:

> "Section 1. The legislature shall provide for a uniform rate of taxation, except that it may provide for special rate or rates on intangible property, but such special rate or rates shall not exceed five mills on the dollar of the assessed valuation of such intangible property, which special rate or rates, or the taxes collected therefrom, may be apportioned by the Legislature, and shall be exclusive of all other State, County, district and municipal taxes; and shall prescribe such regulations as shall secure a just valuation of all property, both real and personal, excepting such property as may be exempted by law for municipal, education, literary, scientific, religious, or charitable purposes."

It will be observed that Chapter 17983 declared that all property owned by a housing authority are to be held and used exclusively as public uses and not for profit and are governmental functions of State Concern, and exempt from ad valorem taxes. The first division of Section 897 G. O. L. exempts all property of the United States and State of Florida from taxation. The second division of Section 897 exempts all property of the counties, cities, villages, towns and school districts of Florida used or intended for public purposes. This opinion holds that the Housing Authority of Jacksonville, Florida, is a public purpose. Chapter 17983, supra, is a declaration of the Legislature that the property of a housing authority should be classed and regarded as a

public purpose of State concern. The Housing Authority of Jacksonville, Florida, is a public body, corporate and politic, and is given perpetual succession. Its purpose is limited to the clearance of slums and the construction of low-cost houses to be used by persons of low incomes, thereby advancing the health, moral and general welfare of the people. It was clearly the intention of the Legislature by enacting Chapter 17983, Laws of Florida, Acts of 1937, that the property of a housing authority would be exempt from all *ad valorem* taxes. Legislation passed by the Legislature of other States and similar to Chapter 17983, *supra*, and having tax provisions in their Constitutions very much like the State of Florida, has been by the Supreme Courts of the several States sustained on the theory of a public purpose of State concern. The Legislature of Florida had the power to enact Chapter 17983, *supra*. See Spahn v. Stewart, *supra*; Wells v. Housing Authority of Wilmington, *supra*; State ex rel. Porterie, Attorney General, v. Housing Authority of New Orleans, *supra*; Anna M. Dorman v. The Philadelphia Housing Authority, *supra*. See also Cooley's Constitutional Limitations, Volume Two (8th Ed.) pages 1086-7.

The order made and entered by the Chancellor below sustaining the separate motions of the defendants to dismiss the bill of complaint was proper and free from error. The order of dismissal appealed from is hereby affirmed. It is so ordered.

ELLIS, C. J. and WHITFIELD and BUFORD, J. J. concur

BROWN, J., concurs in part and dissents in part.

BROWN, J., dissenting in part.

I concur in this opinion with the exception of one point; that is, that the legislative act, exempting the property of the Housing Authority from taxation, is a valid exemption. This exemption from ad valorem taxes is not, in my opinion, within the power of the Legislature under section 1 of Art. IX of the Constitution. Otherwise I concur.

12519. Supreme Court of Georgia.

Decided September 21, 1938.

Williamson v. Housing Authority, etc. of Augusta et al.

By the Court:

1. Neither the housing-authorities law (Ga. Laws 1937, p. 210) nor the housing-co-operation law (Ga. L. 1937, p. 697) contains class legislation, contrary to Article 1, section 1, paragraph 2 of the constitution of this State (Code § 2-102), which declares that "Protection to person and property is the paramount duty of government, and shall be impartial and complete.

2. Neither of said acts, because applying only to cities of populations of 5,000 or more, violates the uniformity clause contained in article 1, section 4, paragraph 1, of the constitution (Code § 2-401), which in part declares that "Laws of a general nature shall have uniform operation throughout the State, and no special law shall be enacted in any case for which provision has been made by an existing general law."

3. Neither of said acts refers to more than one subject-matter, or contains matter different from that expressed in the title, contrary to the article 3, section 7, paragraph 8 of the constitution (Code § 2-1808), which declares that "No law or ordinance shall pass which refers to more than one subject-matter, or contains matter different from what is expressed in the title thereof."

4. Nor does either of said acts delegate to the cities and counties of this State certain powers which are non-delegable legislative powers, in violation of Article 3, section 1, paragraph 1, of the constitution (Code § 2-1201), which declares that "The legislative powers of the State shall be vested in a General Assembly, which shall consist of a Senate and House of Representatives."

5. The slum-clearance project inaugurated by virtue of the two acts

above referred to does not involve the taking of private property in violation of the due-process clause of the constitution of this State, or of the fourteenth amendment to the constitution of the United States.

6. The contract of the City of Augusta here involved, made in pursuance of the housing-co-operation law, does not create a debt within the meaning of article 7, section 7, paragraph 1, of the constitution of this State (Code § 2-5501), which prevents a municipality, except under certain conditions, from incurring a debt.

7. The conferring of the right of eminent domain upon the housing authority, by the housing-authorities law was within the power of the General Assembly.

8. The exemption from taxation of the property of the housing authority, and its bonds, is not forbidden by the constitution of this State.

9. The project here involved is for public purposes, and affects the general public. The acts authorizing it, and the contract in pursuance thereof, are not subject to the attack that the legislation upon which the same is predicated is forbidden by the constitution of this State.

10. The judge did not err in sustaining the demurrer to the petition as amended.

A. R. Williamson filed in Richmond superior court his petition seeking to enjoin the Housing Authority of the City of Augusta and the City Council of Augusta from proceeding with the development and financing of a proposed slum clearance and low rent housing project for that city. Plaintiff's petition was dismissed on general demurrer, to which dismissal he excepted.

The petition attacks the constitutionality of the act approved March 30, 1937 (Ga. Laws 1937, p. 210), known as the housing-authorities law, and also the housing co-operative law (Ga. Laws 1937, p. 697).

The contract between the housing authority of the City of Augusta and the United States Housing Authority is set forth, the latter acting under pursuance of the Federal Housing Act (42 U. S. C. A. 1401, et seq.). The contract sets forth, among other things, that the United States housing authority will purchase from the local authority its bonds, these bonds to be secured only by a pledge of the income of the property itself which is to be acquired from the proceeds of the sale of these bonds and from a pledge of the annual subsidy which is made by the United States housing authority to the local authority. The bonds are not secured by a deed or lien upon the physical properties of the project. The contract expressly provides that the indenture securing the bonds shall not confer a power of foreclosure and shall prohibit the sale or other disposition of the project. It is also provided that the United States Housing Authority will make an annual contribution to the housing authority of the City of Augusta in a sum not to exceed $58,555 each year for a period of sixty years, which constitutes 3-1/2 per cent of the entire estimated development cost of the project, plus ten per cent. The bonds draw 3% interest and are payable in annual installments running from two to sixty years. The annual interest on all of the bonds to be issued by the local authority is $50,190, based on the aggregate amount of bonds of $1,673,000. The rents derived from the operation of the project will be utilized to pay ordinary operating expenses and repairs and to supplement the annual contribution for the payment of the principal and interest on the bonds. Section 17 of the contract provides that "pursuant to the provisions of the United States Housing Act of 1937, the faith of the United States Government is pledged to the payment of the annual contributions contracted for under this agreement and appropriations are authorized to be made in each fiscal year out of any money in the treasury not otherwise appropriated in the amounts necessary to provide for such payments."

Grice, Justice. The housing-authorities law (Ga. Laws 1937, page 210) declares that there exist in this State insanitary and unsafe dwelling accommodations, and that persons of low income are forced to reside in such unsafe accommodations; that there is a shortage of safe dwelling accommodations available at rents which persons of low income can afford, and that they are forced to occupy over-crowded dwellings which cause an increase in the spread of disease and crime and constitute a menace to the health, safety, morals and welfare of the residents of the State and impair economic values, necessitating excessive and disproportionate expenditures of public funds for crime prevention and punishment, public health and safety, fire and accident protection, and other public services. The General Assembly further declared that these slum areas can not be cleared nor can the housing shortage for persons of low income be relieved through private enterprise, and that such clearance and reconstruction of safe and sanitary dwelling accommodations for persons of low income are public uses and purposes. It provides for the creation of public bodies corporate and authorizes such bodies to acquire and operate housing projects and to finance such properties by issuing its bonds secured either by pledge of the income and revenue from the housing projects or a mortgage on its properties. The authorities are expressly authorized to borrow money or accept grants or other financial assistance from the Federal government. The statute is substantially like those adopted in many other States, and is designed to enable these local housing authorities to attain their objects by means of assistance from the Federal Housing Authority.

The housing-co-operation law (Ga. Laws 1937, page 697) is designed to enable municipalities to co-operate and assist housing authorities and authorize certain advances and assistance. It further creates a State housing authority board which must approve all housing projects undertaken within the State.

1. Plaintiff in error's first specific ground of attack is that the two Georgia acts here involved constitute class legislation, contrary to article 1, section 1, paragraph 11 of the constitution of this State (Code, § 2-102), which declares that "protection to person and property is the paramount duty of government, and shall be impartial and complete." The argument is that the actual benefits to be derived from the proposed slum-clearance and low cost housing project are limited to those individuals or families "who lack the amount of income which is necessary to enable them, without financial assistance, to live in safe and sanitary dwellings without over-crowding," and that thus the housing act provides special privileges and advantages for a particular group to be selected from persons occupying a certain economic and financial status, to the exclusion of other citizens who by arbitrary standards occupy a different situation.

It might also be claimed that the actual benefits derived from maintaining the Georgia Academy for the Blind are limited to blind children; or that the actual benefits of the Georgia State sanitarium are limited to those mentally diseased; or that adults are denied the actual benefits of the public school system because the schools are maintained only for children between certain ages; and that therefore, since they provide privileges and advantages only for a particular group, their maintenance by the State is contrary to our organic law. It is no violation of the constitutional guaranty here invoked for the State to provide direct benefits for a certain group, to the exclusion of other citizens, unless done by arbitrary standards. The governing authorities were well justified in limiting to those of moderate income the benefits of the legislation under discussion. The statute makes a classification and states the basis thereof, which can not be said by this court to be unreasonable.

2. It is contended that said acts do not have uniform operation,

but apply to cities having populations of 5,000 or more, and that they therefore violate the provisions of article 1, section 4, paragraph 1 of the constitution of this State (Code, § 2-401), which in part declares that "Laws of a general nature shall have uniform operation throughout the State, and no special law shall be enacted in any case for which provision has been made by an existing general law." Counsel while conceding the right of the General Assembly to classify, provided the classification be natural, not arbitrary, take the position that the classification undertaken by the General Assembly in the passage of these acts does not bear a reasonable relation to the result sought to be accomplished, and therefore can not be upheld.

From the very nature of this legislation, and its purpose, to limit it to cities having a population of 5,000 or more is not an arbitrary classification. The size of the population of a community or city furnishes a legitimate ground of differentiation. It is a well known fact that slum conditions and congestion in housing are more acute in the larger cities.

3. It is insisted that the acts refer to more than one subject-matter and contain matter different from that expressed in the title, contrary to the provisions of article 3, section 7, paragraph 8 of the constitution of this State (Code, § 2-1808), which provides that "No law or ordinance shall pass which refers to more than one subject-matter or contains matter different from what is expressed in the title thereof." Particularizing, counsel for plaintiff in error contends that the housing law of Georgia offends that provision for the reason that it refers to more than one subject-matter by referring to the following, to-wit:

The creation of a State housing authority board; the creation of provision for method of creating a body corporate to be known as a

"housing authority;" the exemption of property from taxation; provisions relative to the enforcement of the right of eminent domain; also that said act further violates such constitutional provision in that it contains the following matters which are not expressed in the title thereof, to-wit: Provision for the enforcement of the right of eminent domain by the said housing authorities; the exemption of property of said housing authorities from levy and sale under execution; aid to said housing authorities by loan or grant from the federal government; the provision that the bonds of said housing authorities shall not be debts of the State, county or city; the provision authorizing said housing authorities to conduct investigations, hearings, to issue subpoenas, and require the production of documents before it; and that the housing co-operation law is in violation of such constitutional provisions for the reason that it refers to more than one subject-matter, in that it refers to the following, to-wit: The creation and organization of a State housing authority board and defining its authority; the authorization of cities to aid and contribute to local housing authorities; the mandatory provisions that cities shall contribute to the first year's expenses of local housing authority; and that said housing co-operation law further violates such constitutional provisions in that it contains the following matters, which are not expressed in the title thereof, to-wit: The authorizing of cities, counties or territorial divisions of the State to lend money to said housing authorities; and the portion of section 7 of the said act providing that resolutions of governing bodies of cities, counties or other subdivisions of the State shall take effect immediately and need not be laid over or published or posted.

Each of the subjects dealt with in the housing law of Georgia (Ga. Laws 1937, p. 210) and the housing co-operation law (Ga. Laws 1937, page 697) are definitely related to the main subject-matter of the act. Unity

of purpose is what the constitution requires of legislative enactments; if there is only one general subject-matter, an act is not open to the objection of plurality because it enters into details, provided all parts of the enactment have a natural connection and relate to the main object of the legislation. Compare Churchill v. Walker, 68 Ga. 681, 686; the Columbus Southern Railway Co. v. Wright, 89 Ga. 574; McCommons v. English & Company, 100 Ga. 653; Starnes v. Mutual Loan & Banking Co., 102 Ga. 597; Brand v. Town of Lawrenceville, 104 Ga. 486; Welborne v. The State, 114 Ga. 793; Pearson v. Bass, 132 Ga. 117; Nolan v. Central Georgia Power Co., 134 Ga. 201; Shadrick v. Bledsoe, Ga. , No. 11236.

In Central of Georgia Railway Company v. The State, 104 Ga. 831, it was said: "What the constitution looks to is unity of purpose. It does not mean by one subject-matter only such subjects as are so simple that they can not be subdivided into topics; but it matters not how many subdivisions there may thus exist in a statute or how many different topics it may embrace, yet if they all can be clearly indicated by a comprehensive title, such matter can be constitutionally embodied in a single act of the legislature."

The general purpose of the housing statutes of the State, to which reference has been made, is to create public corporations the functions of which are to engage in slum clearance by establishing sanitary and wholesome housing projects in cities of a stated size and class, with the view of promoting health and sanitation and the prevention and spread of crime and disease. This being the main and primary purpose of the legislation, it could not have been complete without defining the powers and duties of such authorities, and the ways and means of their exercise of the powers so conferred. The statutes are not open to the criticism that they refer to more than one subject-matter.

Nor can the objection be sustained that they contain matter different from what is expressed in their titles. The title of an act need only

indicate the general object and subject-matter to be dealt with. It is not required that the title contain a synopsis of the law. Wright, comptroller-general, v. Fulton County et al., 169 Ga. 354 (2(a)), and cases there cited; and Cady v. Jardine, 185 Ga. 9, wherein it was said: "It was never intended that the substance of the entire act should be set forth in the caption. It was not contemplated that every detail stated in the body should be mentioned in the caption. If what follows after the enacting clause is definitely related to what is expressed in the title, has a natural connection, and relates to the main object of legislation, and is not in conflict therewith, there is no infringement of the constitutional inhibition." Then after quoting the title, or a portion of it, the court said: "Any provision in the body which is germane to this general purpose as embraced in the title would not be violative of the constitutional provision."

4. An assault is also made on the two acts because it is claimed that they delegate to the cities and counties of this State certain powers which are non-delegable legislative powers; and the plaintiff invokes article 3, section 1, paragraph 1 of the State constitution (Code, § 2-1201), which declares that "The legislative powers of the State shall be vested in a General Assembly, which shall consist of a Senate and House of Representatives." The contention is that the housing authorities law by its terms attempts to delegate non-delegable legislative powers in the following particulars: 1. To the mayors of certain cities in the State to create public corporate housing authorities. 2. To the governing boards of said authorities to determine the type, nature, and extent of the projects to be undertaken, the locations thereof, the amount of bonds to be issued thereon and other like matters, including the power of eminent domain, the power of acquisition of land and tax exemptions.

There is nothing in the housing authority law which attempts to delegate to the mayors of certain cities the power to create public corporate

housing authorities. The General Assembly itself, in the act, in section 4 thereof, expressly creates the housing authority of the city, and then provides that "such authority shall not transact any business or exercise its powers hereunder until and unless the governing body of the city or county, as the case may be, by proper resolution shall declare at any time hereafter that there is need for an authority to function in such city or county." The only connection the mayor has with this is stated in section 5 of the act, to-wit: "When the governing body of a city adopts a resolution as aforesaid, it shall promptly notify the mayor of such adoption. Upon receiving such notice, the mayor, by and with the consent of the Governor, shall appoint five persons as commissioners of the authority created for said city."

Nor in the provision giving to the governing boards certain powers, as above pointed out, is there any violation of the rule forbidding the attempted delegation of non-delegable legislative powers. Having declared the purposes of the act, and enacted provisions to carry the same into effect, the General Assembly could properly confer on the governing board of the authority the powers of which complaint is made. Compare Georgia Railroad v. Smith et al., 70 Ga. 694; Southern Ry. v. Melton, 133 Ga. 277. The tariff act of September 21, 1922, empowered and directed the president to increase or decrease duties imposed by the act so as to equalize the differences which, upon investigation, he finds and ascertains between the costs of producing at home and in competing foreign countries the kind of articles to which such duties apply. The act laid down certain criteria to be taken into consideration in ascertaining the differences, fixed certain limits of change, and made an investigation by the tariff commission, in assisting the president to ascertain the differences, a necessary preliminary to any proclamation changing the duties. The Supreme Court of the United States in holding that the delegation of power was not unconstitutional, quoted approvingly from the case of Wilmington

and Zanesville Railroad Co. v. Commissioners, 1 Ohio St., 77, 88, as follows: "The true distinction, therefore, is, between the delegation of power to make the law, which necessarily involves a discretion as to what it shall be, and conferring an authority or discretion as to its execution, to be exercised under and in pursuance of the law. The first can not be done; to the latter no valid objection can be made." Hampton and Co. v. United States, 276 U. S. 394, 407.

5. It is asserted that the achievement of the project will necessitate the taking of private property in violation of the due process clause of the State constitution and of the fourteenth amendment to the Federal constitution. The argument advanced is that as a result of the construction and operation of the proposed housing units, rental property in Augusta, including that of petitioner, will be rendered less valuable; that by the terms of the act, the rentals to be charged for the new units shall be such as the tenants can afford to pay; that since such tenants will consist only of persons of low income, the natural consequence is that the rent level will be so low as to undermine the basis and destroy the standard by which private property can be rented so as to produce a fair return over cost of maintenance; that the proposed entry by the government into such field of real estate development and operation will be destructive of private property rights in violation of the State and Federal constitutions; moreover, that the act requires cities and counties to levy and collect taxes for the purpose of defraying certain initial costs of the project and otherwise aiding in its development; that petitioner's property will be called upon to bear its proportionate burden of these additional taxes, and with no compensating benefits; that in addition to that, the housing authority proposes to purchase various parcels of real estate which are now subject to taxation; that upon the acquisition of that property by the authority, it becomes exempt from all forms of taxation and will be removed from the tax digests, causing a substantial

loss in public revenue.

A like argument could be made by a property owner whenever the city takes over activities of the kind originally carried on by private enterprise, but so far as we are advised it has never been held by any court that such a position was maintainable. The suggestion that the competition of this housing project will deny to plaintiff due process is completely answered by a recent decision of the Supreme Court of the United States in which it was held that a distributor of electricity under a non-exclusive franchise was not denied any constitutional rights by competition from municipalities erecting power plants with funds loaned by Federal agencies. It was there held: "The claim that petitioner will be injured, perhaps ruined, by the competition of municipalities brought about by the use of the monies, therefore presents a clear case of damnum absque injuria. Stated in other words, these municipalities have the right under the State law to engage in the business in competition with petitioner, since it has been given no exclusive franchise. If its business be curtailed or destroyed by the operations of the municipalities, it will be by lawful competition from which no legal wrong results." Alabama Power Co. v. Ickes, U. S. , 82 L. ed. 263.

6. It is insisted that said acts and the contracts made pursuant thereto provide for debts to be incurred by a municipality and other political divisions of the State in violation of the restriction and prohibition contained in article 7, section 7, paragraph 1 of the constitution of this State (Code, § 2-5501), counsel's position being that the legislative design in enacting the housing law is to circumvent that constitutional limitation, in that a debt will be incurred which will be an obligation of the city council of Augusta, and of a political division of the State, within the meaning of the constitution. In support of the view that the contracts here involved create a debt of the city, counsel rely on the cases of City of Dawson v. Dawson Waterworks, 106 Ga. 696; Renfroe

v. Atlanta, 140 Ga. 81; Byars v. City of Griffin, 168 Ga. 41; Dortch v. Southeastern Fair Association, 182 Ga. 633; Cartledge v. City Council of Augusta, 183 Ga. 414.

The case of Dawson v. Dawson Waterworks, 106 Ga. 696, seems not to be particularly in point, although it is perhaps our leading case on what is a debt of a municipal corporation within the meaning of our constitution. The holding, from which Simmons, Chief Justice, dissented, was that the making of a contract by municipal authorities for gas or water for a term of years for a certain sum to be paid annually, was a debt, within the meaning of the constitution. In the instant case, the municipality has entered into no agreement to make payments over a term of years. The only agreement on behalf of the municipality of the City of Augusta is that it agrees to eliminate unsafe and unsanitary dwelling units of a number equal to or greater than 340, either by demolishing dwellings on lands acquired by the city by purchase or otherwise, or by causing the compulsory demolition, or by inducing private owners to voluntarily eliminate such dwellings. This contract is presumed to be made for a lawful purpose and is therefore not construed as binding the municipality to do any act or to engage in any undertaking, financial or otherwise, with respect to elimination of such dwellings contrary to what it should do in any event under the public power. Nor can it be construed as an obligation on its part to eliminate dwellings which should not be eliminated for a purpose within the police power. Manifestly, the city could not bargain away the discretion which it should exercise within the police power for the general welfare; and the contract can therefore mean nothing more than an assurance, unnecessary perhaps, that the city will do what it should do. If any other construction would lead to the conclusion that the contract is illegal, then it should be construed as stated above, in view of the presumption that is for a legal purpose. There is an allegation in an amendment to the petition that the city council of Augusta

has already appropriated and used certain sums of money out of the general funds of said city of Augusta for the use and benefit of said housing authority, and unless enjoined as prayed in his original petition, the city council will proceed under the terms of section VI of an act of the General Assembly of Georgia, approved March 31, 1937, referred to as the "Housing co-operation law" (Ga. Laws 1937, pp. 607-702), to appropriate further sums of money out of the general funds of said city of Augusta for the purpose of paying the necessary administrative expense and overhead of the housing authority of the city during its first year of operation and will proceed to enter into contracts for payment for services with said housing authority and will otherwise appropriate, dedicate and use property, funds and assets of the City of Augusta for the use of said housing authority, pursuant to the provisions of said housing co-operation law. This does not, however, indicate that the City of Augusta is about to incur any debt on that account, the allegation being that the City Council would, unless enjoined, appropriate certain sums from the general funds of the city - presumably from funds on hand.

The Renfroe case, supra, is clearly distinguishable. Interpreting the contract there dealt with, the court said: "It is impossible to read this contract and these resolutions without seeing plainly that the intention of the parties was for the city to contract for the building and equipping of a crematory at a fixed price, a part of which was to be provided for and paid in 1912 and much the larger part of which was to be paid in installments in subsequent years; and that it was sought at least to pledge the good faith of the city for the payment of the future installments. It went even further; it provided that if any installment should not be paid, the company should at once be vested with the title, possession, and control (except as to the land), and that it should have the right to operate the plant for ten years for its own account, free of rent. Thus the city might pay every installment but the last one; but if the council in that year conscientiously and correctly believed that the

contract was illegal, and refused to violate the law as they saw it, the city would have neither its money nor a crematory. This would be to apply not only moral but pecuniary coercion to future councils to force them to pay or lose and to take from the city its crematory and put it in the hands of the other party, by virtue of the terms of the contract. To say that this creates no debt within the meaning of the constitution is simply to juggle with words. We know of no law which authorizes a city council to pledge the good faith of the city for the payment of money in future years, any more than to mortgage the city hall for the same purpose. The city's good faith is a great asset, and no council has the right to pledge it to evade the constitution. Certainly no council has the right to admit that it can not bind future councils and yet to fix payments for future councils to make, and so arrange the contract that, if the future councils do not make the payments, moral and pecuniary loss will automatically fall upon the city, and it will be put to serious inconvenience." Nothing of that kind appears in the case now before us.

The case of Byars v. City of Griffin, 168 Ga. 41, followed the Renfroe case. In discussing the contract there dealt with, this court said that it was "the primary purpose of the parties that the city should ultimately become owner of the property. In these circumstances the obligations of the city amounted in substance to a debt within the meaning of the clause of the constitution . . ." It was in that immediate connection said in that case: "The city wanted the property, and would advance from the city treasury $100,000 of the amount necessary to obtain it, and would employ the city's distributing plant and operate the joint enterprise to pay the balance in the future. If the city should not perform its obligations, and should fail to make the payments as specified in the contract, it would not get the property. This would result in defeat of the city's policy to own its water system, and entail other losses. The effect of the transaction was to constitute the city's

obligation to make the future payments - by whatever name called - in substance a debt within the meaning of the constitution."

The decision in Cartledge v. Augusta, 183 Ga. 414, was planted on the prior cases of Renfroe v. Atlanta, and Byars v. Griffin, supra. We quote from the opinion: "The city does not pay any money out of its treasury into the construction of the hydroelectric plant and distribution system. But the Augusta canal, the present property of the City of Augusta, and the water therefrom, will be an important part of the hydroelectric plant, without which the plant could not operate. The income from the sale of electric power generated by the plant can not in any sense be considered as produced solely by the power-house, generator, turbine, and transmission lines, exclusive of the canal and water therein. The fact that at the present time the city may be deriving no income from the surplus water in the canal is, in our opinion, immaterial. The canal and the water are valuable property of the city. Other property will be combined with them to produce income from the whole. But the income from the entire development, canal, water, and hydroelectric generating plant, and the distribution system, is charged with the payment of the revenue bonds to be issued and sold for the purpose of constructing the plant and system."

The scheme there attempted contained the same infirmity as that dealt with in the Renfroe case. Both in the Dortch and Cartledge cases, it appears that the city would pledge the income from municipal property previously owned. Nothing of that kind appears here, nor does the feature of coercion enter into it. Morton et al. v. City of Waycross et al., 173 Ga. 298, is another case which on its facts was controlled by the principles applied in the Renfroe and Byars cases. It was there ruled that "the sale of the equipment and its installation at a time when the city has not surplus funds with which to pay and has not levied any tax for such purpose,

would create a debt within the meaning of" the constitution. In principle, the case of State of Georgia v. Regents of the University System of Georgia et al., 179 Ga. 210, followed approvingly in Williams v. McIntosh County, 179 Ga. 735, rules adversely to plaintiff in error the point now under consideration. In the Regents case, it was ruled that, "The Regents of the University System of Georgia is a distinct corporate entity and is governed by a board of Regents. Through the board it can exercise any power usually granted to such incorporations, necessary to its usefulness, and not in conflict with the constitution and laws. An obligation incurred by the corporation, or the Board of Regents, is not a debt of the State, and therefore is not affected by constitutional limitations upon State indebtedness." Also, that "The loan agreement as made by the corporation and its Board of Regents with the Federal government under which bonds will be issued by the regents and purchased by the government for the purpose of providing funds for stated university uses, the bonds to be paid exclusively out of described special funds, does not involve any illegal undertaking on the part of the Board of Regents, and is within the powers granted to the corporation and its board of regents by the laws of this State. The court properly refused to enjoin the execution of such agreement." What was said in the opinion on the vital question then and there considered applies with equal force here. We quote an extract: "In the first division of this opinion we have disposed of the question whether the obligations would create a debt against the State, and in the briefs filed for defendant it is maintained that such obligations would not even create a debt against the regents as a corporation. This for the reason that the bonds do not constitute general obligations, but are payable only out of special funds. In the view which we take of the case it is unnecessary to decide whether in these circumstances a 'debt' will be created against the corporation. Whatever the nature of the particular obligation it is our opinion that the board of regents, or the corporation as the

case may be, is vested with sufficient authority to issue the bonds and to obtain the loan upon the conditions agreed upon. The buildings are to be erected on the lands of the corporation, and the title to the buildings will be in the corporation from the time of their construction, ownership by the corporation not being dependent upon any condition, not even the payment of the loan. No mortgage or other lien is created, and the only stipulation which in any manner contemplates a lien is the statement which specified the income to be pledged. None of the other property or resources can ever be held liable, and all possible remedies must be aimed at such special income. Such remedies as the government may preserve in the agreement of indenture will, of course, be limited to the rights conferred by that instrument, which is to be in accord with the loan agreement." The contract invoked in the instant case is of the type dealt with in the Regents case.

Neither the Renfroe, Byars, Cartledge nor the Morton case construed an act of the General Assembly, but instead, contracts entered into by virtue of municipal ordinances. In the instant case, we are dealing with solemn acts of the General Assembly and a contract of the city expressly authorized by a legislative act. In such a case courts will not, unless satisfied beyond a reasonable doubt, rule that the statutes and the contract made thereunder are an attempt to circumvent the constitution. On their face, they do not run counter to the constitution, and we will not ascribe to the lawmakers of the State a purpose to circumvent the provisions of that instrument.

7-8. Finally, the acts and the contracts made thereunder are attacked on the following grounds:

(a) The achievement of the project will necessitate the taking of private property in violation of the due process clause of the State constitution and the fourteenth amendment to the constitution of the United States; (b) The proposed housing project is not for a public purpose but

is for private use, and the tax exemptions and other privileges and immunities conferred upon the housing authority are in violation of the constitution; (c) The right of eminent domain granted to the housing authority by the acts is violative of the constitution; (d) Said acts make it mandatory upon cities and counties to appropriate money, loan credit to, and make service contracts with the housing authority, although such authority is not a corporation organized for purely charitable purposes; (e) Said acts undertake to delegate to the counties of this State the right to levy and collect taxes for purposes other than those authorized by the constitution.

The proposed project should not be stricken down for any of the reasons next above enumerated, provided the use to which the property to be acquired is put is legitimately a public use, for public purposes. Whether it is or not is the controlling question.

Under the constitution, article 7, section 2, paragraph 2 (Code, § 2-5002), "The General Assembly may by law exempt from taxation all public property; . . . all institutions of purely public charity." A testator devised to trustees certain real estate, the annual rents to be appropriated by them for the erection of a poor house in Richmond County, and for the support of its inmates. No poor house had been erected, but the trustees were accumulating a fund for the purpose. The property was assessed for taxes. The trustees sought injunction. This court held that the poor house when erected would be exempt, but not detached property from which its support is derived. This court said: "No matter to whom the institutions belong, whether to a private individual, to a corporation, or to an unincorporated company or association, they are equally exempt, provided they are dedicated to charity and used exclusively as institutions of purely public charity. Hospitals, almshouses, asylums for the insane, for the deaf and dumb, or the blind, orphan asylums, homes of various kinds, soup-houses, etc., permanently established and open, without charge, to

the whole public, or to the whole of the classes for whose relief they are intended or adapted, are institutions of the exempt order, irrespective of their ownership, and without regard to whether they have behind them, or connected with them, any institution in the personal or ideal sense of the term, or not, That the word 'institution,' both in legal and colloquial use, admits of application to physical things, can not be questioned. One of its meanings, as defined in Webster's Unabridged dictionary, is 'an establishment, especially of a public character, affecting a community.' And one of the meanings of 'establishment,' as defined by the same authority, is 'the place in which one is permanently fixed for residence or business; residence with grounds, furniture, equipage, etc., with which one is fitted out; also, any office or place of business, with its fixtures.'" The Trustees of the Academy of Richmond County v. Bohler, tax collector, 80 Ga. 159.

The recent case of Tharpe, tax collector, v. Central Georgia Council of Boy Scouts of America, 185 Ga. 810, dealt with the question whether or not property used as a boy scout camp was exempt from taxation on the ground that it was dedicated to charity. In the opinion it was said: "Under the statute, 'the following described property shall be exempt from taxation, to-wit: . . . all institutions of purely public charity.' Code, § 92-201. The test is whether the property itself is 'dedicated to charity and used exclusively' as an institution of purely public charity. 'The exemption from taxation of institutions of public charity, provided for by the constitution, is of such institutions as property not as persons, - the physical things, not the ideal institutions.' Trustees of the Academy of Richmond County v. Bohler, 80 Ga. 159 (7 S. E. 633). The character of the plaintiff corporation, as disclosed by its charter provisions and the other evidence, will be considered, of course, in determining whether the use of the property is such as to exempt it

from taxation. Cf. Elder v. Atlanta-Southern Dental College, 183 Ga. 634 (189 S. E. 254). A familiar meaning of the word 'charity' is alms-giving, but as used in the law it may include 'substantially any scheme or effort to better the condition of society or any considerable part of it.' Wilson v. Independence First National Bank, 164 Iowa, 402 (145 N. W. 948, Ann. Cas. 1916D, 481). 'Charity,' as used in tax exemption statutes, is not restricted to the relief of the sick or indigent, but extends to other forms of philanthropy or public beneficence, such as practical enterprises for the good of humanity, operated at moderate cost to the beneficiaries, or enterprises operated for the general improvement and happiness of mankind.' 61 C. J. 455, § 505. This court has said: 'The property of a Young Men's Christian Association, used solely for the purposes of public charity, using the term 'charity' in its broad sense, is not taxable, provided its income is not used, nor intended to be used, as dividends or profits;'" citing City of Waycross v. Waycross Savings & Trust Company, 146 Ga. 68 (4). It is expressly provided in section 9 of the housing authorities law that the housing project shall not be operated for profit. In a somewhat analogous case in Massachusetts dealing with the question whether or not a corporation organized to provide a home for working girls was a charitable institution, the court said: "Though not paupers, they are so poor as to make it a work of charity to provide for them a home. The individuals of the class change from day to day. They are sufficiently numerous, and so a part of the public, and so connected with it and with the public welfare, as to give to the work of providing a home for any individuals comprised in the class that quality of indefiniteness in the persons helped, which, with the charitable purpose aimed at, makes a public charity in the legal sense." Franklin Square House v. City of Boston, 188 Mass. 409, 74 N. E. 675.

We are of the opinion that the exemption from taxation contended for can be sustained on the general ground that the project is a purely public charity within the meaning of the constitutional provision next above referred to, even if it were not public property; the fact that a small amount of rent is to be charged does not change its character; (Linton v. Lucy Cobb Institute, 117 Ga. 678; Brewer v. American Missionary Association, 124 Ga. 490; Hurlburtt Farm v. Medders, 157 Ga. 258); and that, applying the principles ruled in the Tharpe case, supra, the contemplated project is for purely charitable purposes, and that therefore the provision in section 6 of the Housing co-operation law, which provides that the city shall, out of any monies in its treasury not otherwise appropriated, appropriate to the authority an amount of money necessary to cover the administrative expense and overhead during the first year, the act further declaring that said money so appropriated shall be paid as a donation, is not violative of article 7, section 6, paragraph 1 of the constitution (Code, § 2-5401), which among other things provides that the General Assembly shall not authorize any municipality to appropriate money to any corporation "except for purely charitable purposes."

In so far as section 6 of the act refers to the making of loans or donations by the city after the first year, the authority to do so is not made mandatory, but merely permissive.

If the project under attack is for public purposes, and the property about to be acquired by it is for public purposes, then the property may be exempted from taxation, and its bonds, being instrumentalities of government are non taxable.

Property may be public property so as to come within the exemption from taxation although the legal title is not in the State, the county, or a municipality. Compare the Trustees of the Academy of Richmond

County v. The City Council of Augusta, 90 Ga. 634. See also Walden v. Town of Whigham, 120 Ga. 646 (1).

Public property, within the meaning of that clause of the constitution which authorizes the General Assembly to exempt from taxation all public property, embraces only such property as is owned by the State, or some political division thereof, and title to which is vested directly in the State, or one of its subordinate political divisions, or in some person holding exclusively for the benefit of the State, or a subordinate public corporation. Board of Trustees of the Gate City Guard v. City of Atlanta, 113 Ga. 883.

Bonds issued by a municipality of this State are not taxable by this State or any county thereof. Penick, tax collector, v. Foster, 129 Ga. 217.

The bonds are merely government instrumentalities and are not taxable by the force of the constitution itself. Id. 225.

In the recent Pennsylvania case of Darman v. The Philadelphia Housing Authority et al., hereinafter cited, the Supreme Court of that State, in a case similar to this, held that the grant to the housing authorities of the right of eminent domain did not violate a provision in the constitution of that State similar to the one in the Georgia constitution on the subject of eminent domain, and added that "The public nature of the use of the property also justifies the exemption granted by the act from State and local taxation." That case also ruled that the act did not contain two subject-matters, nor matters different from that expressed in the title; was not class legislation because limited to cities of a certain size; nor did the act involve any unconstitutional delegation of power; the provisions of the Pennsylvania act being almost identical with the Georgia act.

The Florida case hereinafter cited, also on a similar record, made similar rulings as to the right of eminent domain, as to the creation of

a debt by the city, and expressed the same view as we have above as to tax exemptions.

In the North Carolina case, hereinafter cited, it was held that the property acquired by a housing authority was exempt from taxation, since the property was held for a public purpose.

In the New York case, hereinafter cited, it was held that because the project was limited to persons of low income did not make the use private, instead of public.

If the use is a public one, the power of eminent domain conferred by the act is legitimate. "The exercise of the right of eminent domain shall never be abridged." Article 4, section 2, paragraph 2 of the constitution of Georgia, Code, § 2-2502. The right of eminent domain is the right of the State, through its regular organization, to reassert. . . its dominion over any portion of the soil of the State on account of public exigency and for the public good. . ." Code, § 36-101. "It is the province of the legislature to judge of the exigencies requiring the exercise of this right, but if, under the pretext of such necessity, the property of one is taken for the private use of another, the courts should declare the law inoperative." Code, § 36-102. This right may be exercised through the medium of corporate bodies, Code, § 36-103.

In Jones v. North Georgia Electric Company, 125 Ga. 618, 625, this court had before it the question whether or not an act which conferred upon owners of water powers the right of eminent domain was an attempt to take property from an owner against his will for other than a public purpose. In upholding the act, the opinion stated with approval the general rule evolved by Judge Cooley in ascertaining the character of the use, as follows: "The reason of the case and the settled practice of free governments must be our guides in determining what is or is not to be regarded as public use; and that only can be considered such where the

government is supplying its own needs, or is furnishing facilities for its citizens in regard to those matters of public necessity, convenience, or welfare, which, on account of their peculiar character, and the difficulty - perhaps impossibility - of making provision for them otherwise, it is alike proper, useful, and needful for the government to provide." See also Fallbrook etc. v. Bradley, 164 U. S. 112, 160-164; Mt. Vernon-Woodberry Cotton Duck Co. v. Alabama Power Co., 240 U. S. 30.

The right of the city to establish and maintain an ice plant was upheld in Holton v. City of Camilla, 134 Ga. 560, and in Saunders v. Mayor, etc. of Arlington, 147 Ga. 581. The act authorizing the creation of drainage districts was upheld because founded on the principle of public benefit. Almond v. Pate, 143 Ga. 711. The act requiring appropriations for the building of a cyclorama and museum was declared valid, the requirement having reference to the performance of a governmental function. McClatchey v. City of Atlanta, 149 Ga. 648. So also the building of an airport, the main purpose of which was to facilitate travel and transportation for public convenience and general welfare. McGinnis v. McKinnon, 165 Ga. 713; Swoger v. Glynn County, 179 Ga. 768.

As stated by Stern, J., in the Pennsylvania case hereinafter cited: "A legislative project of this nature goes beyond anything heretofore attempted in this State. It naturally invites, therefore, the attack of those who are inclined to regard all experiments in our social and economic life as presumptively unconstitutional. Such challenges must fail, however, if upon analysis, it appears that the only novelty in the legislation is that approved principles are applied to new conditions. Neither our State nor our Federal constitution forbids changes, merely because they are such, in the nature or the manner of use of methods designed to enhance the public welfare; they require only that the new weapons employed to combat ancient evils shall be consistent with the fundamental scheme of government of the commonwealth and the nation, and shall not violate

specific constitutional mandates."

The application to the facts of this case of the general rule stated in several of the Georgia cases last cited, and recognized in all of them, leads us to the conclusion that the legislation here under attack must be sustained against the criticism that it does not deal with a public purpose. See also Block v. Hirsch, 256 U. S. 135, 155; Jones v. City of Portland, 245 U. S. 217; Green v. Frazier, 253 U. S. 233. Similar statutes were before the courts of North Dakota, California, New York, Kentucky, Pennsylvania, Louisiana, Florida, and North Carolina, and in each instance a like conclusion was reached. Green v. Frazier, 44 N. Dak. 395; William v. Powell, 91 Cal. App. 1; New York City Housing Authority v. Muller, 1 N. E. (2d) 153; Spahn v. Stewart, 268 Ky. 97; Wells v. Housing Authority of Wilmington (N. C.), 197 S. E. 693; State ex rel., etc. v. Housing Authority of New Orleans (La.), decided June 27, 1938, 182 So. 725; Marvin v. Housing Authority of Jacksonville (Fla.), decided July 25, 1938; and Dornan v. Philadelphia Housing Authority, 200 Atl. 834.

9. The trial judge did not err in sustaining a demurrer to the petition as amended.

Judgment affirmed. All the Justices concur, except Russell, C. J. and Atkinson, P. J., who dissent from the ruling in the 8th headnote and the related portion of the opinion.

THE STATE OF SOUTH CAROLINA

In The Supreme Court

W. E. McNULTY, Taxpayer of the City of Columbia, suing for himself and for and on behalf of all other taxpayers of the city of Columbia, ...Appellant,

v.

L. B. OWENS, Mayor of the city of Columbia; E. C. Coker, W. S. Hendley, L. Cooper Smith, S. L. Latimer, Jr., and G. H. Crawford, members of the Columbia Housing Authority; John A. Chase, Jr., secretary of the Columbia Housing Authority; City of Columbia and Columbia Housing Authority, ...Respondents.

Appeal From Richland County

G. Duncan Bellinger, Judge

Case No. 1591

Opinion No. 14753

Filed October 13, 1938

AFFIRMED

McKay & Manning, of Columbia, for appellant.

Paul A. Cooper and Robinson & Robinson, all of Columbia for respondents.

PER CURIAM: While we have considered with care the questions raised in this case, we do not deem it necessary to add anything to what Judge Bellinger has said in his decree. His order, the result of which we approve, is sustained generally by the authorities cited therein. We may say, however, that we are impressed with the very strong argument filed by counsel for the appellant, there being much in favor of some of the contentions made.

The circuit decree, which will be reported, is affirmed.

John G. Stabler,	CJ.
M. L. Bonham,	AJ.
D. Gordon Baker,	AJ.
E. L. Fishburne,	AJ.
L. D. Lide,	AAJ.

CARTER, J., did not participate on account of illness.

DECREE OF JUDGE BELLINGER

This action was brought by a taxpayer representing himself and others similarly situated against the City of Columbia and the Columbia Housing Authority asking for an injunction against the proposed action of the Columbia Housing Authority and of the City of Columbia in erecting in Columbia a housing project to provide housing for persons of low income and to enjoin the demolition by the Housing Authority of certain slum areas in the City.

The plaintiff in addition to being a taxpayer is the owner of rental property leased for residential purposes in the City, with which property he claims the project to be built by the Columbia Housing Authority will compete.

The validity of the action of the defendants is questioned on a number of grounds which are set out in paragraph 8 of the complaint.

Returns and answers were filed in behalf of the defendants admitting that they proposed to erect in the City of Columbia, pursuant to valid legislation, a project to provide housing for persons of low income, pursuant to certain proposed agreements between the United States Housing Authority and the Columbia Housing Authority and certain proposed agreements between the Columbia Housing Authority and the City of Columbia. The defendants deny the illegality of the proposed project.

The proposed contracts, the resolutions of the Columbia Housing Authority and other exhibits were offered in evidence, and oral testimony taken before me in response to a rule issued with the summons and complaint.

The testimony shows that pursuant to an Act of the General Assembly of 19th of March, 1934 (38 Stat. 1386), providing for the creation of public authorities to engage in slum clearance projects and for the construction and acquisition of housing accommodations for families of low income, the City of Columbia, by proper resolution dated April 10, 1934, created a housing authority for the City of Columbia. Promptly thereafter, as authorized by statute, the Mayor of the City of Columbia named E. C. Coker, W. S. Hendley, L. Cooper Smith, S. L. Latimer, Jr., and G. H. Crawford as members of the Columbia Housing Authority. These citizens of Columbia qualified as members of the Authority and are still acting in that capacity.

The Congress of the United States by its Act of September 1, 1937, (42 U. S. C. A. 1401) set up the United States Housing Authority for the purpose of helping in the financing of these low-cost housing projects. The Columbia Housing Authority has been negotiating with the United States Housing Authority in connection with the financing of projects in the City of Columbia.

Immediately preceding the institution of this suit the United States Housing Authority submitted to the Columbia Housing Authority drafts of certain proposed contracts which have been approved by the Columbia Housing

Authority, but which have not been executed by any of the parties thereto. These contracts were offered in evidence and provide substantially and following:

The Columbia Housing Authority will erect in the City of Columbia at a total cost of $560,000.00 a slum clearance and low-cost housing development, which will be financed by the issuance by the Columbia Housing Authority of 3% serial bonds maturing over a period of about sixty years, totaling $560,000.00. Of these bonds the Columbia Housing Authority proposes to sell to the United States Housing Authority an aggregate amount of between $458,000.00 and $504,000.00, selling the remaining bonds locally or to the City of Columbia.

The proposed contracts between the City of Columbia and the Columbia Housing Authority permit the City of Columbia to give to the Columbia Housing Authority any land which the City might own which may be useful to the project, or the services of the City of Columbia, such as engineering services, the use of the facilities of the Columbia Street Department, or other things which the City might contribute. Such property or services as may be contributed by the City are to be deducted from the total amount of bonds to be issued and will reduce the amount of bonds which will have to be financed locally.

These contracts further provide that the United States Housing Authority will make an annual contribution to the Columbia Housing Authority of approximately $19,000.00 to help defray the operating costs and interest and principal requirements in accordance with the bond maturities. The City of Columbia will also agree to accept the sum of $500.00 annually in lieu of all taxes and assessments. The bonds and operating expenses will be paid out of this government subsidy and from the rents collected from the project.

The Columbia Housing Authority and the City of Columbia by these agreements will obligate themselves to demolish as many dwelling units

as are erected. If, therefore, the property on which the housing project is built does not contain as many dwelling units as would be erected on the property, the City is obligated to tear down a sufficient number of units on property owned by it or to use its police powers to accomplish the demolition of unsanitary dwellings on private property so as to make the demolition equivalent to the number of dwelling units erected.

As has been said heretofore these contracts have not been actually executed but the proposed plan is sufficiently definite to permit the Court to pass upon the validity thereof.

Several questions raised in the taxpayer's complaint present for the consideration of the Court the question of whether the elimination of slum areas and the building of low rent housing units is a public municipal purpose within the meaning of the State Constitution.

Under the division of the powers provided in our State Constitution the question of whether an act is for a public purpose is primarily one for the Legislature and this Court will not interfere with the legislative finding unless the determination of that body is clearly wrong. Riley v. Charleston Union Station Co., 71 S. C. 457, 51 S. E. 485; Park v. Greenwood County, 174 S. C. 35, 176 S. E. 870. In the Park case the Court had this to say:

> "The question of whether an act is for a public purpose is primarily one for the Legislature; and this Court will not interfere unless the determination by that body is clearly wrong. Poulnot v. Cantwell, 129 S. C. 171, 123 S. E. 651. We find in the case before us that the General Assembly has by the Act of May 8, 1933 (38 Stat. at Large, p. 411) expressly authorized a county to build a plant for the generation and distribution of electric current. This act has been amended twice since that time (938 Stat. at Large, p. 1306; 38 Stat. at Large, p. 1392). Another Act (38 Stat. at Large,

p. 299) as amended in 1934 (38 Stat. at Large, p. 1302) permitted counties to erect, maintain and operate electric light plants. It will, therefore, be seen that the Legislature has, at least four times during the past two years, found as a fact that the erection and operation of such a plant by a county is a proper public purpose. This finding, while not conclusive, is entitled to much weight."

We find in the Act setting up the Housing Authority adopted May 19, 1934, a declaration of public interest in the following language:

"Declaration of Public Interest. It is hereby declared as a matter of legislative determination that in order to promote and protect the health, safety, morals, and welfare of the public; it is necessary in the public interest to provide for the creation of public corporate bodies to be known as housing authorities, and to confer upon and vest in said housing authorities all powers necessary or appropriate in order that they may engage in low cost housing and slum clearance projects; and that the powers herein conferred upon the housing authorities including the power to acquire property to remove unsanitary or substandard conditions, to construct and operate housing accommodations and to borrow, expend, lend and repay moneys for the purpose herein set forth, are public objects essential to the public interest."

This finding by the General Assembly has been reaffirmed in numerous amendments to the Act passed at subsequent sessions of the General Assembly. Act of May 17, 1935, (39 Stat. 4240), Act of June 5, 1935, (39 Stat. 501), Act of April 17, 1937 (40 Stat. 267), Act of May 10, 1937 (40 Stat. 431), Act of May 10, 1937 (40 Stat. 1426), and Act of the most recent General Assembly ratified May 5, 1938, further amending the 1934 Act. In addition thereto we find similar public purposes declared in the Limited Dividend Housing Act of 1933 (38 Stat. 176).

Similar findings by the Congress of the United States are also entitled to great weight here. Thus we see that the Congress in creating the United States Housing Authority by its Act of September 1, 1937, declared in 42 U. S. C. A. 1401:

> "§1401. Declaration of Policy. It is hereby declared to be the policy of the United States to promote the general welfare of the nation by employing its funds and credit, as provided in this chapter, to assist the several States and their political subdivisions to alleviate present and recurrent unemployment and to remedy the unsafe and insanitary housing conditions and the acute shortage of decent, safe and sanitary dwellings for families of low income, in rural or urban communities, that are injurious to the health, safety, and morals of the citizens of the nation."

Twice prior to this time the Congress has also indicated the public character of housing by providing for Federal expenditures for this purpose in the Reconstruction Finance Corporation Act of 1932, 15 U. S. C. A. 601, and in Title II of the National Industrial Recovery Act, 15 U. S. C. A. 701 (1933).

The evidence taken before me does not overthrow these legislative findings, but on the contrary confirms their correctness.

In the City of Columbia, for instance, of 12,000 dwelling houses, some 4,000 are without inside toilets, some 5,200 without bath or shower facilities, some 4,200 without gas or electric lights, and some 2,400 in need of substantial repairs. Columbia's high death rate, twenty per thousand against a national average of eleven per thousand, may well be attributable in part to the housing conditions in the City. An examination of the juvenile delinquency in Columbia during the year 1937 shows that practically all of these cases come from bad housing areas. A similar check indicates that bad housing is a very material factor in our high infant mortality rate.

Experience in other parts of the country and in England indicate a very substantial improvement in health and in morals where sanitary housing has been provided for persons of low income.

University Terrace, a complete slum clearance and low-cost housing project in Columbia, is illustrative of the benefits that accrue to Columbia from projects of this nature. This project was built on property immediately adjacent to the University of South Carolina and to the colored High School of Columbia. Of the fifty-four dwelling units which previously occupied this block, only one contained a bath tub and only two inside toilets. It was an area which was a subject of considerable concern to the City Police Department, and a very unwholesome influence to the students of the High School immediately adjacent thereto.

This area was eliminated and dwelling units for both white and colored persons erected thereon. It has been in operation for some seven or eight months now, and not a single police case has been made in connection with the 74 negro families occupying the colored portion of this property.

The statistics of the Department of Labor show that in the corporate limits of the City of Columbia there are 2,500 white families with incomes of less than $1,000.00 a year, and 4,200 negro families with incomes of less than $1,000.00 a year. Statistics indicate that twenty to twenty-five per cent of a family's income is as much as should be spent for rent and utilities, which means that for a family with an income of $1,000.00 a year not over $20.00 per month for rent, water, heat and lights, and for those of smaller incomes correspondingly less.

Considering all of these matters, including the obvious need for low-cost housing, the apparent inability of private capital to supply such housing, and the satisfactory solution of the problem afforded by similar governmental programs of slum clearance and low-cost housing

here and elsewhere, we conclude that the slum clearance and low-cost housing project planned by the Columbia Housing Authority is an exercise of a proper governmental function for a valid public purpose.

Having reached this conclusion it follows that this property may be exempt in whole or in part from taxation under the provisions of Art. 10, Sect. 1. and Art. 10, Sect. 4 of the Constitution of 1895. This property is municipal property within the meaning of Sect. 4, it is also property used exclusively for public purposes within the meaning of that section. It therefore follows that the property of the Authority is exempt from taxation by the Consitution. The provisions of the Act of 1934 as amended by the Act of May 10, 1935 (40 Stat. 430, 440) providing for the exemption of this property from taxation constituted a confirmation by the legislature of the exemption of this property by the Constitution, and further provided for the exemption of this property from special assessment. It thus appears that the property is exempted from taxation and special assessment, and therefore the contract between the City of Columbia and the Columbia Housing Authority for the payment of $500.00 in lieu of taxes and special assessment, which contract is authorized by the Act of 1934, is a benefit to the taxpayers of the City of Columbia rather than a detriment and they cannot complain thereof.

Having reached the conclusion that the project is for a public purpose it follows that the Columbia Housing Authority may exercise the power of eminent domain if that power be necessary in acquiring property for slum clearance or low-cost housing, and because of the public purpose of this project it does not constitute a taking of property for private purposes within the prohibition of Section 17 of Art. 1 of the Constitution.

The other allegations of paragraph 8 of the complaint questioning the validity of the powers given to the Columbia Housing Authority because

the project is not for a public purpose must similarly be overruled.

The taxpayer also alleges that the bonds to be issued by the Columbia Housing Authority will constitute an increase of the bonded indebtedness of the City of Columbia in violation of Section 7, Art. 8 and Section 5 of Art. 10 of the Constitution. This position is obviously unsound in that Section 11 of the Act provides specifically that "no indebtedness of any nature of any Authority shall constitute a debt or obligation of a municipality or the state or any other subdivision or agency or instrumentality thereof." Those bonds, therefore are not to be computed in arriving at the limitations of the bonded indebtedness of the City of Columbia. Cathcart v. City of Columbia, 170 S. C. 372, 170 S. E. 435; Park v. Greenwood County, 174 S. C. 35, 176 S. E. 870; Roach v. City of Columbia, 172 S. C. 478, 174 S. E. 461; Clarke v. S. C. Public Service Authority, 177 S. C. 427, 181 S. E. 481.

The next question presented is the taxpayer's allegation of illegality in the donation of land, services or money to the Columbia Housing Authority by the City of Columbia. Since the purposes of the Authority are public the City has discretion to donate land, money or services for these purposes. Heasloop v. City of Charleston, 123 S. C. 272, 115 S. E. 596.

It is next charged in the complaint that the City of Columbia by its contract will attempt to bind the future exercise of the governmental powers with regard to fixing water rates, maintaining streets, etc. An examination of the contract will show that the City is merely obligating itself to furnish municipal services and facilities for these tenants of the same character as those furnished other tenants in the City of Columbia. A municipal corporation is so obligated and this provision in the contract is merely an acknowledgement of the existing law on this point. Since the property is for a public purpose and totally exempt from taxation under the provisions of the statute, the City and Housing Authority may agree on a payment in lieu of taxes, and it is

within the power of the City of Columbia to agree to such payment.

The proposed contract between the City of Columbia and the Columbia Housing Authority whereby the City will bind itself to demolish unsound and insanitary dwellings constructed by the Authority less the number of unsafe and insanitary units demolished by the Authority constitues merely an agreement on the part of the City to exercise a power which it already has in such a manner as to cooperate with the program of the Housing Authority. Any action taken by the City in fulfilment of this contract will be subject to all of the limitations to which such actions are subjected under the constitution and laws of the State; and this contract neither increases or decreases the protection afforded to citizens by those limitations. The contract does not constitute an attempt by the City to bind itself in its exercise of governmental functions. It is merely an agreement to cooperate in the use of those functions and as such is valid.

The final attack upon the validity of this project is based upon the theory that the United States Housing Authority has no power to obligate the federal government to make an annual contribution of $19,000.00, it being charged that the elimination of slums and providing of low-cost housing is not a proper function of the federal government.

Attention has been called elsewhere to the fact that the Congress on three separate occasions has passed Acts providing for the use of federal funds in assisting states and their political subdivisions in remedying insanitary housing conditions in both urban and rural communities. The declaration of policy in the present Act of the Congress has been quoted above and shows that Congress' appropriation is not merely for the purpose of remedying unsafe and insanitary housing conditions, but to also assist the states in alleviating the present and recurring unemployment. This Court will take judicial knowledge of the fact that

conditions throughout the nation are similar to those shown to exist in the City of Columbia, and that there are ample grounds to support the findings by Congress as to the existence of national unemployment and of housing conditions which are injurious to the health and morals of the nation. It is now clear that the national Congress has a right to make appropriations under the taxing clause not confined to those matters on which Congress is given the right to legislate. United States v. Butler, 297 U. S. 1. Following this decision are the Social Security cases of Steward Machine Co. v. Davis, 301 U. S. 548; Helvering v. Davis, 301 U. S. 619. As said in the Steward case by Mr. Justice Cardoza:

> "It is too late today for the argument to be heard with tolerance that in a crisis so extreme the use of the moneys of the nation to relieve the unemployed and their dependents is a use for any purpose narrower than the promotion of the general welfare."

The government's right to spend money for the relief of unemployment through states and their subdivisions is thus clearly established. See also the opinion of Judge Parker in Duke Power Co. v. Greenwood County, 91 F. (2d) 665.

Although the above cases deal with unemployment and old age pensions, the reasoning contained therein would apply equally well to the elimination of unsafe and insanitary dwelling units and the erection of low-rent dwellings for families of low income, which is just as essential to the national welfare as is the relief of unemployment.

Since the consent of the state is necessary in this matter no question of the invasion of the reserved powers of the state or interference with its functions is present.

If, therefore, the taxpayer can raise the question of the validity of federal expenditures it is clear the federal Congress has the right to provide for federal contributions in this vital public work, and it

is clear that under the Act of September 1, 1937, the Congress has authorized the United States Housing Authority to enter into contracts of this nature.

It might also be borne in mind that since there are some questions in the complaint as to the validity of the organization of the Columbia Housing Authority that the Legislature by its Act of May 10, 1937 (40 Stat. 1426) expressly validated the creation of housing authorities under the present Act. This action by the Legislature also renders academic any question as to delegation of power by the Legislature to the City Council and Mayor, even without the validating act, such position cannot be maintained in view of the cases of City of Greenville v. Foster, 101 S. C. 178, 85 S. E. 769, and Dillon Catfish Drainage Co. v. Bank of Dillon, 143 S. C. 178, 141 S. E. 274.

It follows, therefore, that the Acts of the Congress and of the Legislature of South Carolina are not in violation of any provision of either Constitution and that the actions of the City of Columbia and of the Columbia Housing Authority in the manners complained of in the complaint are legal in every particular.

From the record before the Court the conclusion is inescapable that bad housing conditions have an adverse effect on the health and morals of the City of Columbia, therefore, the elimination of these slum areas is a proper function of government, both city and state.

The views herein expressed are in accord with the rulings of the highest courts of the several states that have passed upon these matters. Wellman v. Powell (1928), 91 Cal. App. 1, 266 Pac. 1029; Simon v. O'Toole (1931), 108 N. J. L. 32, 155 A. 449; New York City Housing Authority v. Muller, (1926), 270 N. Y. 333, 1 N. E. (2d) 153; Spahn v. Stewart (Ky.), 103 S. W. (2d) 651; In Re: Opinions of the Justices, 179 So. (Ala.) 535.

It is, therefore

ORDERED AND ADJUDGED

That the prayer of injunction be denied and the complaint dismissed.

No. 7909.

STATE of MONTANA

In the Supreme Court, December Term, 1938.

L. F. Rutherford, for himself and on behalf of all other Taxpayers of the City of Great Falls, State of Montana,

Plaintiff,

- v -

The City of Great Falls, a municipal corporation, Julius J. Wuerthner, Mayor of the City of Great Falls; T. E. Hodges, V. Keith Ario, C. L. Burris, Joe Bauer, George Jaap, Matt Quilter, W. S. Anderson, Jhalmer C. Johnson, John E. Swanson, Joseph Brud, as Aldermen of said city and constituting the City Council of said city, T. Loye Ashton, as City Treasurer of said city, W. P. Harrison, as City Clerk of said city, and Great Falls Housing Authority, a body corporate and politic, and Fred A. Fligman, J. George Graham, Fred J. Martin, Frank E. Wilcococks and Leonard E. Taylor, as Commissioners of the Great Falls Housing Authority,

Defendants.

Submitted: January 4, 1939.

Decided: January 21, 1939.

Filed: January 21, 1939.

(Sgd) A. T. Porter

Clerk.

Mr. Justice Stewart delivered the Opinion of the Court.

This is an original suit by a taxpayer to enjoin the city of Great Falls and the Great Falls Housing Authority from proceeding further under the provisions of Chapters 138 and 140 of the Session Laws of 1935 (secs. 5309.1 to 5309.34, Rev. Codes.) Chapter 138 is known as the Housing Co-operation Law, and Chapter 140 the Housing Authorities Law. The complaint attacks the constitutionality of both Acts, as well as the proceedings already taken thereunder. Defendants have appeared by a joint general demurrer to the complaint.

The chapters in question are similar to those enacted in thirty or more states, Hawaii and Puerto Rico. All are aimed toward the promotion of low rent housing or slum clearance in cities and towns of specified sizes. Broadly stated, the two Acts, which for convenience will be discussed together as constituting the Housing Authority, provide:

That any city of the first or second class may set up an authority which shall be a public body, and a body corporate and politic, with power to investigate and study living and housing conditions in the city and to plan and carry out projects for the clearing, replanning and reconstruction of slum areas, and to provide safe and sanitary housing accommodations at reasonable rentals for persons of low income. It is empowered, under certain limitations, to issue and sell bonds which, however, shall not be a debt of the state nor of the city; and it may not in any manner pledge the credit of the state or city, or impose upon either any obligation.

The bonds are to be of two types. One is payable from the income and revenues of a housing project without the credit of the authority being pledged for payment; payment of the other type of bond has the pledge or credit of the authority and may be additionally secured by a pledge of its revenues or by a mortgage of property and revenues of

the authority. It is granted the power of eminent domain to be exercised as provided, and its property and securities are apparently exempted from the payment of taxes. The state, county, city or municipality, or any subdivision, is empowered to cooperate with the Housing Authority in essential ways, such as: To grant, sell or lease property; maintain parks, playgrounds, sewage, water and other facilities adjacent to or in connection with housing projects; provide suitable streets, sidewalks, alleys, etc., and to rezone and change the city map in conformity with housing projects.

The complaint sets forth numerous particulars in which the Housing Act allegedly contravenes certain provisions of our Constitution. In the main, each and all of the objections raised must inevitably turn upon the question whether the ultimate result sought to be obtained by the legislation constitutes a public use or purpose. The most important objections are as follows:

A. The Act unlawfully vests the power of eminent domain in the Housing Authority to acquire private property for purposes and uses which are private and not public.

B. It unconstitutionally purports to exempt the property and securities of the Authority from all taxation.

C. It empowers a city unconstitutionally to loan its credit and make donations.

D. It constitutes special or class legislation for the benefit of one class of persons to the exclusion of all others.

E. It fails sufficiently to define the class of persons (those of low income) permitted to occupy the housing accommodations, or to set up sufficient standards to guide the Housing Authority in the selection of tenants, and, therefore, unconstitutionally attempts to delegate legislative authority to the commission of the Housing Authority.

F. That the contract of cooperation entered into between the city

and the City Housing Authority is invalid and void.

It is only fair to say at the outset that all of the objections raised against the constitutionality of the Housing Law have been passed upon by the supreme courts of other jurisdictions with respect to similar legislation, and the legislation has been uniformly upheld. We do not assume to say that in each of those jurisdictions the constitutional provisions involved are exactly the same as ours, but a similarity in principle exists sufficient to give to those analogous cases controlling effect here. Likewise, we do not propose to go into detail in passing on the points raised because, at best, our decision would necessarily be but a repetition of what has already been ably said in the following decisions, on which we are content to rest this decision: Dornan v. Philadelphia Housing Authority, 331 Pa. 209, 200 Atl. 834; Spahn v. Stewart, 268 Ky. 97, 103 S. W. (2d) 651; Wells v. Housing Authority, 213 N. C. 744, 197 S. E. 693; State ex rel. Porterie v. Housing Authority of New Orleans, 190 La. __, 182 So. 725; New York Housing Authority v. Muller, 270 N. Y. 333, 1 N. E. (2d) 153, 105 A. L. R. 905; Marvin v. Housing Authority of Jacksonville, (Fla.), 183 So. 145; Williamson v. Housing Authority of Augusta, (Ga.), 199 S. E. 43; McNulty v. Owens, (S. C.), 199 S. E. 425; In re Opinion of the Justices, (Ala.), 179 So. 535.

In enacting the law the legislature made certain findings of fact upon the basis of which it determined and declared the necessity in the public interest of the provisions enacted, and that the objects thereof were "public uses and purposes for which public money may be spent and private property acquired." (Sec. 1, Chap. 138; sec. 2, Chap. 140.) It is obvious that the law was passed in the exercise of the sovereign police powers inherent in state governments. (State v. Safeway Stores, Inc., 106 Mont. 182, 76 Pac. (2d) 81.) It is equally clear from a reading of the findings and declarations of necessity set out in both

Acts that the legislature considered that it was enacting laws involving a public purpose. Legislation having for its purpose the eradication of slums and the substitution in place thereof of safe and sanitary dwellings is well within the definition of "public purpose" as defined in Green v. Frazier, 44 N. D. 395, 176 N. W. 11, affirmed by the United States Supreme Court in 253 U. S. 233, 40 Sup. Ct. 499, 64 L. Ed. 878, as follows: "A public purpose * * * has for its objective the promotion of the general welfare of all the inhabitants or residents, within a given political division, as, for example, a state, the sovereignty and sovereign powers of which are exercised to promote the public health, safety, morals, general welfare, security, prosperity, contentment, and equality before the law, of all the citizens of the state."

The public nature of slum clearance projects having been recognized and passed upon by the legislature, as was their right, it is not now our duty or prerogative to interfere with that legislative finding in the absence of a clear showing that the determination of that body was wrong. Their findings, while not conclusive, are entitled to much weight. (McNulty v. Owens, supra; Spahn v. Stewart, supra; New York City Housing Authority v. Muller, supra.) All of the cases heretofore cited have upheld similar housing authority laws as being for a public purpose, and demonstrate very conclusively the reasons for such conclusions. We are in accord with that view.

Having decided that the use to which the housing projects will be devoted _is_ _a_ _public_ _one_, it follows that the grant in the Housing Authorities Law of the right of eminent domain does not violate either Article III, section 14, or Article XV, section 9, of the state Constitution, assuming just compensation be made to owners. (Dornan v. Philadelphia Housing Authority, supra; McNulty v. Owens, supra; Williamson v. Housing Authority, supra; Marvin v. Housing Authority, supra; Spahn

v. Stewart, supra; New York City Housing Authority v. Muller, supra; State ex rel. Porterie v. Housing Authority, supra.)

By virtue of these same authorities where the question was raised, the conclusion followed that the public nature of the use to which the housing property was devoted justified its exemption from state and local taxation. The same is true here. Peculiarly enough, the property and securities of an authority are not expressly exempted from taxation in the Act itself, although such intention is announced in the title thereof. Whether this was inadvertently left out, or intentionally so, does not appear nor does it matter. Express exemption of housing properties and securities appears in the statutes of many of the states, and a few, as ours, make no express provision. However, we believe the matter is of no consequence. Article XII, section 2, of the Constitution, expressly exempts from taxation the property of the United States, the state, county, cities, towns, school districts, municipal corporations and public libraries, because such property is public property. The property and securities of a Housing Authority are essentially public property and, therefore, within the constitutional exemption.

On this point it is said in Dornan v. Philadelphia Housing Authority, supra: "In the absence of any statute to the contrary public property used for public purposes is exempt from taxation and from assessments for improvements and no express exemption law is needed * * *. The general exemption * * * is not only valid, but its statutory expression is unnecessary since it would have resulted from the public nature of the use of the housing projects." Further, as stated in Cruse v. Fischl, 55 Mont. 258, 175 Pac. 878, in speaking of Article XII, section 2: "There cannot be a difference of opinion concerning the meaning of the language employed in section 2, above. The authority to tax any property of the first class is denied the lawmakers absolutely.

The provision is mandatory in character, is self-executing and the legislation thereafter enacted declaring property of that class exempt added nothing to its force and effectiveness." (See, also, Wells v. Housing Authority, supra.)

There is no merit in the contention that the Act violates Article XIII of the Constitution, with respect to sections 1, 2, 4 or 6, concerning particular limitations with regard to the public indebtedness. Any possibility of contravention of these sections is foreclosed by the explicit language of the Act, wherein the following provision is made; "Neither the commissioners of the authority nor any person executing the bonds shall be liable personally on the bonds by reason of the issuance thereof.

"The bonds and other obligations of the authority (and such bonds and obligations shall so state on their face) shall not be a debt of any city or municipality located within its boundaries or of the state and neither the state nor any such city or municipality shall be liable thereon, nor in any event shall they be payable out of any funds or properties other than those of the authority. The bonds shall not constitute an indebtedness within the meaning of any constitutional or statutory provision of the laws of the state. Bonds may be issued under this Act notwithstanding any debt or other limitation prescribed by any statute." (Subd. (b), sec. 14, Chap. 140, Session Laws of 1935.)

The same contention was similarly dismissed in Dornan v. Philadelphia Housing Authority, supra; State ex rel. Porterie v. Housing Authority, supra; Marvin v. Housing Authority, supra; McNulty v. Owens, supra, and Williamson v. Housing Authority, supra.

As to the objection that the city cannot constitutionally loan its credit or make donations to the Housing Authority to cover the administrative expenses and overhead of the authority the first year and from time to time make other donations, we are not impressed. We agree with

what was said in State ex rel. Porterie v. Housing Authority, supra: "The primary purpose of housing authorities is to eradicate the slum menace. In doing so, they lighten the burden of cities in discharging the municipal duty of protecting all citizens indiscriminately against disease, crime and immorality. It is therefore perfectly clear that, when a city uses public funds for the establishment of a housing authority, whether the funds be used for organization expenses or in the purchase of a small percentage of the housing authority's bonds, the city is performing, indirectly through a public agency created by the state and sanctioned by its own governing authority, one of the primary functions of municipal government." (Compare, also, McNulty v. Owens, supra; Williamson v. Housing Authority, supra; State ex rel. Cryderman v. Wienrich, 54 Mont. 390, 170 Pac. 942, and Stanley v. Jeffries, 86 Mont. 114, 284 Pac. 134.)

The next contention urged by plaintiff is that the legislation is in violation of Article V. section 26, Constitution, which prohibits special or class legislation. Persons of low income are singled out for special treatment. That this is a valid classification seems too clear for argument. The matter of classification is primarily for the legislature, which enjoys a broad discretion in selecting a particular class for special consideration. The presumption is that it acted upon legitimate grounds of disctinction, if any such grounds existed. (See State v. Safeway Stores, Inc., supra.) Identical classification has been upheld as valid in State ex rel. Porterie v. Housing Authority, supra; Spahn v. Stewart, supra; Dornan v. Philadelphia Housing Authority, supra; Williamson v. Housing Authority, supra, and Housing Authority, v. Muller, supra.

Some point is made of the fact that no criterion definition or specific standard is set up by the Act to guide a housing commission in uniformly determining with certainty just what persons will come

within the term "persons of low income." The vesting of this power of determination with the Housing Commission, contends plaintiff, constitutes a delegation of legislative powers in contravention of Article V, section 36, of our Constitution. A contrary position was taken in State ex rel. Porterie v. Housing Authority, supra, wherein the court said flatly: "The right of a city to investigate and determine whether such conditions exist as warrant the organization of a housing authority and the right of the housing authority to determine the question as to what persons are to be considered those of low income as prescribed in the Act, are not legislative functions." This conclusion was based on the rule laid down in State v. Guidry, 142 La. 422, 76 So. 843, wherein it was said: "The authority of the legislature to delegate to the administrative boards and agencies of the state the power and authority of ascertaining and determining the facts upon which the laws are to be applied and enforced cannot be seriously disputed." (Compare State ex rel. Stewart v. District Court, 103 Mont. 487, 63 Pac. (2d) 141.) From this it also follows that the discretion vested in a housing commission to determine what is an unsanitary and unsafe building, and the discretion it must exercise in the performance and interpretation of the many other powers placed upon it by the legislature, may not be held vulnerable to the criticism that the provisions conferring such discretion carry a delegation of legislative power. (See, also Wells v. Housing Authority, supra.)

We are of the opinion that this is not a fatal weakness in the legislation for the further reason that express provision is made for an authority "to enter into such contracts, mortgages, trust indentures, leases or other agreements as the Federal Government may require including agreements that the Federal Government shall have the right to supervise and approve the construction, maintenance and operation of such housing project. It is the purpose and intent of this Act to

authorize every authority to do any and all things necessary to secure the financial aid and the cooperation of the Federal Government in the construction, maintenance and operation of any housing project which the authority is empowered by this Act to undertake." (Sec. 23, Chap. 140; sec. 6, Chap. 138.)

It is pertinent to observe in this connection that section 424, Title 40, U. S. C. A. provides that, "In the administration of any low-cost housing or slum-clearance project described in section 421 of this title, the Federal Emergency Administrator of Public Works shall fix the rentals." Section 1402, Title 42, Id., then provides certain definitions which must be considered in fixing the rents and selecting the tenants: "(1) The term 'low-rent housing' means decent, safe, and sanitary dwellings within the financial reach of families of low income, and developed and administered to promote serviceability, efficiency, economy, and stability, and embraces all necessary appurtenances thereto. The dwellings in low-rent housing as defined in this chapter shall be available solely for families whose net income at the time of admission does not exceed five times the rental (including the value or cost to them to heat, light, water, and cooking fuel) of the dwellings to be furnished such families, except that in the case of families with three or more minor dependents, such ratio shall not exceed six to one (2) The term 'families of low income' means families who are in the lowest income group and who cannot afford to pay enough to cause private enterprise in their locality or metropolitan area to build an adequate supply of decent, safe, and sanitary dwellings for their use." Many of the states have followed the 5 to 1 ratio as a criterion for tenant selection, and some have even more stringent requirements.

Section 1415, Title 42, U. S. C. A., also embraces certain provisions for the purpose of insuring that the low-rent character of housing projects will be preserved, which in substance are that in the loan

agreements entered into between the United States Housing Authority and a State Housing Authority, the former may insert any convenant, condition or provision it may deem necessary to insure the low-rent character of a given housing project.

It is significant that the housing authorities generally will be financed with funds chiefly supplied by the Federal Government. In fact the national Housing Program is the fore-runner and motivating force behind all the state Acts which have been passed, including our own, in order that proper machinery might be set up to enable cities and towns to take advantage of the federal program. It is part and parcel of the federal program of public works. (Sec. 402, Title 40, U. S. C. A.) In the instant case, the complaint alleges that 90% of the funds sought for Great Falls will, under contract with the Great Falls Housing Authority, be loaned by the United States, and that the United States Housing Authority will under agreement make further fixed annual contributions under certain conditions.

With all the restrictions and limitations placed upon the administration of the Federal Housing Authority, there would seem to be little doubt but what the term "persons of low income" will be uniformly determined throughout the various cities of the state according to the rental requirements set up by the Federal Act. At least such a presumption seems the only reasonable one where it is so obvious that the spirit of our law is intended so plainly to dovetail into the Federal Housing Act. (Compare State ex rel. Wilson v. State Board of Education, 102 Mont. 165, 56 Pac. (2d) 1079.) If, after the state Act goes into operation, some individual is unjustly discriminated against, he may at that time be heard to complain and in turn rebut the presumption we are willing to indulge in here. It must be remembered, as before noted, that the various authorities throughout the state will do "any and all things

necessary to aid and cooperate in the planning, construction, and operation of housing projects by the United States of America and by housing authorities."

Finally it is urged that the contract of cooperation entered into between the city and the Housing Authority is invalid and void. The gist of the contract is that the city agrees to eliminate unsafe and unsanitary dwellings in the city to an extent of at least equal to the number of new dwelling units to be erected by the Housing Authority, and to cooperate generally in the program of low-cost housing or slum clearance.

This same question was raised in McNulty v. Owens, supra, and the court there disposed of the contention in these words: "The proposed contract between the city of Columbia and the Columbia Housing Authority whereby the city will bind itself to demolish unsound and insanitary dwellings equal in number to the number of dwellings constructed by the Authority less the number of unsafe and insanitary units demolished by the Authority constitutes merely an agreement on the part of the city to exercise a power which it already has in such a manner as to cooperate with the program of the Housing Authority. Any action taken by the city in fulfilment of this contract will be subject to all of the limitations to which such actions are subjected under the Constitution and laws of the state; and this contract neither increases or decreases the protection afforded to citizens by those limitations. The contract does not constitute an attempt by the city to bind itself in its exercise of governmental functions. It is merely an agreement to cooperate in the use of those functions and as such is valid." To like effect see Marvin v. Housing Authority, supra.)

Counsel for plaintiff in his brief makes no attempt to criticize, distinguish or nullify the effect of the many Housing Authority decisions

(with the exception of one) cited by defendants and to which we here attach controlling significance. Instead, he urges that we adopt and follow the reasoning of the case of opinion of the Justices, 211 Mass. 524, 98 N. E. 611, 42 L. R. A. (n. s.) 21, decided in 1912. The statute there under consideration involved no provision for the clearance of slum areas, and possibly the unemployment problem was not as acute then as now. That case was relied upon by plaintiff in Dornan v. Philadelphia Housing Authority, supra, but was not followed by the court. We, likewise, are not disposed to follow the rule applied in that case. The scope and purpose of the present legislation contemplate the remedying of many evils. A large majority of these states have indicated their desire for this type of program, and the courts in which the respective Acts have been attacked have not faltered for an answer in upholding them. We prefer to follow the precedents laid down in those late and analogous cases.

The demurrer is sustained and the proceeding dismissed.

S. V. STEWART
Associate Justice.

We concur:

HOWARD A. JOHNSON
Chief Justice.

LEIF ERICKSON

ALBERT H. ANGSTMAN
Associate Justices.

C. B. ELWELL
District Judge, sitting in place of Mr. Justice Morris, absent on account of illness.

KNOXVILLE HOUSING AUTHORITY, INC.)
V.) Knox Equity
CITY OF KNOXVILLE ET AL)

OPINION

This bill was filed by Knoxville Housing Authority under the declaratory judgments statute (Code, §§ 8835 et seq.) seeking a judicial ascertainment of its rights in certain particulars. It is conceded that there is a real subsisting controversy and that one or more of the defendants is a proper contradictor with respect to each difference of parties presented and that the case is cognizable under the statutes above mentioned. The controversies involve questions of law only and defendants interpose demurrers. The chancellor overruled the demurrers in toto and made a declaration in all respects favorable to the complainant. Defendants have appealed.

Knoxville Housing Authority was brought out under chapter 20 of the Acts of the First Special Session of the General Assembly of 1935, as amended by chapter 234 of the Acts of 1937. Generally speaking, these statutes provide that cities of the State may set up and procure the incorporation of an Authority with power to take over slum areas in the cities, designated after investigation, and to clear said areas, replan and reconstruct same, and provide therein housing accommodations for persons of low income. Such an Authority is empowered to issue and sell bonds under certain limitations, is endowed with the power of eminent domain, and the property of the Authority and its bonds are exempted from all taxation. An Authority set up under the statutes is authorized to contract with the United States Housing Authority with respect to financial aid from the latter source, and it appears in the case before us that such a contract has been entered into between the local Authority and the Federal Authority.

Since the enactment of the Federal Housing Act of 1937, projects like the one here involved have been undertaken in many of the cities of the country and the general scheme has become so familiar as to relieve us of the necessity of an elaborate and detailed statement here.

The points of controversy between the complainant and defendants involve the validity of the two statutes mentioned as a whole and involve the validity of certain provisions of the statutes which perhaps might be elided if such provisions were held bad. We consider these points separately, but not in the order in which they were discussed in the defendants' brief.

It is said that the Act of 1935 is wholly unconstitutional in that it embraces, both in title and body, more than one subject in violation of Section 17 of Article II of the Constitution of Tennessee.

The title of the Act of 1935 is as follows:

"An Act to declare the necessity of creating public bodies corporate and politic to be known as Housing Authorities to engage in slum clearance and/or projects to provide dwelling accommodations for persons of low income; to provide for the creation of such Housing Authorities; to define the powers and duties of Housing Authorities and to provide for the exercise of such powers, including acquiring property by purchase, gift or eminent domain, and including borrowing money, issuing revenue and credit bonds and other obligations, and giving security therefor; to confer remedies on obligees of Housing Authorities; to provide that the bonds of the Authority shall be legal investment; and to declare that this Act take effect from the date of its passage."

The contention is that so much of the Act, foreshadowed by the caption, as undertakes to confer remedies on obligees of Housing Authorities is a subject distinct from that dealt with by the remainder of the statute. We think this criticism is not well founded. To enable it to

function, as an incident of its creation, a Housing Authority is given power to acquire property by purchase, to borrow money, and to issue bonds. A provision for the benefit of the Authority's creditors is entirely germane to the general purpose as a means of giving the organization a financial rating and making its securities marketable.

It is argued that the Act of 1935, as amended by the Act of 1937, violates Section 1 and 2 of Article II of the Constitution of the State in that it undertakes to delegate to Housing Authorities legislative power to determine the type, nature, and extent of the projects to be undertaken, and the power to determine certain other matters of detail without prescribing any definite standards to guide such Housing Authorities.

In the same connection it is said that this statute violates Section 1 and 2 of Article II of the Constitution in that it delegates to the council of the city the power to declare when a Housing Authority shall be created by finding whether unsanitary dwelling accommodations exist in a particular area, etc., without prescribing any definite standards to guide the city council in making such finding.

We think there is no merit in the two objections to the Acts just stated. The discretion committed to the Housing Authority in the one instance and to the city council in the other is no broader than the discretion committed to other fact-finding bodies in laws previously sustained by this court. Instances are a delegation of the power to such a body to select textbooks for the schools of the State; Leeper v. State, 103 Tenn. 500; a delegation of the power to such body to make exemptions or exceptions from the zoning ordinance of a city; Spencer-Sturla Co., v. City of Memphis, 155 Tenn. 70; delegation of the power to such a body to locate cemeteries; Mensi v. Walker, 160 Tenn. 468. Illustrations like this might be multiplied.

Another criticism is that the Act of 1935 is unconstitutional in that section 24 thereof provides that banks and trust companies are authorized to give security for deposits of the funds of a Housing Authority and that section 26 of the Act of 1935 provides that the bonds issued by a Housing Authority should be valid investments for all public bodies of the State, insurance companies, savings and loan associations, guardians, etc. It is said that these matters introduce other subjects into the Act of 1935 and are likewise beyond the scope of the caption of that Act in violation of Section 17 of Article II of the Constitution.

If these objections were well founded they were removed by section 4 of the Act of 1937, which repealed sections 24, 25, and 26 of the Act of 1935. A statute so framed as to be wholly or in part unconstitutional, but having a title expressing a constitutional object, can be cured by an amendment striking out the invalidating provisions. Clay v. Buchanan, 162 Tenn. 204.

It is very earnestly insisted on behalf of a property owner whose holdings are included in the area to be taken over by this Housing Authority that so much of the statutes before us as undertake to confer upon the Authority the power of eminent domain is invalid, in violation of Section 8 of Article I of the Constitution of Tennessee and the Fourteenth Amendment to the Constitution of the United States, for the reason that the purpose for which the property is to be taken is not a public purpose and the use to which the property is to be put is not a public use. This is a familiar objection to legislation of this character. As heretofore stated, taking advantage of the Federal Housing Act, legislation has been enacted in many States authorizing the creation of local Housing Authorities similar to complainant herein. The power of eminent domain has quite generally been conferred upon such organizations and uniformly sustained.

The courts reason that the primary object of all government is to foster the health, morals and safety of the people. That slum districts with their filthy, congested, weather-exposed living quarters are breeding places of disease, immorality and crime. The character of the houses in such districts make of them a fire hazard. The existence of such districts depresses the taxable value of neighboring property and deprives the State of revenue. The State is also put to great expense in combating disease, crime and conflagration originating in such localities. They menace not only the health, safety and morals of those living therein, but since disease, crime, immorality and fires can with difficulty be confined to points of origin, these districts are a menace to the whole community--indeed, a menace to the State.

Without dissent, therefore, the courts have reached the conclusion that slum clearance was a public purpose and that Housing Authorities serve a public use. Upholding statutes similar to the Acts before us granting the power of eminent domain to organizations like complainant herein, we refer to Matter of N. Y. City H. Authority v. Muller, 270 N. Y. 333; Dornan v. Philadelphia Housing Authority et al (Pa.), 200 Atl. 834; Wells v. Housing Authority (N. C.), 197 S. E. 693; Spahn v. Stewart, 268 Ky. 97. We have been supplied with opinions, not published at the time this case was submitted, of the Supreme Court of Florida in Marvin v. Housing Authority (July 27, 1938); of the Supreme Court of Louisiana in State v. Housing Authority (June 27, 1938); and of the Supreme Court of South Carolina in McNulty v. Owens, Mayor, et al (October 13, 1938), -- all to the same effect.

This court long since declared that "the term public use is a flexible one. It grows and expands with the growing needs of a more complex social order." Ryan v. Terminal Co., 102 Tenn. 116.

We have further said that "an enterprise does not lose the character of a public use because of the fact that its service may be limited by

circumstances to a comparatively small part of the public." Railroad v. Transportation Co., 128 Tenn. 283.

So that, although the contrary is true, if the benefits of this project were confined to the particular persons of low income for whom housing accommodations are provided, the project might be none the less a public use.

The novelty of a purpose does not render it the less a public purpose. The conception of a public purpose must necessarily broaden as the functions of government continue to expand. We are satisfied, therefore, that the purpose for which a Housing Authority is created is properly a public purpose and that such an entity serves a public use.

In addition to the assault made upon chapter 20 of the Acts of the First Extra Session of 1935 and the amendatory Act, chapter 234 of the Acts of 1937, defendants City of Knoxville and Knox County attack the validity of chapter 214 of the Acts of 1937. Chapter 214 provides that the property and bonds of Housing Authorities, created under the other statutes mentioned, shall be exempt from all State, county, and city taxation and assessments. This is the most serious question in the case but it seems to be closed against defendants' contentions by previous decisions of this court.

Section 29 of Article II of the Constitution of Tennessee provides "all property, real, personal or mixed, shall be taxed, but the Legislature may except such as may be held by the State, by counties, cities or towns, and used exclusively for public or corporation purposes."

We have seen that complainant Housing Authority holds its property for a public purpose. Is this holding of property a holding by the State, by a county, or by a city or town? We think the holding of the property involved is a holding by the City of Knoxville in the sense of our decisions.

Under the provisions of the Act of 1935, a Housing Authority thereby authorized is brought out by the city council of the particular city in which it is to be located after a public hearing. The mayor of the city appoints the commissioners to act as an Authority and this commission constitutes the body corporate and politic. These commissioners may be removed for sufficient cause by the mayor; the city attorney is required to render legal services to the Housing Authority, and the city has other powers of supervision and control.

It follows that while the Housing Authority is incorporated, it is still a mere agency or instrumentality of the city. The relation is altogether similar to the relation of the University of Tennessee to the State. The University is incorporated, but its board of trustees, apart from the Governor and certain State officers ex officio members, is appointed by the Governor subject to confirmation of the Senate. There are statutes of the State with reference to the control and management of the University. In considering the nature of property owned by the University, this court said:

"We are of the opinion that the State and the public represented by it must be considered as the owner of property held by the University, and that the sovereign character of the State's ownership is not changed by the creation of the corporation, as a convenient means through which the State exercises the strictly governmental function of educating the youth among its citizens." University of Tennessee v. Peoples Bank, 157 Tenn. 87.

We, therefore, conclude that the property involved is still to be regarded as city property, although as a matter of convenience the title rests in this subsidiary corporation.

The Housing Authority, although incorporated, being none the less an arm or agency of the City of Knoxville, both property held by the Authority and bonds issued by the Authority may be exempted from taxation

by the Legislature, as were the property and bonds of a school district. Greenwood v. Rickman, 145 Tenn. 361.

It is finally urged by the defendants that certain steps preliminary to the incorporation of a Housing District, prescribed by the statutes, were not taken by those in charge and that for this reason the Housing Authority was not legally incorporated and cannot legally function.

An examination of the exhibits sent up with this record indicates to us that all statutory formalities were substantially observed in procuring the charter of this organization. At any rate, a certificate of incorporation has issued to Knoxville Housing Authority from the office of the Secretary of State attested by that official. Nothing is here presented but a collateral attack on the charter of the corporation. The last paragraph of section 4 of the Act of 1935 provides that "the Authority shall be conclusively deemed to have been established in accordance with the provisions of this Act upon proof of the issuance of the aforesaid certificate by the Secretary of State." A certified copy of such certificate is contained in the record before us.

We find no error in the conclusions reached by the chancellor and his decree is affirmed.

Green, C. J.

OFFICE OF CLERK OF THE SUPREME COURT
For The Middle Division of The State of Tennessee

I, DAVID S. LANSDEN, Clerk of said Court, do hereby certify that the foregoing is a true, perfect, and complete copy of the Opinion of said Court, pronounced at its December term, 1938, in case of Knoxville Housing Authority against City of Knoxville as appears of record now on file in my office.

In Testimony Whereof, I have hereunto set my hand and affixed

(SEAL) the seal of the Court, at office in the Capitol at Nashville,

on this, the 23rd day of January 1939.

David S. Lansden Clerk

By ______________________ D. C.

UNITED STATES OF AMERICA

STATE OF ILLINOIS, SS.

At a Supreme Court, Begun and held in Springfield, on Tuesday, the sixth day of December, in the year of our Lord One Thousand Nine Hundred and Thirty-eight, within and for the State of Illinois.

Present--Chief Justice ELWYN R. SHAW

Justice CLYDE E. STONE	Justice WARREN H. ORR
Justice NORMAN L. JONES	Justice PAUL FARTHING
Justice FRANCIS S. WILSON	Justice WALTER T. GUNN

JOHN E. CASSIDY, Attorney General

WARREN C. MURRAY, Marshal

Attest: ADAM F. BLOCH, Clerk

BE IT REMEMBERED, that afterward, to-wit, on the 26th day of January, 1939, in vacation after the December 1938, term of the Court, the opinion of the Court was filed in said cause and entered of record in the words and figures following, to-wit:

Paul A. Krause, et al,
APPELLANTS,

vs.

No. 25005

Peoria Housing Authority, claiming to be a municipal corporation and a public body corporate and politic of the State of Illinois, et al,

APPELLEES,

Error to

Appeal from
Circuit Court Peoria

Docket No. 25005--Agenda 50--December, 1938.

Paul A. Krause et al. Appellants, v. The Peoria Housing Authority et al, Appellees.

Mr. Justice Farthing delivered the opinion of the court:

Appellants, taxpayers of the city of Peoria, seek an injunction restraining the Peoria Housing Authority and the city of Peoria from taking any action under certain contracts. These consist of loan and annual contributions contracts between the Peoria Housing Authority and the United States Housing Authority and a cooperation agreement between the Peoria Housing Authority and the city of Peoria. They were entered into pursuant to the provisions of the Illinois Housing Authorities act (Ill. Rev. Stat. 1937, chap. 67½) and the United States Housing act. (U.S.C.A. title 42, chap. 8). This injunction suit is brought on the theory that certain provisions of the Illinois Housing Authorities act under which these contracts were entered into are invalid under our State and Federal constitutions.

The purpose of the Illinois Housing Authorities act, as stated in section 2, (Laws of 1938, first sp. sess. p. 33) is the eradication of slums. It provides: "It is hereby declared as a matter of legislative determination that in order to promote and protect the health, safety, morals and welfare of the public, it is necessary in the public interest to provide for the creation of municipal corporations to be known as housing authorities, and to confer upon and vest in said housing authorities all powers necessary or appropriate in order that they may engage in low-rent housing and slum-clearance projects; and that the powers herein conferred upon the housing authorities, including the power to acquire property, to remove unsanitary or substandard conditions, to construct and operate housing accommodations, to regulate the maintenance of housing projects and to borrow, expend and repay moneys for the purposes herein set forth, are public objects and

governmental functions essential to the public interest." This act enables our State and municipalities to take advantage of the provisions of the Federal Housing act extending loans and grants of money to State and local housing authorities under certain conditions.

Substantially, the act provides that the governing body of any city, village or incorporated town having more than 25,000 inhabitants, or any county, may, by resolution, determine the need for a housing authority. This resolution, with the findings in support thereof, must be considered by the State Housing Board. If the State Housing Board determines that a need exists for such local housing authority it issues a certificate to the presiding officer of such city, village, incorporated town or county providing for the creation of such authority. The housing authority, consisting of five commissioners, is appointed by the presiding officer of the city, village, incorporated town or county with the approval of the State Housing Board. The local authority is authorized, in the furtherance of slum clearance, to acquire and manage property, to issue bonds which are not to be obligations of the city, county, or State, and to exercise the right of eminent domain. The persons entitled to direct benefit in the projects must belong to a designated low-income class. The investment of sinking, insurance, retirement, compensation, pension and trust funds in the bonds of housing authorities is authorized. Provision is made for cooperation between the municipality and the housing authority in vacating streets, zoning the development for residential purposes, lending money, loaning employees, etc.

The financial aid offered by the United States Housing Authority is in the form of loans and annual contributions. The loans are secured by the revenues of the projects and the annual contributions made for such projects by the Federal government. Funds for these

loans are made available out of proceeds from the sale of United States Housing Authority bonds which bonds are guaranteed as to principal and interest by the United States government. In addition to such loans, the United States Housing Authority is authorized to contract to pay the local authority annual contributions toward meeting part of the difference between financial charges on the project (including debt requirements) and the income, through rentals which the occupants of the project can afford to pay.

The loan contract provides that the United States Housing Authority shall purchase bonds of the Peoria Housing Authority in the principal amount of $2,559,000, but not to exceed ninety per cent of the actual development cost of the housing project. This contract is conditioned upon the exemption of the project from all State and local taxation, except for certain service charges, and is further conditioned upon the furnishing, to the project and its tenants, of the ordinary municipal services and facilities without cost or charge.

The annual contributions contract between the Peoria Housing Authority and the United States Housing Authority is also conditioned upon a local, annual contribution in the form of tax exemption, except for certain service charges. It is further conditioned on the execution of a contract between the Peoria Housing Authority and the city of Peoria, obligating the city to eliminate an equal number of unsafe and unsanitary dwelling units. By it the city agrees to furnish the project and its tenants the ordinary municipal services and facilities.

The cooperation agreement between the city and local housing authority obligates the city in accordance with the provisions of the aforesaid annual contributions contract, and requires it to employ its corporation counsel and other officials to assist in condemnation of property to be used in the project. By this contract it is agreed

that the city will not levy, impose or charge any tax against the project, but it provides for an annual service charge of five per cent of the shelter rentals of the project for the first ten years, and three per cent thereafter. This charge is to be paid to the city by the Peoria Housing Authority and the money is to be distributed among the several taxing bodies in proportion to their tax rates.

Appellants contend that the General Assembly has not authorized an exemption of the local authorities' property from taxation. Except as to property owned by the national government within the State, the exemption of property from taxation requires affirmative action by the General Assembly. (Constitution of 1870, art. 9, sec. 3; People v. University of Illinois, 328 Ill. 377; Glen Oak Cemetery Co. v. Board of Appeals, 358 id. 48.) While it is true that tax-exemption statutes are construed most strongly against the exemption, nevertheless, if a clear intention to exempt certain property appears, it must be given effect. Appellees claim that such clear intention is found in three statutory provisions enacted at a special session of the General Assembly in 1938, and in certain provisions of the Revenue act. Section 29 of the Illinois Housing Authorities act, (Laws of 1938, first sp. sess. p. 38; 67½ S.H.A. 27b;) added by amendment of 1938, reads as follows:

"With respect to any housing project of a housing authority, the housing authority shall, after such project has become occupied, either in whole or in part, file with the proper assessing authority on or before April 1 of each year, a statement of the aggregate shelter rentals of each such project collected during the preceding calendar year; and, unless a different amount has been agreed upon between the housing authority and the city, village, incorporated town or county for which the housing authority was created, five (5) per cent of such aggregate shelter rentals shall be charged and collected as a service charge

for the services and facilities to be furnished with respect to such project, in the manner provided by law for the assessment and collection of taxes, and the amount so collected shall be distributed to the several taxing bodies in such proportions that each taxing body will receive therefrom the same proportion as the tax rate of such taxing body bears to the total tax rate that would be levied against the project if it were not exempt from taxation. A city, village, incorporated town or county for which a housing authority has been created may agree with the housing authority, with respect to any housing projects, either separately or jointly or one or more of them, for the payment of a service charge in an amount greater or less than five (5) per cent of the aggregate annual shelter rentals of any project, upon the basis of shelter rentals or upon such other basis as may be agreed upon, but not exceeding the amount which would be payable in taxes thereon were the property not exempt, and, if such an agreement is made, the amount so agreed upon shall be collected and distributed in the manner above provided. Shelter rental shall mean the total rentals of a housing project as such project is defined in the twelfth subsection of section 2 of "An act for the assessment of property and for the levy and collection of taxes," approved March 30, 1872, as amended, exclusive of any charge for utilities and special services such as heat, water, electricity and gas. The records of each housing project shall be open to inspection by the proper assessing officers."

Section 5b of the Housing Cooperation act, (Laws of 1938, first sp. sess. p. 32; 67½ S.H.A. 32b;) added by amendment of 1938, reads as follows: "Any city, village, incorporated town or county for which a housing authority has been created may enter into such agreements with its respective housing authority as are authorized by section 29 of 'An act in relation to housing authorities,' approved March 19, 1934, as amended."

The sixth, seventh and twelfth paragraphs of section 2 of the Revenue act, as amended in 1938, the twelfth paragraph being added by such amendment, (Laws of 1938, first sp. sess. pp. 66, 67, 68,) provides as follows:

"Sec. 2. All property described in this section, to the extent herein limited, shall be exempt from taxation, that is to say:

"Sixth--* * * all property owned by any city or village located within the incorporated limits thereof, * * *

"Seventh--All property of institutions of public charity, * * *

"Twelfth--All land of housing authorities created under 'An act in relation to housing authorities,' approved March 19, 1934, as amended, title to which land has been or shall be acquired from the United States government or any agency or instrumentality thereof, and any buildings or improvements now or subsequently erected thereon, in so far as such land, buildings and improvements are used for low rent housing purposes, or as an incident thereto; but such land, buildings and improvements or portions thereof intended or used for stores or other commercial purposes shall not be exempt from taxation. Nothing herein shall be construed as exempting property of housing authorities or any part thereof from special assessments or special taxation for local improvements; and nothing herein contained shall be construed as limiting the power of any political subdivision of this State to sell or furnish a housing authority with water, electricity, gas or other services and facilities upon the same basis that such services and facilities may be rendered to others under similar circumstances."

Section 29 of the Housing Authorities act and section 5b of the Housing Cooperation act clearly indicate the intention that there be a general tax exemption of housing authorities, and that service charges shall be paid by them. If section 29 were construed as requiring the payment of a proportion of shelter rentals without tax exemption, this

would constitute an additional burden upon housing authorities' property, in violation of the constitution. It is an elementary rule that, if possible, statutes must be so construed as to avoid invalidity. (People v. Wilson Oil Co. 364 Ill. 406.) Although general exemption of housing authority property from taxation is not found in the twelfth paragraph of section 2 of the Revenue act, appellees contend that such exemption is created by the sixth and seventh paragraphs of that section. They claim that a housing authority is a public charity and, also, that its property is property owned by a "city or village." However, appellants contend that this construction of section 29 and the sixth and seventh paragraphs of section 2 of the Revenue act is prevented by the twelfth paragraph of section 2 of that act. If the twelfth paragraph of section 2 were construed as exclusive of any other exemptions it would be open to the objection of unconstitutionality on the ground that it embodied an arbitrary classification. On the other hand, if it is regarded merely as a restatement with reference to one group of projects of an existing provision of law exempting all projects, its constitutionality cannot be questioned on the ground of special legislation. As we have said the construction of a statute which renders it constitutional must be adopted if possible. Of course, such a construction will make the exemption feature of the twelfth paragraph of section 2 unnecessary. But it is not unusual to find duplication in legislation, and the duty to construe statutes so that they may be in accordance with our constitution overpowers this minor consideration.

To sustain the decree, appellees contend that a housing authority is an institution of public charity within the provisions of the seventh paragraph of section 2 of the Revenue act. For property to be exempt under that section it must be (1) owned by a charitable organization, and (2) used exclusively for charitable purposes. (People v. Rockford

Lodge No. 64, B. P. O. E. 348 Ill. 528.) There is no fixed rule by which it can be determined whether an organization is a charitable one. Each case must turn on its particular facts. (People v. Thomas Walters Chapter of D.A.R. 311 Ill. 304.) In Congregational Publishing Society v. Board of Review, 290 Ill. 108, we said that a charity, in a legal sense, is not confined to mere almsgiving or to the relief of poverty and distress, but has a wider signification and embraces the improvement and happiness of man. A charitable use, where neither law nor public policy forbids, may be applied to almost anything that tends to promote the well-doing and well-being of social man. Under the statutes creating the housing authorities no profit may be made from the rentals. (Ill. Rev. Stat. 1937, chap. 67½, pars. 24, 25.) The purpose of the projects is to do away with the menace of slums. While only families of low income receive direct benefit from the projects, all persons in the community will benefit indirectly. It is common knowledge that slum areas create fire hazards, increase the danger of epidemics and promote crime and juvenile delinquency. By lessening these evils all persons in the community are benefited. The Supreme Court of Georgia, in Williamson v. Housing Authority of Augusta, 199 S. E. (Ga.) 43, (1938), adopted the view that a housing authority is a charitable institution, and sustained a tax exemption under a provision in the constitution of that State exempting public charities from taxation. In People v. Young Men's Christian Ass'n, 365 Ill. 118, the defendant's charter was one issued while the 1848 constitution was in effect. In holding its personal property exempt from taxation we said: "Upon the state of facts shown by record it is clear that appellee is a charitable organization engaged in charitable work. Its primary object is charity--not the making of a profit. The rates charged for its rooms are not based, alone, on the cost of the service

rendered, but the object of appellee is to furnish wholesome living conditions to young men at a price they can afford to pay and thereby correct the social evils that surround men who would otherwise be compelled to live in cheap rooming houses, amid sordid environments. Appellee had the power to furnish living quarters for young men as it does, and it follows as a matter of course that it could furnish the incidental services necessary to the comfort of the lodgers."

The Peoria Housing Authority is a public charity whose property is to be devoted exclusively to a charitable purpose. For these reasons this tax exemption is valid.

Appellants contend that if the General Assembly has exempted the housing projects from taxation and authorized the acceptance of certain payments for services normally rendered to taxable property, then the vesting of power in any one taxing body to negotiate as to such payment and to bind other taxing bodies constitutes a special privilege, and is special legislation in violation of section 22 of article 4 of the State constitution. It will be noticed that under the provisions of the act giving the cities power to agree as to service charges, it is provided that "the amounts so collected shall be distributed to the several taxing bodies in such proportions that each taxing body will receive therefrom the same proportion as the tax rate of such taxing body bears to the total tax rate that would be levied against the project if it were not exempt from taxation." Thus no one taxing body is given any preference over any other. The city is made an agent by section 5b of the Housing Cooperation act to contract for all taxing bodies. It would be impossible for each of the taxing bodies to be appointed as agent for the purpose of contracting with the housing authority and hope to carry on the work of such authority efficiently and without discrimination. The city is primarily interested in the housing project and it is entirely reasonable to appoint it as agent to contract

for all taxing bodies. Therefore, the contention that this is special legislation cannot be sustained.

Appellants contend that taxes for these several corporate bodies may be levied only by their corporate authorities, (Constitution of 1870, art. 9, secs. 9, 10,) and that the city of Peoria has no power to levy such taxes. But the charge provided here is not a tax, the property being tax exempt.

Several of appellant's remaining contentions involve the question of whether the establishment of housing authorities is for a public purpose. While we have to some extent considered this problem in determining that their purpose is charitable, we deem it advisable to discuss further the public character of these authorities. By section 2 of the Illinois Housing Authorities act, quoted above, the legislature declares the purpose of housing authorities to be the eradication of slums and further declares this purpose to be a public one. It is not the function of this court to pass on the wisdom of the legislature's action. In Hagler v. Small, 307 Ill. 460, we said: "What is for the public good and what are public purposes are questions which the legislature must in the first instance decide. * * * The power of the State to expend public moneys for public purposes is not to be limited, alone, to the narrow lines of necessity, but the principles of wise statesmanship demand that those things which subserve the general well being of society and the happiness and prosperity of the people shall meet the consideration of the legislative body of the State, though they ofttimes call for the expenditure of public money. If it can be seen that the purpose sought to be obtained is a public one and contains the elements of public benefit, the question how much benefit is thereby derived by the public is one for the legislature and not the courts."

Cases from other jurisdictions, holding similar housing acts to be for a public purpose, include, Marvin v. Housing Authority of Jacksonville, 183 So. (Fla.) 145, (1938); Williamson v. Housing Authority of Augusta, supra; Spahn v. Stewart, 268 Ky. 97; State v. Housing Authority of New Orleans, 182 So. (La.) 725, (1938); New York Housing Authority v. Muller, 270 N. Y. 333; Wells v. Housing Authority of Wilmington, 213 N. C. 744; Dorman v. Philadelphia Housing Authority, 200 Atl. (Pa.) 834, (1938); McNulty v. Owens, 199 S. E. (S.C.) 425, (1938).

In holding the New York Housing act to be for a public purpose the Court of Appeals, in New York Housing Authority v. Muller, supra, said: "The public evils, social and economic, of such conditions are unquestioned and unquestionable. Slum areas are the breeding places of disease which take toll not only from denizens, but, by spread, from the inhabitants of the entire city and State. Juvenile delinquency, crime, and immorality are there born, find protection, and flourish. Enormous economic loss results directly from the necessary expenditure of public funds to maintain health and hospital services for afflicted slum dwellers and to war against crime and immorality. Indirectly there is an equally heavy capital loss and a diminishing return in taxes because of the areas blighted by the existence of the slums. Concededly, these are matters of State concern * * * since they vitally affect the health, safety, and welfare of the public."

We are of the opinion that the housing authorities provided for by the Illinois Housing Authorities act are created for a public purpose. This determination disposes of appellants' contentions that slum clearance and low-rent housing are not a public purpose for the expenditure of public funds or for the purpose of condemnation.

Appellants contend that the bonds to be issued by the Peoria Housing Authority are obligations of the city of Peoria and are subject to

section 12 of article 9 of the State constitution. We cannot agree with this contention. By the terms of the Illinois Housing Authorities act, bonds or obligations issued by such an authority are not "payable out of any funds or properties other than those of said authority," and they are explicitly declared not to constitute "an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction." (Ill. Rev. Stat. 1937, Chap. 67½, par. 11; 67½ S. H. A. 11.) While the provisions that the bonds are not to constitute an indebtedness within the meaning of any constitutional debt limitation is not binding on us, it is clear that the debt here created is not one coming within the constitutional limitation. We have held that obligations which are secured only against the revenues of specific revenue-producing properties are not within the constitutional restrictions on municipal indebtedness. (Maffit v. City of Decatur, 322 Ill. 82; Ward v. City of Chicago, 324 id. 167; Hairgrove v. City of Jacksonville, 366 id. 163.) The case before us is quite similar to Ward v. City of Chicago, supra, where we held that the issuance by the city of Chicago of certificates of indebtedness to pay for the extension and enlargement of the city's waterworks system did not violate the constitutional provision limiting the indebtedness of a municipality, since the certificates were to be paid solely from the revenues derived from the waterworks system and no property of the city was pledged to secure their payment. The obligation of the city to continue the performance of municipal functions, as provided in its contract with the housing authority, does not constitute the incurring of an indebtedness within the terms of the constitution. Statutory provisions similar to the one here in question have been upheld in other States as not authorizing obligations of a municipality within the meaning of similar constitutional provisions as to debt limitations.

Dorman v. Philadelphia Housing Authority, supra; Marvin v. Housing Authority of Jacksonville, supra; Wells v. Housing Authority of Wilmington, supra.

Appellants contend that the limitation of power to create a housing authority to cities having a population of over 25,000, and counties, constitutes an arbitrary classification. Classifications based on population have been upheld whenever there is a reasonable relation between the population and the objects and purposes of the act. (Mathews v. City of Chicago, 342 Ill. 120.) Admittedly the housing problem is more acute in large communities than in small ones. The provision with reference to counties shows that the legislature considered the slum-clearance problem one that is State-wide. By this provision the need for slum clearance in smaller cities is met. The classification of cities by population has a reasonable relation to the objects sought to be obtained. Neither it, nor the provision as to counties, is arbitrary.

Appellants say that the Illinois Housing Authorities act of 1934, under which the Peoria Housing Authority was created, was unconstitutional in that it delegated to the State Housing Board arbitrary power to create local housing authorities in violation of section 1 of article 4 of our constitution. While the legislature may delegate some discretion to administrative bodies, it must lay down standards to guide its exercise. (Chicagoland Agencies v. Palmer, 364 Ill. 13.) Assuming that the 1934 act did not prescribe adequate standards, an amendment passed in 1937 (Ill. Rev. Stat. 1937, chap. $67\frac{1}{2}$, par. 3; $67\frac{1}{2}$ S. H. A. 3;) remedies that objection so far as the present statute is concerned. By that amendment it is provided that before issuing a certificate the State Housing Board must find "(a) that unsanitary or unsafe inhabited dwelling accommodations exist in such city, village, incorporated town or county, or (b) that there is a shortage of safe or sanitary dwelling

accommodations in such city, village, incorporated town or county available to persons who lack the amount of income which is necessary (as determined by said board) to enable them without financial assistance to live in decent, safe and sanitary dwellings without overcrowding." The act then enumerates several factors which the board may take into consideration in determining whether dwelling accommodations are unsafe or unsanitary. This amendment, however, has no effect as to the Peoria Housing Authority which was created under the 1934 act. The objection with respect to that authority is obviated by an act passed in 1937 specifically validating the establishment of housing authorities under the 1934 act. (Ill. Rev. State. 1937, chap. 67½ pars. 36, 37.) By such validating act, the legislature itself created the Peoria Housing Authority, thus the objection of improper delegation of legislative authority cannot be made to that act. While the legislature cannot, by a curative act, destroy vested rights or impair the obligations of contracts, (People v. Prather, 343 Ill. 443,) no such consideration is present here. Prior to the validating act, the Peoria Housing Authority had taken no action other than investigative in character. Appellants had not obtained any vested rights which might be impaired by the retroactive application of the validating legislation. In such case the legislature may, by curative act, validate any proceeding which it had power to authorize in advance. (People v. Madison, 280 Ill. 96.) The General Assembly had power to create housing authorities by its own act. Such action would not be a violation of section 22 of Article 4 of our constitution. That section provides that the General Assembly shall not pass special or local laws in certain enumerated cases, and "in all other cases where a general law can be made applicable, no special law shall be enacted." The legislation here under question does not fall in any of the enumerated classes. We have held that the clause

requiring the enactment of general laws in all cases where such laws are applicable is a matter of legislative discretion, not subject to judicial review. Herschbach v. Kaskaskia Island Sanitary and Levee District, 265 Ill. 388; Scherzer v. Keller, 321 id. 324; Cermak v. Emmerson, 323 id. 561.) Therefore, the Peoria Housing Authority was given a valid legal status.

Appellants' contention that a special privilege is granted to those entitled to housing has already been answered by our determination that the Illinois Housing Authorities act is for a public purpose. The public purpose of the act lies in providing housing to persons of low-income class. Also, as we have said, the entire community will derive some benefit from the slum-clearance projects. All persons who come within the standards are eligible when there is sufficient shelter for them.

The contention that an arbitrary discretion in the choice of tenants is conferred on the local housing authority is without merit. Administrative discretion is not an unconstitutional delegation of the legislative function where, as here, adequate standards to guide the exercise of discretion are provided for by the statute. (Chicagoland Agencies v. Palmer, supra.) Reasonable standards are set by section 25 of the act. In Dorman v. Philadelphia Housing Authority, supra, and Williamson v. Housing Authority of Augusta, supra, it was held that similar statutes did not constitute a delegation of the legislative function.

Section 28 of the Illinois Housing Authorities act which authorizes the investment of certain funds in the bonds of housing authorities is valid. There is no arbitrary discrimination if such authorization is reasonable. The reasonableness lies in the fact that the preference extends only to bonds of projects receiving financial assistance from

the Federal government. Pursuant to the United States Housing act, the United States Housing Authority has contracted to make annual contributions up to three and three-fourths per cent of the actual development cost of the local housing project. The Peoria Housing Authority covenants that these annual contributions will be pledged only as security for the bonds. It is well settled that the General Assembly has the power to classify persons or objects, provided such classification has a reasonable basis. There must be a substantial difference which has a reasonable relation to the classification. (People v. Schenck, 257 Ill. 384.) The contractual obligation of the United States Housing Authority affords additional security for these bonds beyond what is ordinarily found. This constitutes a reasonable basis for the separate classification of them. The Illinois Housing Authorities act is a separate and complete statute, and although provision is made elsewhere in our statutes with reference to the investment of trust, insurance and other funds, it was not necessary to refer to such other statutory enactments.

We have no Federal restriction upon the city of Peoria. While it, of course, has no authority to bargain away its governmental powers to the national government, it may, as here, voluntarily contract with an agency of the national government within the authority granted it by the State. The agreement of the city commits it only to the performance of governmental functions clearly within its power. Ashton v. Cameron County Water Improvement District, 298 U. S. 513, and Arkansas-Missouri Power Co. v. City of Kennett, 78 Fed. (2) 911, cited by appellants, are not in point.

Appellants' final contention is that there is no power to enter into contracts under some of the legislation here in question, as it was not passed until subsequent to July 1, 1938, and contained no emergency

clauses. In support of this contention they cite Dunne v. County of Rock Island, 283, Ill. 628, which held that an act approved June 24, 1915 and effective July 1, 1915, had the effect of invalidating a contract entered into during the interval. That decision is against appellants' contention. It shows that an act which is approved but not in effect will be given legal force. The law pursuant to which these contracts were entered into is in existence; it is merely its operation which is postponed to a future date. (People v. Inglis, 161 Ill. 256.) Although no contracts may exempt the project from taxation before the statutes become effective on July 1, 1939, contracts may now be made to become operative on that date.

The decree of the circuit court is affirmed.

Decree affirmed,

THE STATE OF INDIANA,

IN THE SUPREME COURT, NOVEMBER TERM, 1938

On the 13th day of March, 1939, being the 91st Judicial day of said November Term, 1938.

No. 27105

HON. GEORGE L. TREMAIN, Chief Justice

HON. MICHAEL L. FANSLER,)
HON. CURTIS G. SHAKE,) Associate
HON. CURTIS W. ROLL,) Justices
HON. H. NATHAN SWAIM,)

IN THE CASE OF

Jesse Edwards, et al., etc.

vs.

Housing Authority of the City of Muncie, Indiana, et al, etc.

APPEALED FROM THE Delaware Superior COURT

Come the parties by their attorneys, and the Court being sufficiently advised in the premises, gives its opinion and judgment as follows, pronounced by

Fansler, J.

INDIANA

Edwards, et al. v. Housing Authority of the City of Muncie, Indiana, et al. Docket No. 27105, November Term, 19 N. E. 2nd 741, (March 13, 1939)

This is an action by the appellants, taxpayers and property owners of the City of Muncie and Delaware County, seeking to enjoin the Housing Authority of the City of Muncie and of Delaware County, and the officers of those municipalities, from operating under chapters 81, 207, and 209 of the Acts of 1937 (Acts 1937, pp. 433, 1034, 1058), upon the theory that those acts, constituting one body of law providing for slum clearance and public housing, are unconstitutional. The complaint seems to have been drawn for the purpose of questioning every provision of the acts in question and raising every conceivable constitutional objection thereto. Demurrers were sustained, and error is predicated upon the ruling.

The purposes of the acts in question, as indicated by their titles,are to provide for public bodies corporate, to be known as housing authorities, to undertake slum clearance and provide dwelling accommodations for persons of low income; to define their powers and duties, which include the acquisition of property, borrowing money, issuing bonds and other obligations; to authorize municipal corporations to give aid to the projects or similar agencies of the United States, by furnishing the usual public service facilities; and to authorize municipalities to contract with respect to the services and facilities to be provided; and requiring municipalities to make appropriations for the first year's administrative expenses of such authorities; and to exempt the property and bonds of such bodies corporate from taxation. It is declared in the acts: "(a) That there exists in the State housing conditions which constitute a menace to the health, safety, morals and

welfare of the residents of the State; (b) that these conditions necessitate excessive and disproportionate expenditures of public funds for crime prevention and punishment, public health and safety, fire and accident prevention, and other public services and facilities; (c) that the public interest requires the remedying of these conditions by the creation of housing authorities to undertake projects for slum clearance and for providing safe and sanitary dwelling accommodations for persons who lack sufficient income to enable them to live in decent, safe and sanitary dwellings without overcrowding; and (d) that such housing projects are for public uses and purposes and are governmental functions of State concern. As a matter of legislative determination, it is hereby found and declared that the property and bonds of a housing authority are property and bonds of a public corporation and of such character as to be exempt from taxation." (Chapter 81, section 1, p. 434.) And:

"(b) That there exists now and may exist at divers times in the future, conditions, due to floods, tornadoes, fires and other disasters beyond human control, which demand the re-planning and re-building of housing areas; (c) That these slum areas have not been cleared, nor can the shortage of safe and sanitary dwellings for persons of low income be relieved, through the ordinary operations of private enterprise, and that the construction of housing projects for persons of low income (as herein defined) would therefore not be competitive with ordinary operation of private enterprise; (d) That the clearance, re-planning and reconstruction of the areas in which insanitary or unsafe housing conditions exist and the providing of safe and sanitary dwelling accommodations for persons of low income are public uses and purposes for which public money may be spent and private property acquired; that it is in the public interest that work on such projects be commenced as soon as possible in

order to relieve unemployment which now constitutes an emergency; and the necessity in the public interest and welfare for the provisions hereinafter enacted, is hereby declared a matter of legislative determination." (Chapter 207, section 2, p. 1035.) And again: "It is hereby found and declared that the assistance herein provided for the remedying of the conditions set forth in the Housing Authorities Law constitutes a public use and purpose and an essential governmental function for which public moneys may be spent, and other aid given; that it is a proper public purpose for any other state public body to aid any housing authority operating within its boundaries or jurisdiction or any housing project located therein; as the state public body derives immediate benefits and advantages from such an authority or project; and that the provisions hereinafter enacted are necessary in the public interest." (Chapter 209, section 2, p. 1059.)

That the Legislature has power to protect public health, safety, morals, and welfare, and to exercise and to authorize the exercising of the power of taxation and eminent domain, and the raising and expenditure of public funds for such purposes, cannot be doubted. From time to time boards and commissions have been created and authorized and vested with authority to carry out projects for the protection of the public. The name given to such an instrumentality is of no significance, nor do we find any limit upon the character or number of public corporations or bodies politic, which the Legislature may authorize or create to accomplish such purposes. The facts found by the Legislature and recited in the enactments are not disputed, or their existence denied, and, since the conditions described must be assumed to exist and to affect the public welfare, it can scarcely be doubted that there is a public interest which justifies the undertaking of the projects authorized by

the enactments. The various housing authorities are not authorized to levy taxes, but municipalities are authorized to pay the first year's administrative expenses of these projects, and to furnish, and to contract to continue to furnish, certain facilities, such as streets, sanitary service, police and fire protection, street lighting, etc., which, if not necessary, are at least useful and convenient in accomplishing the principal purpose of the projects, which is to replace unsanitary, unsafe, and unhealthy dwellings which are a menace to the community. If such dwellings are a menace to the public, and their replacement necessary for the protection of the public, there is a sufficient basis for the expenditure of public funds. The amount, and manner, and method of the expenditure, unless it be shown to be entirely unreasonable, must be left to the legislative discretion.

There is no private profit involved in these enterprises. The properties to be acquired and constructed will belong to the public, and, since their purpose is a public one, the authorities may be legally invested with the power of eminent domain. There is ample precedent in the condemnation of property for drains, levees, hospitals, parks, highways, and other public purposes, to say nothing of the exercise of that power by private corporations where there is merely a public interest, as in the case of public utilities.

It is contended that the act is unconstitutional in that it attempts to grant to a class of citizens privileges or immunities which, upon the same terms, do not equally belong to all citizens; that, since the properties of the housing authorities are to be exempted from taxation, and are to be furnished for a rental sufficient only to pay costs without profit, the tax exemption inures directly to the benefit of the tenants, and that they as a class are receiving a benefit which is not enjoyed by

the public generally. But the same character of private benefit is found in connection with all public, charitable, or quasi-charitable enterprises. The right to secure the benefits of such projects for the public generally cannot be denied because incidental special benefits may accrue to some individuals.

It is contended that the property and bonds involved may not lawfully be exempted from taxation. This contention is based upon the theory that they are private enterprises, but they are not. They are as public in character as drainage, levee, sanitary, or highway projects, the property and bonds of which are properly exempted from taxation.

It is contended that the provision of the act, which authorizes housing authorities to issue bonds secured by mortgage upon the housing projects without limitation as to the value of the taxable property within the housing authority, contravenes section 1 of article 13 of the Constitution of Indiana, which prohibits political of municipal corporations from becoming indebted in an amount in excess of 2 per cent. of the taxable property within the corporation. By the provision of the act the bonds authorized do not become the debt of any city, town, or county, the state, or any political subdivision thereof. They are not payable out of taxes or any funds or properties other than the funds and properties of the housing authority issuing them. The situation seems identical with that involved in the case of Fox v. City of Bicknell et al. (1923), 193 Ind. 537, 540, 541, 141 N. E. 222, 223. In that case the City of Bicknell was proceeding under an act which authorized it to acquire a water plant and to mortgage the plant and pledge the funds derived from its operation to the payment of bonds. In holding that the issuing of such bonds does not violate the constitutional provision, the court said: "The city of Bicknell is not agreeing to pay any money

raised by taxation, and is not pledging or mortgaging any property that it already has; nor is it pledging income or revenues from any source except the plant. Hence, there is no legal or moral obligation on the part of the city to pay, its only duty being to manage the plant and take care of the funds." The purpose of the constitutional provision is to limit the public indebtedness, which would be a burden upon the public and payable out of taxes or by the sale of public property. The project here authorized contemplates a benefit to the public without any expenditure of public funds other than those incidental amounts involved in the first year's administrative expenses of the authority and in furnishing the usual highway, sanitary, and policing services to the territory within the authority. But such expenses are current expenses, payable currently. The property of the housing authority is acquired with the funds raised by the bond issue and other contributions without cost to the public, the state, or any body politic, and at most the bondholders may take back the property or income from the property which they have provided. The scheme in nowise involves an evasion of the spirit or purpose of the constitutional provision.

It is contended that the taking effect of the act is made to depend upon the declaration by the governing body of a city, town, or county that there is need for a housing authority to function in such city, town, or county, and that therefore the law is in contravention of section 25 of article 1 of the Constitution of Indiana, which provides that no law shall be passed, the taking effect of which shall depend upon any authority, except as provided in the Constitution. There is an emergency clause in the acts, by the terms of which they went into force immediately upon their passage, so that their taking effect was not made to depend upon the action of any other body. It

is true that the question of whether or not a particular community will avail itself of the provisions of the act is made to depend upon the determination of that question by local authority. But that is true under statutes authorizing the construction of highways or hospitals, and in many other cases which will readily suggest themselves. The law is not unconstitutional in this respect. Johnson et al. v. Board of Park Com'rs of Fort Wayne et al. (1930), 202 Ind. 282, 174, N. E. 91.

It is asserted that the act violates section 1 of article 4 of the Constitution of Indiana by delegating legislative authority to the housing authorities. Appellants say that the act does not sufficiently define the class of persons permitted to occupy the housing accommodations provided for, nor set up sufficient rules or standards in the selection of those entitled to live in the establishments to be constructed. It is provided that, in renting and selecting tenants, the authority "shall not accept any person as a tenant in any dwelling in a housing project if the persons who would occupy the dwelling have an aggregate annual income which equals or exceeds the amount which the authority determines (which determination shall be conclusive) to be necessary in order to enable such persons to secure safe, sanitary and uncongested dwelling accommodations within the area of operation of the authority and to provide an adequate standard of living for themselves (b) It may rent or lease the dwelling accommodations therein only at rentals within the financial reach of persons who lack the amount of income which it determines (pursuant to (a) of this section) to be necessary in order to obtain safe, sanitary and uncongested dwelling accommodations within the area of operation of the authority and to provide an adequate standard of living." The law is complete in itself. The Legislature cannot delegate the power to make a law, but it can make a law and delegate power

to determine the existence of some fact or situation upon which the law is intended to operate. The overseer of the poor selects the objects of the public bounty; local officers determine who shall be admitted to poorhouses and public hospitals. It is obvious that the Legislature could not itself select the tenants in these public projects, nor could it accomplish its purpose by fixing arbitrary income limits, since income requirements necessarily vary in different communities. Laws have been upheld which delegate power to adopt rules to prevent outbreaks in the spread of contagious diseases, and regulating minimum standards of food and drugs, to determine and fix reasonable rates to be charged by public utilities, to determine the price of milk, etc. We believe that the act provides sufficient standards and rules for the determination of the facts, and that it is not unconstitutional in this respect. See Blue v. Beach et al. (1900), 155 Ind. 121, 56 N. E. 89; Isenhour v. State (1901), 157 Ind. 517, 62 N. E. 40; Arnett, Controller, v. State ex rel. Donohue (1907), 168 Ind. 180, 80 N. E. 153; Southern Indiana Railway Co. et al. v. Railroad Commission of Indiana (1909), 172 Ind. 113, 87 N. E. 966; and Albert et al. v. Milk Control Board of Indiana (1936), 210 Ind. 283, 200 N. E. 688.

It is argued that the act is invalid in that it is an attempt on the part of both the General Assembly and the City of Muncie to surrender and alienate police and governmental power. It is conceded that many of the things which the city may contract to do under the act have to do with the exercise of police and governmental powers, but both the city and the housing authority are public corporations, to which the Legislature may delegate governmental and police power, and therefore, in making agreements, they simply exercise a power expressly delegated

to them as bodies politic. Neither the city nor the housing authority acquired any vested right to exercise governmental or police powers, and the Legislature may withdraw the power at any time, notwithstanding the contract. The City of Muncie merely agrees with the other body corporate that it will exercise certain powers, which it now holds with respect to certain matters, in cooperation with, and in aid of, the housing authority in the accomplishment of the public purpose contemplated by the legislation in question. It is as though a civil city agreed with the school city to furnish police, fire, and sanitary services in school or playground territory, or agreed with a park board to furnish such services in connection with public parks. No reason is seen why it may not be done if the Legislature authorizes it as it has done here; and no authority to the contrary is called to our attention.

Finally it is urged that subdivision (g) of section 3 of the Housing Authorities Act is invalid in that it attempts to vest two independent public corporations with the same or like powers within the same territory. The section provides that the housing authority of a city shall include such city and the area within five miles thereof, excluding territory within the boundaries of another city or town, and that the county territory shall include all of the county except that portion which lies within a city or town. The appellants rely upon certain statements in Taylor et al. v. City of Fort Wayne et al. (1874), 47 Ind. 274, and Strosser v. City of Fort Wayne (1885), 100 Ind. 443, to the effect that there cannot be two corporations for the same purpose with coextensive powers of government extending over the same district. It is true that such a situation could create intolerable confusion, but there is no such situation here. Normally the county government has jurisdiction outside of the area of incorporated

cities and towns in respect to certain matters, but the city has power to annex additional territory, which, for governmental purposes within the scope of the authority of the city, is removed from the jurisdiction of the county. It may have been the legislative intention that either a county or a city housing authority might assume jurisdiction to act in respect to territory outside of the area of cities, but adjacent thereto, and no doubt the authority which first undertakes to exercise jurisdiction acquires exclusive jurisdiction. See Taylor et al. v. City of Fort Wayne et al., supra.

The only question presented here is whether the housing authority of the City of Muncie can exercise the power of eminent domain for the purpose of acquiring property without the boundaries of the City for use in the construction of a housing project. Clearly the act was intended to confer such power, and no reason is seen why the Legislature might not do so. If conflicts of jurisdiction arise between county authorities and city authorities it will be time enough to decide the jurisdictional question when it is presented.

The determination of the Legislature that there is a public interest in the subject-matter of the act, and that housing projects are devoted to a public use and a public benefit, seems to have the support and the concurrence of the Congress of the United States, and, as appellees advise us, the Legislatures of 32 states which have enacted similar legislation. The constitutionality of such acts has been questioned in a number of states. No case holding a similar law, or any part of it, unconstitutional has been called to our attention. The last case sustaining such a law, to which our attention has been called, is Knoxville

Housing Authority, Inc., v. City of Knoxville et al., decided by the Supreme Court of Tennessee at its December Term, 1938. A number of cases in different jurisdictions, sustaining comparable laws, are collected in Williamson v. Housing Authority, etc., of Augusta, et al., decided by the Supreme Court of Georgia on September 21, 1938, in which the Georgia Housing Authority Law was upheld.

Judgment affirmed.

And afterwards, to wit: On the day of , 193 the Court, being fully advised, overruled the petition for rehearing heretofore filed herein by

It is, therefore, considered by the Court that the judgment of the Court below in the above entitled cause, be in all things

at the cost of the

all of which is ordered to be certified to said Court,

And it is further considered by the Court, that the

recover of the

the sum of for

costs and charges in this behalf expended.

THE STATE OF INDIANA

SUPREME COURT

I, PAUL STUMP, Clerk of the Supreme Court of the State of Indiana, certify the above and foregoing to be a true and complete copy of the opinion and judgment of said Court in the above entitled cause.

In WITNESS WHEREOF, I hereto set my hand and affix the seal of said Court, at the City of Indianapolis,

SEAL this 28th day of March 1939.

(Sgd) Paul Stump C.S.C.

THE BACKGROUND OF HOUSING OPINIONS

Any discussion of the decisions of the State Supreme Courts with regard to the creation, financing and administration of local housing Authorities brings to mind the well-nigh forgotten background of public housing in a number of landmarks from the pens of both Judges and pioneer writers. The classic, "How the Other Half Lives" by Jacob Riis, written in 1890, foreshadowed the works of Edith Elmer Wood. Her volume, "Housing of the Unskilled Wage-Earner", written in 1919, and "Recent Trends in American Housing", written in 1921, are historical documents in the field.

Early housing decisions relating to the enforcement of building codes, zoning restrictions, as well as the building of housing projects themselves are numerous. To mention a few: Green vs. Frazier, 253 U. S. 233, 40 Sup. Ct. 499 (1920) affirming 44 N. D. 395, 176 N. W. 11; State, ex. rel. Reclamation Bd. vs. Clausen, 110 Wash. 525, 188 Pac. 538 (1920): Simon vs. O'Toole, 108 N.J.L. 32, 155 At. 449 (1931): Veteran's Wel. Bd. vs. Jordan 189 Cal. 124, 208 Pac. 283 (1922): Willmon vs. Powell 91 Cal. App. 1, 266 Pac. 1029 (1928): Euclid vs. Amber Realty Co., 272 U. S. 365, 47 Sup. Ct. 114 (1926).

Books, magazine articles, and law review dissertations, in recent years, analyzing and reporting the changing aspects of public housing, are multitudinous.

The volume of printed materials concerning public housing becomes ponderous. To-day many chapters in the story of public housing have been written. To-morrow will see the story unfold and unfold, a story without end; a story that will live as long as democratic government exists with its chief bulwark, a strong and contented citizenry.