



1300 I STREET, SUITE 125  
P.O. BOX 944255  
SACRAMENTO, CA 94244-2550

Public: (916) 445-9555  
Telephone: (916) 322-6124  
Facsimile: (916) 324-8835  
E-Mail: Julia.Bilaver@doj.ca.gov

June 18, 2012

Victor J. James  
Acting General Counsel  
California Housing Finance Authority  
500 Capitol Mall, Suite 1400  
Sacramento, California 95814

RE: Request for Advice on the Jurisdictional Authority of a Local Housing Authority and an Out-of-State Housing Authority Under State Law

Dear Mr. James:

This letter responds to your request for legal advice on the jurisdictional authority of local and out-of-state housing authorities to operate statewide in California. Your questions relate to a Notice of Funding Availability issued by the United States Department of Housing and Urban Development ("HUD") for its Performance-Based Contract Administrator Program. In connection with this federal program, you have asked for advice on the following state law issues:

### **Discussion**

1. **Does a local housing authority have legal authority to operate throughout the entire state?**

Although there is no case or statute precisely on point, our review of the relevant authorities leads us to conclude that a local housing authority likely lacks the necessary legal authority to operate statewide.

Public housing is generally administered through local housing authorities pursuant to the Housing Authorities Law. (Health & Saf. Code, § 34200 et seq.)<sup>1</sup> The Housing Authorities Law creates in each county and city a local housing authority to provide safe and sanitary dwellings to persons of low income. (§§ 34201, 34240, 34242, 34312, 34315, 34322.) California has more than 80 local housing authorities operating in various areas throughout the state. The rights,

---

<sup>1</sup> All statutory references are to the Health and Safety Code unless otherwise provided.

duties, powers and privileges of a housing authority are vested in its board of commissioners, who are appointed by local county or city officials. (§§ 34275, 34290.)

We have previously advised that the operation of a housing authority is local in nature, being essentially limited to a defined geographic area. (64 Ops.Cal.Atty.Gen. 677 (1981).) Under the Housing Authorities Law, the area of operation of a housing authority is a defined term. The area of operation of a city housing authority is the city and the area within five miles of its territorial boundaries, except it does not include any area which lies within the territorial boundaries of another city. (§ 34208.) For a county housing authority, the area of operation is the unincorporated areas of the county, and any incorporated areas of the county upon consent of the incorporated area. (§ 34209.) The area of operation of an area housing authority is the combined possible areas of operation of the participating cities and counties. (§ 34247.) We believe these definitional provisions indicate that the Legislature intended to limit the jurisdictional powers of a local housing authority to the geographic area in which it operates.<sup>2</sup>

This conclusion is supported by case law. In *Torres v. Board of Commissioners of the Housing Authority of Tulare County* (1979) 89 Cal.App.3d 545 (*Torres*), the court determined that local housing authorities are not “state agencies” even though they administer matters of state concern because they are local in scope and character, restricted geographically in their area of operation, and do not have statewide power or jurisdiction. (*Torres, supra*, 89 Cal.App.3d at 550.)

2. Does a corporation or other instrumentality formed by a local housing authority have legal authority to exercise the statutory powers of a local housing authority throughout the entire state?

A local housing authority which lacks legal authority to operate statewide may not delegate authority it does not have to operate statewide to a corporation or other instrumentality.

As described above, we view the powers of a local housing authority as being limited to the geographic area in which it operates. The issue then is whether a corporation or other instrumentality formed by one or more local housing authorities may exercise power outside of the geographic area in which the creating authorities operate. In *Cabrillo Community College Dist. v. California Junior College Assoc.* (1975) 44 Cal.App.3d 367 (*Cabrillo College*), the court considered a similar issue. In that case, several community colleges created an association to regulate athletic competition among its member colleges. The association imposed a local residency requirement on student athletes. The new requirement, however, was at odds with state law, which does not require students to be residents of a community college district to gain admission. The court held that when the member colleges created the association, they delegated

---

<sup>2</sup> See *Housing Authority of City of Los Angeles v. City of Los Angeles* (1953) 40 Cal.2d 682, 687 (city housing authority did not exceed jurisdiction by developing a housing project on a site outside the city where city agreed to annex the site).

some of their power to the association and they could only delegate as much power as they themselves derive by statute. (*Cabrillo College, supra*, 44 Cal.App.3d at 372.) Thus, the association could not exercise greater power than its member colleges.

Applying *Cabrillo College*, a local housing authority cannot delegate more power than it has. If the legal authority of one or more local housing authorities is limited to a certain geographic area, then the legal authority of a corporation or instrumentality formed by the authorities is similarly limited.

3. Does a local housing authority have legal authority to accept a federal grant for a housing project that is outside its territorial jurisdiction?

A local housing authority which lacks legal authority to operate statewide may not accept a federal grant for a housing project that lies outside its defined area of operation.

A valid administrative action must be within the scope of authority conferred by statute. (*US Ecology, Inc. v. State of California* (2001) 92 Cal.App.4th 113, 131-132.) As a creature of statute, a local housing authority may not exceed the powers given to it by the Legislature. Section 34311, subdivision (d) authorizes local housing authorities to make and execute contracts necessary or convenient to the exercise of its powers. In addition, section 34315.3 authorizes local housing authorities to accept financial or other assistance from any public or private source for activities permitted by state law. More specifically, section 34327, subdivision (a) authorizes a local housing authority to borrow money or accept grants or other financial assistance from the federal government for any housing project that is “within its area of operation.” As described above, we view the powers of a local housing authority as being limited to the geographic area in which it operates. Thus, we believe the grants of power in the three statutes above are also limited and only apply to housing projects and programs within a local housing authority’s geographic area of operation.

4. Does an out-of-state housing authority have legal authority to exercise the powers of a housing authority in California?

An out of state housing authority lacks legal authority to exercise the powers of a housing authority in California.

As a sovereign state, California has a right to exercise its police power and the power of eminent domain to protect the safety, health, and welfare of its citizens. When enacting the Housing Authorities Law, the Legislature expressly declared that the shortage of safe and sanitary dwelling accommodations for persons of low income cause an increase in and spread of disease and crime and constitutes a menace to the health, safety, morals, and welfare of California residents. (§ 34201.) The Legislature has delegated some of its sovereign power to local housing authorities through the Housing Authorities Law to address these threats to public health and safety. A local housing authority may, among other things, acquire property, enter

into contracts, exercise the power of eminent domain, and issue bonds to finance its functions. (§ 34310 et seq.)

Like California, other states have passed laws creating housing authorities. But a housing authority created under the sovereign power of another state does not have authority to exercise that power in California. (See *Hall v. University of Nevada* (1972) 8 Cal.3d 522, 524.) Under our federal system of government, individual states may adopt distinct policies to protect their own residents and every state enjoys the same power. (*Sullivan v. Oracle Corp.* (2011) 51 Cal.4th 1191, 1205.) It is true that each state must give full faith and credit to the “public acts, records, and judicial proceedings” of every other state.” (U.S. Const., art. IV, § 1.) But a state does not have to substitute another state’s statutes in place of its own laws on a subject matter it is competent to govern. (*Baker by Thomas v. General Motors Corp.* (1998) 522 U.S. 222, 232.)

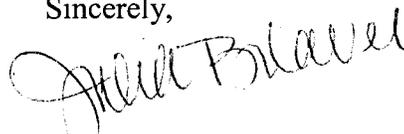
The Housing Authorities Law does not delegate powers to out-of-state housing authorities, and we are not aware of any other statutes that delegate the powers of a housing authority to out-of-state housing authorities. Thus, an out-of-state housing authority does not have legal authority to exercise the same powers as a housing authority in California.

5. Does a corporation formed by an out-of-state housing authority have legal authority to exercise the powers of a housing authority in California?

An out-of-state housing authority lacks legal authority to exercise the powers of a housing authority in California, and so would any corporations formed by it.

A corporation formed by an out-of-state housing authority can only exercise as much power as that out-of-state housing authority. (See *Cabrillo College, supra*, 44 Cal.App.3d at 372.) Because state law does not delegate any sovereign power to out-of-state housing authorities, a corporation formed by an out-of-state housing authority would also lack legal authority to exercise the powers of a local housing authority in California.

Sincerely,



JULIA A. BILAVER  
Deputy Attorney General