



COMMONWEALTH OF PENNSYLVANIA  
OFFICE OF ATTORNEY GENERAL

LINDA L. KELLY  
ATTORNEY GENERAL

April 19, 2012

15th Floor, Strawberry Square  
Harrisburg, PA 17120  
(717) 783-1111

Mr. Kerry E. Hickman, Acting Director  
Office of Housing Assistance and Contract Administration Oversight  
Multifamily Housing Program  
U.S. Department of Housing and Urban Development  
451 Seventh Street SW, Room 6151  
Washington, DC 20410

**Re: Pennsylvania Law - Statewide Housing Authority and Administration of  
Project-based Contracts for HUD Section 8 Rental Subsidies**

Dear Mr. Hickman:

Please be advised that the Pennsylvania Housing Finance Agency (PHFA) has requested that our office review Pennsylvania law and provide your office with our conclusions in regard to the standing of PHFA as the exclusive state-wide public housing agency within the Commonwealth of Pennsylvania.

Specifically, we have reviewed this office's 1977 Opinion (the "1977 Opinion") as to the Pennsylvania Housing Finance Agency's status as a public housing agency. It is our opinion that the 1977 Opinion remains valid for the reasons set forth herein.

We have further reviewed whether the Pennsylvania Housing Finance Agency is the only agency with the exclusive authority to administer a statewide Project-Based Section 8 contract. The Pennsylvania Housing Finance Agency is the only entity, within the Commonwealth of Pennsylvania, with the exclusive authority to administer a statewide Project-Based Section 8 contract.

In addition, we have reviewed whether an out-of-state entity may serve as a public housing authority in the Commonwealth of Pennsylvania. It is our belief, and you are advised, that an out-of-state entity is not enabled by state law to serve as a "public housing authority" under Pennsylvania law.

In our 1977 Opinion, we determined that PHFA is a public housing agency pursuant to the Housing Act of 1937, 42 U.S.C. § 1437a(6) (the "Housing Act").

The Pennsylvania Housing Finance Agency ("PHFA") is a public corporation and government instrumentality of the Commonwealth of Pennsylvania existing pursuant to the provisions of the above-cited Housing Finance Agency Law, Act of Dec. 3, 1959, P.L.1688, No. 621, as amended (35 P.S. Section 1680.101 *et seq.*) (the "Housing Finance Agency Law"). PHFA was created in 1959, and began its corporate existence after passage of Act 5 of 1972. PHFA exists, *inter alia*, to address public health and safety issues through the operation and administration of specialized programs for the financing of both single family and residential rental housing for persons and families of low and moderate income. There has been no derogation of the power of authority of PHFA by legislation, by regulation or by judicial action, since the issuance of our original Opinion; therefore, PHFA maintains the requisite power and authority pursuant to state law to qualify as a public housing agency. The 1977 Opinion remains valid, based upon the Housing Act and the Housing Finance Agency Law.

We note that the Housing Act has been amended to expand the scope of powers. We have reviewed the amendments that have occurred since the issuance of the 1977 Opinion, and have reviewed the Opinion of Chief Counsel for the Pennsylvania Housing Finance Agency. We concur that PHFA has the powers set forth within the meaning of section 3(b)(6)(A) under Pennsylvania law. Further, we concur that the jurisdiction of the Pennsylvania Housing Finance Agency encompasses the entire Commonwealth.

Local housing authorities in the Commonwealth of Pennsylvania are also creatures of state law. The powers and operations of these entities is set forth in 35 P.S. §§ 1541 *et seq.* (1937, May 28, P.L. § 1 *et seq.*, referred to as the "Housing Authorities Law"). After a thorough examination of the Housing Finance Agency Law, the Housing Act and the Housing Authorities Law, we have concluded that a local housing authority's jurisdiction is limited to its field of operation<sup>1</sup>.

In order for a "public housing agency" to be "authorized to engage in or assist in the development or operation of public housing" it must satisfy Pennsylvania's statutory requirements. In the Commonwealth, the enabling legislation that creates local housing authorities provides, in pertinent part, that a "housing authority" is "a public body and a body corporate and politic" and one may be established for each city and one for each county within Pennsylvania. (35 P.S. § 1544.) A housing authority is not able to transact business or "become operative" until it has satisfied the statutory requirements. The housing authority law specifically limits the authority of a local housing entity to act within its territorial boundaries because...."The governing body of any city or county may find and declare by proper resolution that there is need for an Authority to function within the territorial limits of said city or county." 35 P.S. § 1544 (b).

A housing authority may only be formed if the governing body of any city or county in Pennsylvania or the Governor of Pennsylvania determines that there is such a need for a housing authority. No more than one housing authority for each city and county may be established. Following the declaration of a need for a housing authority, the governing body or the Governor shall

---

<sup>1</sup> Section 1543(g) defines "Field of Operation", in pertinent part, as-"The area within the territorial boundaries of the city of or county for which the particular housing authority is created..." 35 P.S. 1543(g).

file a certificate with the Department of State. The certificate "shall be conclusive proof" that the housing authority was "properly established." See 35 P.S. § 1544.

The Pennsylvania General Assembly's creation of PHFA evidences that it was intended to serve as the sole housing authority with statewide jurisdiction. In 1973, in response to a constitutional challenge to PHFA's existence, the Supreme Court of Pennsylvania determined that PHFA is "a state-wide government instrumentality." *Johnson v. PHFA*, 453 Pa. 329, 309 A.2d 528 (1973 Pa. Lexis 681). The authority of a local housing authority is limited to the city or county it was created to serve. PHFA does not share the same restrictions. PHFA's enabling statute does not limit its authority to the city and county of its incorporation.

PHFA's mission is to help alleviate the hardships "which results from insufficient production of private homes and of rental housing for persons and families of low and moderate income." 35 P.S. § 1680.102. The General Assembly bestowed upon PHFA broad powers to "*promote the health, safety and welfare*" of the citizens of the Commonwealth. These powers include the authority to act throughout the state, and these powers include all things necessary to administer the Project-Based Section 8 contract throughout the Commonwealth. It is our opinion, and you are advised, that PHFA is the only entity with the power to serve as a statewide public housing authority.

Once a housing authority is established, it is vested with substantial powers and responsibilities. Most notably, it is charged with promoting the health and welfare of its residents. A housing authority may also cooperate with and act as an agent of the Federal Government for the public purposes related to the acquisition, construction, operation or management of a housing project, *see* 35 P.S. § 1544(g), to acquire property by eminent domain, *see* 35 P.S. § 1544(n), make recommendations about a city or municipalities plan within its jurisdiction, *see* 35 P.S. § 1544(c). Certain housing authorities are also able to appoint police officers, *see* 35 P.S. § 1544(g). Furthermore, Pennsylvania courts have recognized housing authorities as Commonwealth agencies for purposes of sovereign immunity. *See, Crosby v. Kotch*, 135 Pa. Commw. 470, 580 A. 2d 1191 (Pa. Cmwlth. 1990) (holding that a housing authority was a Commonwealth agency rather than a local agency).

In sum, Pennsylvania's Housing Authority Law provides "[e]ach Authority shall transact no business or otherwise become operative until and unless" they have been properly established by the jurisdiction that they serve. Pennsylvania courts have recognized a housing authority to be a Commonwealth agency, for purposes of sovereign immunity. By law, Pennsylvania's housing authorities are vested with substantial powers and responsibilities. Taken together, these factors do not support recognition of an out-of-state entity as a housing authority within the Commonwealth of Pennsylvania.

It is axiomatic that an out-of-state entity cannot lawfully function as a housing authority within the Commonwealth. A housing authority may only be formed if the governing body of any city or county in Pennsylvania or the Governor of Pennsylvania determines that there is such a need for a housing authority. No more than one housing authority for each city and county may be established. Following the declaration of a need for a housing authority, the governing body or the Governor shall file a certificate with the Department of State, and the certificate "shall be conclusive proof" that the

Mr. Kerry E. Hickman  
Page 4

April 19, 2012

housing authority was "properly established." See 35 P.S. § 1544. An out-of-state agency seeking to serve as the administrator for Pennsylvania cannot be considered a "public housing agency" under the Housing Act, since it cannot be a legally recognized housing authority within the Commonwealth of Pennsylvania.

In conclusion, it is our opinion that (1) the Pennsylvania Housing Finance Agency remains a public housing agency as evidenced by our October 12, 1977 opinion; thus, it is able to administer the Project-Based Section 8 contract; (2) it is the only housing authority, in Pennsylvania, with state-wide jurisdiction; and (3) an out-of-state entity is not a "housing authority" of the Commonwealth.

Sincerely yours,



Robert A. Mulle  
Chief Deputy Attorney General  
Office of Civil Law

RAM:mlm  
SR-38310-RJ6S