



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

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June 7, 2012

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Rhode Island Housing and Mortgage Finance Corporation
44 Washington Street
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Re: Advisory Opinion – Authority to Act as Public Housing Authority in the State of Rhode Island

Dear Mr. Milito:

I am writing in response to your request on behalf of Rhode Island Housing and Mortgage Finance Corporation (“Rhode Island Housing”) for an opinion from the Attorney General on the questions of 1) whether Rhode Island Housing is authorized to serve as the Performance-Based Contract Administrator (“PBCA”) for the State of Rhode Island, and 2) whether an entity not formed pursuant to Chapter 25 of Title 45 (“City Housing Authorities”) or Chapter 26 of Title 45 (“Town Housing Authorities”) constitutes a “public housing authority” under Rhode Island law.

For the reasons set forth below it is my opinion that 1) Rhode Island Housing is authorized to serve as a PBCA for the State of Rhode Island, and 2) any other entity not formed in accordance with Chapter 25 or Chapter 26 of Title 45 of the General Laws does not constitute, and is not authorized to act as, a “public housing authority” under Rhode Island law.

In reaching these opinions I have had the opportunity to review, among other materials, the PBCA Invitation, and the United States Housing Act of 1937 (“1937 Act” found at 42 U.S.C. 1437 et seq.). I have also specifically reviewed Section 2.2 of the PBCA invitation, entitled, “Statutory Definition of ‘Public Housing Agency’ and Related Statutory Definitions.”

A. Rhode Island Housing is Authorized to Act as a “Public Housing Authority”

It is my understanding that HUD may only enter into a Performance Based Annual Contributions Contract (“ACC”) with a legal entity that qualifies as a “Public Housing Authority” under the 1937 Act. Within that act, a public housing authority is defined as a, “State, county,

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municipality or other governmental entity or public body (or instrumentality thereof) which is authorized to engage in or assist in the development of public housing." 42 U.S.C. 1437a(b)(6).

The Rhode Island Housing and Mortgage Finance Corporation was established by Chapter 262 of the Public Laws of 1973, and is currently codified at Chapter 55 of Title 42 of the General Laws of Rhode Island. Shortly after its enactment, the Rhode Island Supreme Court opined confirming the public purpose of Rhode Island Housing in a case entitled, Opinion to the Governor, 112 R.I. 151, 308 A.2d 809 (1973).

The legislation established Rhode Island Housing as a public corporation of the state, having a separate and distinct legal existence from the state but "exercising public and essential governmental functions" to carry out the act. Section 42-55-4, General Laws of Rhode Island, 1956, as amended. The exercise of those functions, "shall be deemed and held to be the performance of an essential governmental function. Id.

Although the act establishing Rhode Island Housing does not explicitly mention "public housing," the broad definition of "housing development" within the act, found at Section 42-55-3 of the General Laws of Rhode Island, is consistent with and encompasses development that is considered "public housing" under the 1937 Act.

In addition, the act specifically grants to Rhode Island Housing the power to carry out functions that are regularly conducted by public housing authorities. Specifically, the act provides that Rhode Island Housing shall have the power "[t]o administer and manage Section 8 tenant based certificate programs and Section 8 rental voucher programs in those municipalities that do not have a local housing authority and in those municipalities who local housing authority elects to contract with Rhode Island Housing Mortgage and Financing Corporation." Section 42-55-5(35), General Laws of Rhode Island, 1956, as amended.

For the foregoing reasons, it is my opinion that Rhode Island Housing and Mortgage Finance Corporation qualifies as a "public housing authority" within the meaning of 42 U.S.C. 1437a(b)(6) with authority to operate throughout the State of Rhode Island.

B. Entities Not Created Pursuant to Chapter 25 or Chapter 26 of Title 45 of the General Laws Are Not "Public Housing Authorities" under Rhode Island Law

It is my understanding that the Annual Contributions Contract to be awarded in this instance may only be awarded to a "public housing agency" pursuant to 42 U.S.C. 1437f(b)(1) that is authorized to act as a public housing agency throughout the state in accordance with the laws of the state. The PBCA invitation notes at page 6, "[a] public housing agency is a creature of state law."

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Rhode Island law is quite specific with regard to what constitutes a "public housing agency." The General Laws of Rhode Island address "City Housing Authorities" in Chapter 25 of Title 45, and "Town Housing Authorities" in Chapter 26 of the same title. Within these chapters, an "authority" or "housing authority" is a specifically defined entity, defined as "a public body and a body corporate and politic, organized in accordance with the provisions of chapters 25 and 26 of this title for the purposes, with the powers, and subject to the restrictions established in chapters 25 and 26 of this title."

The Rhode Island Supreme Court has affirmed the public purpose of a housing authority as early as 1953, when, in the case of State ex re. Costello v. Powers, 80 R.I. 390, 97 A.2d 584 (1953), the Court stated:

"It appears that the housing authority of the city of Pawtucket when set up in accordance with the provisions of G.L.1938, chap. 344, § 4, 'shall constitute a public body and a body corporate and politic' and be issued a certificate of incorporation. Such body corporate is made up of five commissioners, three of whom constitute a quorum. No commissioner individually has any power to bind the housing authority. Its acts are those of the body corporate. The powers of such housing authority in providing in the public interest safe and sanitary dwelling accommodations for persons of low income include among other things authority to borrow money from the federal government and to enter into contracts with it in aid of the purposes of the housing authority. It also exercises some of its powers as a representative of the city government and other powers as an agent of the federal government."

In the case of Parent v. Woonsocket Housing Authority, 87 R.I. 444, 143 A.2d 146 (1958), which concerned an employment contract which had allegedly been breached by the defendant Housing Authority, the Supreme Court stated:

"However, the services which these authorities render are impressed with a public character to such an extent that we think it is a matter of public policy that they be bound in some particulars by the rules which govern the activities of municipal corporations and departments thereof. The public character of such authorities was recognized in Opinion of the Justices, 322 Mass. 745, 751, 78 N.E.2d 197, 201, where the court stated: 'But the housing authorities are not corporations 'privately owned and managed.' On the contrary, they are publicly owned and managed.' In State ex rel. Costello v. Powers, 80 R.I. 390, at page 396, 97 A.2d 584, 586, this court in referring to the character of the Pawtucket housing authority said: 'It also exercises some of its powers as a representative of the city government and other powers as an agent of the federal government.'

More recently, the Supreme Court again considered the nature of a housing authority under Rhode Island law when reviewing an eviction action brought by the Woonsocket Housing

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Authority in the case of Housing Authority of the City of Woonsocket v. Fetzik, 110 R.I. 26, 289 A.2d 658 (1972). The Court noted:

"...a housing authority is one of a large class of corporations created by the government to undertake public enterprises in which the public interests are involved to such an extent as to justify conferring upon such corporations important governmental privileges and powers, such as eminent domain, but which are not created for political purposes and which are not instruments of the government created for its own uses or subject to its direct control.

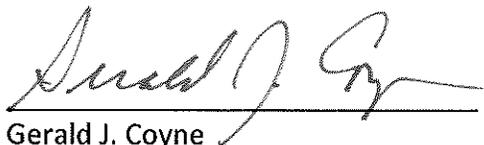
A housing authority exercises some of its powers as a representative of the city government and other powers as an agent of the federal government, State ex rel. Costello v. Powers, 80 R.I. 390, 97 A.2d 584 (1953), and, as we pointed out in Parent v. Woonsocket Housing Authority, supra, a housing authority has a dual nature which partakes of a public as well as a private character."

For the foregoing reasons, it is my opinion that an entity not created pursuant to Chapter 25 or Chapter 26 of Title 45 of the General Laws, does not qualify as a "public housing authority" under Rhode Island Law. The term "public housing authority" has a specific statutory meaning under Rhode Island law that precludes its application to any other entity, including instrumentalities of in-state or out-of-state entities, not specifically organized within the applicable sections of the Rhode Island General laws. Moreover, any properly constituted city housing authority or town housing authority does not have authority to operate as a public housing authority throughout the State of Rhode Island without first meeting the requirements of R.I.G.L. §45-25-8 or R.I.G.L. §45-26-6, respectively.

Very truly yours,

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By:


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