

FEBRUARY 14, 1950.

HON. CHARLES R. ERDMAN, JR., *Commissioner,*
Department of Conservation and Economic Development,
520 East State Street,
Trenton, New Jersey.

FORMAL OPINION—1950. No. 17.

DEAR COMMISSIONER:

This is being written pursuant to your request for an opinion concerning the constitutionality of the Limited-Dividend Housing Corporations Law (c. 184, P. L. 1949). We understand that such an opinion has become necessary because the Federal Housing Administration has delayed the processing of applications for mortgage commitments by persons intending to proceed under the above law until a determination by this office that the act is constitutional. We participated in the drafting of this law and at the time considered the constitutional questions involved. Among other things the act was intended to encourage the undertaking by private enterprise of the clearance, replanning, development or redevelopment of blighted areas in exchange for tax exemption as authorized by Article VIII, Section III, paragraph 1 of the Constitution. An act of the Legislature is presumed to be constitutional until declared unconstitutional by a court of competent jurisdiction; and it is the duty of administrative bodies to accept a legislative act as constitutional until such time as it has been declared to be unconstitutional by a qualified judicial body. *Schwartz vs. Bd. of Taxation*, 129 N. J. L. 129; *Affd.* 130 N. J. L. 177 (E. & A. 1943).

The main constitutional question involved is whether Section 18 of the Act. (sec. 18, c. 184, P. L. 1949 as amended by sec. 5, c. 305 P. L. 1949) providing that projects of Limited-Dividend Housing Corporations, hereinafter referred to as corporations, will be exempted from taxation under certain circumstances violates Article VIII, Section I of the Constitution which provides that property shall be assessed for taxation under general laws and by uniform rules according to the same standard of value. This same question applies to section 19 of the act (c. 184, P. L. 1949) which exempts Housing Corporations from payment of franchise or other State tax.

The act seeks to accomplish the public purpose of providing adequate housing by enlisting the participation of private capital and enterprise. The need for rental housing in the State of the type contemplated by this law is very acute. The intention of the act is to provide rental accommodations for persons in need of housing who cannot obtain accommodations in the open market commensurate with their income. This is clearly set forth in section 2 wherein it is stated:

Section 2, Chapter 184, P. L. 1949—

"It is hereby declared that there is a severe housing shortage in the State; . . . that the improvement of these conditions requires the production of new dwellings at rents which the families who need housing can afford; that the creation of the agencies and corporations hereinafter described, is necessary and desirable for this purpose; that the provision of housing to make possible and to assist the clearance, planning, development or redevelopment of blighted areas, as proposed in this act, is a public purpose and a public use for which public money may be spent and private property acquired; and that the necessity in the public interest for the provisions hereinafter enacted is hereby declared as a matter of legislative determination."

Section 4 of the act provides that these corporations may be organized to provide accommodations for families in need of housing and to develop or redevelop blighted areas, when authorized by the Authority (Public Housing and Development Authority, a body politic and corporate of the State).

Section 5 provides that stockholders of the corporations shall at no time receive in repayment of their investment any sums in excess of the amount thereof plus cumulative dividends at a rate not to exceed six per centum (6%) per annum, and that on dissolution of the corporation (which shall be within fifty years; since its duration is so limited by section 6) any surplus in excess of these amounts shall be paid to the State except that where tax exemption is provided by a municipality under section 18 the surplus may be divided between the State and said municipality. Sections 6, 7 and 8 provide for the incorporation and powers of these corporations, all being subject to the approval of the Authority.

Section 9 of the act provides that no securities or obligations shall be issued by corporations except for money or property actually received by it and of property on a valuation approved by the Authority.

The Authority has the power to make rules and regulations to supervise the operations of these corporations and no corporation can proceed with a project under the act without its approval (sections 11-16, inclusive).

The Authority under section 16 of the act is given the right to supervise the operations of these corporations, examine their books, financial activities and fix and alter from time to time the rents for projects operated by them.

Section 18 of the act provides for tax exemption and reads as follows:

Section 18, Chapter 184, P. L. 1949—

"When the governing body of any municipality in which a project of a housing corporation is or will be located, by resolution finds that the project is or will be an improvement made for the purposes of the clearance, replanning, development, or redevelopment of any blighted area (as defined in any law of this State) within such municipality, or for any of such purposes, then such project and improvement shall be exempt from all property taxation; provided that in lieu of taxes the housing corporation owning said project shall make to the municipality payment of an annual service charge for municipal services supplied to said project, in such amount, not exceeding the tax on the property on which the project is located for the year in which the undertaking of said project is commenced or ten per centum (10%) of the annual gross shelter rents obtained from the project, whichever is the greater, as may be agreed to by the municipality and the housing corporation and approved by the Authority. Any exemption from taxation made pursuant to the provisions of this section shall not extend for a period of more than fifty years and shall only be effective during the period of usefulness of the project as determined by the Authority and shall continue in force only while the project is owned by a housing corporation formed under this act and regulated by the Authority or owned or operated by the Authority." (Italics ours).

The exemption from taxation as provided in the act is proper pursuant to Article VIII, Section III, paragraph one of the Constitution which states:

Article VIII, Section III, Paragraph 1 of the Constitution—

"The clearance, replanning, development or redevelopment of blighted areas shall be a public purpose and public use, for which private property may be taken or acquired. Municipal, public or private corporations may be authorized by law

to undertake such clearance, replanning, development or redevelopment; and improvements made for these purposes and uses, or for any of them, may be exempted from taxation, in whole or in part, for a limited period of time during which the profits of and dividends payable by any private corporation enjoying such tax exemption shall be limited by law. The conditions of use, ownership, management and control of such improvements shall be regulated by law." (Italics ours).

The act provides that this tax exemption shall only apply in cases where a municipality shall by resolution find the project to be an improvement for the purposes of the clearance, replanning, development or redevelopment of a blighted area. The tax exemption is for a limited period of time and during this time the profits and dividends of the corporation are limited by law. The dividends are limited to not in excess of six per centum (6%) per annum; and the profits by reason of (1) regulation of rents and (2) that any surplus of the corporation shall be payable to State or State and municipality. The act also explicitly provides for regulation of the condition of use, ownership, management and control of the projects.

A similar question was before the Court in the case of *Redfern vs. Jersey City*, 137 N. J. L. (E. & A. 1948) pg. 356, which involved the constitutionality of the Urban Redevelopment Law (c. 52, P. L. 1946). That law provides for tax exemption and the Court was concerned with the question as to whether it violated Article 4, Section 7, paragraph 12 of the Constitution of 1844, which stated that property shall be assessed for taxes under general laws and by uniform rules according to its true value. The Court found that the law was constitutional and stated on page 360, per BODINE, J.:

"Public housing is a public purpose for which public funds may be expended. *Romano vs. Housing Authority, Newark*, 123 N. J. L. 428, 10 A. 2d 181, affirmed 124 N. J. L. 452, 12 A. 2d 384; *Ryan vs. Housing Authority of Newark*, 125 N. J. L. 336, 15 A. 2d 647. See *Tide-Water vs. Coster*, 18 N. J. Eq. 518, 90 Am. Dec. 634; *Simon vs. O'Toole*, 108 N. J. L. 32, 155 A. 449, affirmed 108 N. J. L. 549, 158 A. 543, and the reasoning implicit in each of those cases.

The Urban Redevelopment Law and the ordinances under review do not constitute a donation by a municipality to a private corporation of any property. The whole purpose is to remedy, in part, a situation now a public danger to health and welfare. . . .

As Chief Justice Beasley said in *Tide-Water vs. Coster*, 18 N. J. Eq. 518, 90 Am. Dec. 634: '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 Legislature may exclude from taxation and thus exempt property constituting a proper class. *State Board of Assessors vs. Central Railroad*, 48 N. J. L. 146, 4 A. 578. Undoubtedly, the whole legislation would be unconstitutional were it not for the public use. To provide housing, when housing is a pressing public need, is the justification for the legislation.

The property to be used, as soon as the plan becomes effective, is an appropriate class for the exemption provisions, if in fact there were in any sense an exemption.

We see no delegation of governmental powers to a private business corporation any more than in the case of delegating the power of eminent domain to

railroad companies and traction companies, and others, to carry on a business made necessary to properly serve the public."

There are many cases in other states upholding the constitutionality of similar legislation, namely: *Zurn vs. City of Chicago*, 389 Ill. 114, 59 N. E. (2d 18); *Spahn vs. Stewart*, 268 Ky. 97, 103 S. W. (2d) 651; *Wells vs. Housing Authority*, 213 N. C. 744, 197 S. E. 693; *Dornan vs. Philadelphia Housing Authority*, 331 Pa. 209, 200 At. 834; *Housing Authority vs. Dockweiler*, 14 Cal. (2d) 437, 94 Pac. (2d) 794; *Stockus vs. Boston Housing Authority*, 24 N. E. (2d) 333; *Re Brewster Street Housing Site*, 291 Mich. 313, 289 N. W. 493; and *Humphrey vs. Phoenix*, 55 Ariz. 374, 102 Pac. (2d) 82.

It is our opinion that under Article VIII, section III, paragraph 1 of the Constitution the tax exemption provided by the act is proper. It does not violate Section 1 of that article since that section permits the granting of exemption from taxation by general laws. Under the authority of the *Redfern case* it can be stated that the property to be included in the exemption is an appropriate class and that this is a general law.

The recent case of *Janouneau vs. Div. of Tax Appeal*, 2 N. J., pg. 325 (Sup. 1949) does not apply in that it involved a strictly private use.

It is our opinion that the Limited-Dividend Housing Corporation Act and the tax exemption provided therein is constitutional. Our opinion is based on the statements set forth above and the cardinal rule that in judging the constitutionality of legislation every intendment must be found in its favor and its constitutionality shall be sustained where the issue is in doubt unless it clearly and inescapably offends a plainly written provision of the Constitution; which is not the case at hand. *City of Jersey City vs. Kelly*, 134 N. J. L. 239, 243 (E. & A. 1946); *State vs. Klapprott*, 127 N. J. L. 395, 399 (Sup. Ct. 1941); *Mansfield & Swett, Inc. vs. West Orange*, 120 N. J. L. 145, 156, 157 (Sup. Ct. 1938); *State vs. Murada*, 116 N. J. L. 219, 223 (E. & A. 1935); *State Board of Milk Control vs. Newark Milk Co.*, 118 N. J. Eq. 504, 518, 519 (E. & A. 1935).

Very truly yours,

THEODORE D. PARSONS,
Attorney General.

By: CHESTER K. LIGHAM,
Deputy Attorney General.

FEBRUARY 24, 1950.

THE HONORABLE SANFORD BATES,
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FORMAL OPINION—1950. No. 18.

DEAR COMMISSIONER BATES:

This relates to your request of February 21, 1950, for an opinion regarding sentencing practices now in effect at the State Prison.

You illustrate your first question by a hypothetical example as follows: A prisoner was received at the State Prison accompanied by five separate sentences, each with