

ATTORNEY GENERAL

“This act . . . authorizes State chartered associations to classify their accounts as to amount and term in the same manner authorized by federally chartered associations by the Housing Act of 1948 and the regulations of the Federal Home Loan Bank Board.”

In view of the fact that Federal Savings and Loan Associations are prohibited from issuing NOW accounts (12 U.S.C.A. § 1464(b) (1)), this amendment can hardly be used to support the contention that New Jersey associations can issue NOW accounts.

June 23, 1975

WILLIAM L. JOHNSTON  
*Acting Executive Director*  
New Jersey Housing Finance Agency  
3535 Quakerbridge Road  
Trenton, New Jersey

FORMAL OPINION NO. 14-1975

Dear Mr. Johnston:

You have asked for an opinion as to whether the New Jersey Housing Finance Agency (hereinafter “HFA”) is empowered to finance housing projects which are fully constructed and occupied in instances where no rehabilitation is contemplated. You are hereby advised that the HFA does not have the statutory authority to provide financing, by mortgage loans or otherwise, to qualified sponsors of a fully constructed and occupied housing project. Such housing projects are solely eligible for HFA financing for rehabilitation, where appropriate, within the meaning of the act.

A reading of the statute in its entirety, including its history, demonstrates that the Legislature did not intend to authorize the HFA to make mortgage loans or other advances for fully constructed and completed housing projects; but rather to encourage through financial assistance the construction of new projects or the completion of projects in various stages of construction. The HFA was established by the New Jersey Housing Finance Agency Law of 1967, Laws of 1967, c. 81., N.J.S.A. 55:14J-2 *et seq.* The introductory policy declaration to the Act notes that there is a need in this State for the construction of new facilities and the rehabilitation of existing housing at rentals available for families of moderate means; and that a public agency has been created to accomplish the foregoing objectives through the use of public financing, loans and other financial assistance. N.J.S.A. 55:14J-2.

After establishing the HFA to administer the Act, the Legislature, in defining the scope of its responsibilities, used language clearly compatible with its declaration to allow for the use of public financial assistance for new construction of moderate income housing. The language of the Act clearly puts the emphasis on contemplated construction throughout the entire statutory framework. Housing projects are defined in part by N.J.S.A. 55:14J-3(g) to mean: “any work or undertaking, whether new construction or rehabilitation, which is designed for the primary pur-

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pose of providing decent, safe and sanitary dwelling units for families of moderate income in need of housing. . . ." Pursuant to N.J.S.A. 55:14J-5(a) the HFA, in order to encourage the construction of safe and adequate housing, is empowered to finance by mortgage loans or otherwise, the construction of housing projects. No application for a loan for the construction of a housing project shall be processed unless there is a certified copy of a municipal resolution already filed with the Agency reciting that there is a need for moderate income housing projects in the municipality. N.J.S.A. 55:14J-6(b). Furthermore, upon the consideration of any application for a loan, the HFA shall first give priority to applications for loans for the construction of housing projects which will be part of or constructed in connection with urban renewal projects. N.J.S.A. 55:14J-8.

Other sections of the Act give additional support to the desired legislative purpose to authorize the financing of projects to be constructed with public assistance. N.J.S.A. 55:14J-9(7) provides that no loan shall be executed unless a qualified housing sponsor shall agree to certify the actual project cost upon completion of project construction and to refund to the Agency the amount by which the proceeds of the loan exceed the certified project cost. N.J.S.A. 55:14J-9(a)(9) makes it plain that the Legislature wished to finance new construction or construction in progress by virtue of its inclusion of a requirement for the payment of the prevailing wage to the workmen employed in the construction. See also N.J.S.A. 55:14J-37. Clearly, the tenor of the statutory language suggests the intercession of HFA financial assistance to aid in the inception of or the on-going construction of housing projects.

Moreover, the available legislative history of the Act indicates that it was enacted to identify a need for the construction of moderate income housing and the use of public financial resources to help alleviate a housing shortage. In the message which accompanied the signing of Assembly Bill No. 770 into law, Governor Hughes indicated a "need for a state program to encourage and support the construction. . . of such housing. . . ." Various companion enactments during the middle and late 1960's further demonstrate the commitment made by the Legislature to the construction of low and moderate income housing and the establishment of various agencies at both State and local levels designed to aid in the alleviation of the need. *See e.g.*, Department of Community Affairs Demonstration Grant Law, N.J.S.A. 52:27D-61 (Laws of 1967, c. 82); Senior Citizens Nonprofit Rental Housing Tax Law, N.J.S.A. 55:14I-2 (Laws of 1965, c. 92); Limited-Dividend Nonprofit Housing Corporations or Associations Law, N.J.S.A. 55:16-2 (Laws of 1949, c. 184, as amended; Laws of 1967, c. 112). It is, therefore clear from the legislative history and companion enactments, that the emphasis was exclusively designed to encourage the actual construction of new dwelling units or their rehabilitation and the use of public financing techniques to meet those specific needs.\*

An administrative agency has only such powers as are expressly or implicitly delegated to it by statute. *Burlington County Evergreen Park Mental Hospital v. Cooper*, 56 N.J. 579, 598 (1970). In the present situation the language of the Act and its underlying policy do not provide either express or implicit authority for the HFA to approve mortgage loans to sponsors of a fully constructed and occupied housing project. There is no legislative purpose to sanction, in essence, the use of the HFA as a low cost permanent mortgage lending or refinancing agency. A policy decision of the significance should be expressed with unmistakable clarity by the Legislature. Thus, pending any legislative expansion of the role of the HFA, there is no justification for the agency to finance by mortgage loans or otherwise completely

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constructed projects or dwelling units other than for rehabilitation contemplated by the Act.

A further question raised is whether the HFA may make its financial assistance available for housing projects in various stages of construction which are short of full completion.\*\* Presumably, construction has been terminated as a result of adverse economic factors in the construction industry, e.g. rising mortgage interest rates and the general unavailability of conventional mortgage financing. Under these circumstances, it may logically be concluded that such a mortgage loan is within the purview of the Act if it will tend to facilitate the actual completion of eligible housing projects at various stages of construction; or where the project has not progressed to the point where it may be characterized as "completed" in both practical and legal terms. Each application for that type of assistance must be evaluated by the HFA on a case by case basis in order to determine within the scope of its discretion whether the project is in a "partially completed" state and whether public financing will provide the economic stimulus for actual completion of the construction.

For these reasons, you are advised that the HFA does not have the authority under the "New Jersey Housing Finance Agency Law of 1967" to finance by mortgage loans or other means housing projects which are fully constructed and occupied unless such financial assistance is designed for rehabilitation of existing housing facilities within the intentment of the Act. You are also advised that it is within the permissible scope of the Agency's discretion to make mortgage loans or other financial assistance available for projects which are in various stages of construction if, in the judgment of the Agency, the project falls short of "completed" status and the assistance will facilitate the ultimate completion of construction.

Very truly yours,  
WILLIAM F. HYLAND  
*Attorney General*

By: THEODORE A. WINARD  
*Assistant Attorney General*

\* There can be doubt that at the time of the adoption of this Act, the Legislature was familiar with the need for new construction to deal with "urban renewal, highway construction, and other public work programs" and desired to lend the HFA's financial resources to encourage construction to deal with those problems. N.J.S.A. 55:14J-2.

\*\* At its November, 1974 meeting HFA by resolution adopted a policy governing the permanent financing of projects funded for construction by conventional lenders. A number of applications are pending from sponsors of projects initiated without HFA financing and which are at various stages of completion. These sponsors have indicated that permanent financing is either unavailable or only available at rates so high that it would be necessary for them to fix rents at levels which families of moderate income could not afford.