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December 5, 1978

Magistrate Olga Jurco
United States District Court
Room 2496
219 South Dearborn Street
Chicago, Illinois 60604

Dear Magistrate Jurco:

In light of the disclosures respecting the acquisition program made at our November 1 meeting, we believe it is necessary now to pursue to a conclusion the legal issue relating to CHA's acquisition power. The purpose of this letter is to set forth plaintiffs' position in one document and to ask for a speedy resolution.

As you know, from the time plaintiffs first suggested and pressed for the development of an acquisition program by CHA counsel for CHA and for plaintiffs have disagreed about CHA's power to acquire buildings for such a program. The first disagreement involved the interpretation of CHA's authority to acquire property under the Housing Authorities Act, Ill. Rev. Stat. ch. 67-1/2, §1 et seq. CHA argued that its acquisition power is limited to areas which are designated (by the City of Chicago or CHA) as blighted or slum; plaintiffs argued that CHA's acquisition power is not so limited. Because of the possibility that under its own theory of statutory power CHA would be able to identify a sufficient number of buildings for a viable acquisition program, we decided not to push then for a final resolution of the issue.

A second disagreement concerns the approach CHA should take to identifying properties for acquisition. Plaintiffs have argued that, even if it were true that CHA could

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acquire property only in areas designated blighted or slum, CHA should identify individual buildings needing rehabilitation and then designate the buildings, collectively, an "integrated project," this being the definition of blighted or slum area. CHA has argued that the areas must be designated first and then a determination made whether there are buildings suitable for acquisition within them. CHA has in fact proceeded in accordance with its view. If plaintiffs are correct, however, CHA would be able to look for buildings needing rehabilitation outside the approximately 85 areas which it has identified as blighted or slum.

At our November 1 meeting, CHA indicated that the supply of buildings appropriate for acquisition in those 85 areas has been virtually exhausted. Its survey of areas has resulted in only 23 buildings for seventy-seven dwelling units being recommended to the Executive Director for acquisition. It thus appears that under CHA's view of its statutory authority to acquire property, and of the appropriate method of identifying buildings for acquisition, CHA cannot develop a meaningful acquisition program. Without waiving our right to pursue inquiry as to whether this is in fact the case, if CHA's factual statements are correct we are brought face-to-face with the legal issue.

In our view the issue involved is of sufficient importance to require determination by Judge Crowley, if necessary. We therefore ask your Honor for a prompt and definitive ruling. Because of the extended time over which this issue has been discussed and argued, we thought it would be useful to restate our arguments in one place, and have done so in the enclosed memorandum. In view of the long delay in getting an acquisition program off the ground, we believe it is important to move quickly towards a resolution of this matter.

We are constrained to add that we believe CHA's conduct of its acquisition program calls into question CHA's good faith in carrying out the Court's basic best effort orders and your directives. This is a separate issue we intend to raise as soon as the legal issue of CHA's acquisition power is resolved.

Sincerely yours,

Alexander Polikoff

Alexander Polikoff

ALP:gdw
Enclosure
cc: Calvin Hall
John Jensen

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DOROTHY GAUTREAX, et al.,)
)
 Plaintiffs,)
)
 -v-) NO. 66 C 1459
) 66 C 1460
 PATRICIA R. HARRIS and) (Consolidated)
 CHICAGO HOUSING AUTHORITY,)
 et al.,)
)
 Defendants.)

MEMORANDUM OF PLAINTIFFS
TO MAGISTRATE JURCO
RESPECTING CHA ACQUISITION PROGRAM

- I. CHA'S ACQUISITION POWER IS NOT CONFINED TO BLIGHTED OR SLUM AREAS
- A. The Statute Conferring Acquisition Power Upon CHA Does Not Limit the Exercise of that Power to Blighted or Slum Areas.

CHA's acquisition powers are founded on the declarations of purpose in Sections 2 and 27 of the Housing Authorities Act, Ill. Rev. Stat. ch. 67-1/2, §1 et seq. (the "Act"). Section 2 provides in part:

"It is hereby declared as a matter of legislative determination that in order to promote and protect the health, safety, morals and welfare of the public, it is necessary in the public interest to provide for the creation of municipal corporations to be known as housing authorities, and to confer upon and vest in said housing authorities all powers necessary or appropriate in order that they may engage in low-rent housing and slum clearance projects, and undertake such land assembly, clearance, rehabilitation, development, and redevelopment projects as will tend to relieve the shortage of decent, safe, and sanitary dwellings...." (Emphasis supplied.)

Section 27 provides in part:

It is the purpose and intent of this Act to authorize every Authority to do any and all things necessary or desirable to secure the financial aid or cooperation of the Federal government in the purchasing, acquiring,... extending and repairing of housing projects, in rehabilitating existing structures for purposes of making available additional dwelling units, and in the assembly of improved...property for development or redevelopment purposes by either public or private agencies.

CHA's specific power to acquire property derives from Section 9 of the Act which states in part:

Whenever it shall be deemed necessary by an Authority in connection with the exercise of its powers herein conferred to take or acquire...real property in the area of operation... such Authority may acquire the same directly...from the owner or owners thereof or may acquire the same by the exercise of eminent domain.... *

Thus, CHA may acquire property in two ways: (1) by negotiated purchase or gift, and (2) by exercising its power of eminent domain. Except for the requirement that it "be deemed necessary...in connection with the exercise of its power," there is not even an arguable statutory restriction on the acquisition of property by the first method. It follows that, for the purpose of exercising its power under Section 2 to "engage in low-rent housing...projects," CHA is free to negotiate the purchase of a building directly from the owner without regard to whether the building is located in a slum or blighted area. Similarly, for the

*See also Section 8.3 of the Act:

An Authority has power to...acquire by eminent domain or otherwise...any property...; to acquire any property... from any firm, corporation, or any municipal, State or Federal government...by gift, grant, bequest or devise....

purpose of exercising its power under Section 27 to "do any and all things necessary or desirable to secure the financial aid or cooperation of the Federal government in the purchasing... of housing projects [and] in rehabilitating existing structures for purposes of making available additional dwelling units...," CHA's power to acquire property by negotiated purchase or gift is likewise free of statutory constraints.

Even the exercise of the power of eminent domain, however, is plainly not confined to blighted or slum areas as CHA argues. The pertinent portion of the statute relating specifically to eminent domain reads as follows:

"The power of eminent domain shall apply not only to [1] improved or unimproved property which may be acquired for or as an incident to the development or operation of a project or projects, but also to: [2] (a) any improved or unimproved property the acquisition of which is necessary or appropriate for the rehabilitation or redevelopment of any blighted or slum area, or [3] (b) any improved or unimproved property which the Authority may require to carry out the provisions of this Act." (Ill. Rev. Stats. ch. 67-1/2, §9, emphasis and brackets added.)

This sentence authorizes housing authorities to use eminent domain in any one of three separate situations. The second situation is limited to slum clearance. The other two clearly are not. It would of course fly squarely in the face of the legislative scheme to read one of three independent clauses as modifying the other two.

Thus, the unambiguous language of the relevant statute makes it clear that the eminent domain power, like the power to acquire by purchase or gift, is not limited to blighted or slum areas.

Frankly, we have not understood CHA's contrary arguments. We do not recall CHA addressing at all the power to acquire property by negotiated purchase. Since most if not all of the buildings acquired for the acquisition program are likely to be obtained by negotiated purchase rather than by condemnation, this alone should be dispositive of the present controversy - leaving at best a largely academic question to be dealt with if and when CHA ever desires to acquire buildings for this program through its power of eminent domain.

With respect to the eminent domain power we similarly do not recall CHA ever addressing the third clause of §9 which gives it the broad power to acquire "any improved... property which the Authority may require to carry out the provisions of this Act." One of those provisions, of course, is to engage in "low-rent housing...projects" (Section 2) and another is "to do any and all things necessary or desirable" to secure federal aid for acquiring housing projects and rehabilitating buildings (Section 27).

With respect to the first clause of §9 - acquisition of property "for or as an incident to the development or operation of a project or projects" - CHA has argued that the definition of "project" in §17(g) limits this clause to blighted or slum areas. The argument is that the first sentence of the §17(g) definition, which is not limited to blighted and slum areas, applies only to property already acquired by a housing authority on the date the Housing Authorities Act was passed, and that "as it relates to future

acquisition" the third sentence of the definition - which is so limited - applies and that therefore the first clause of §9 is likewise so limited. (Supplement to Defendant Chicago Housing Authority Memorandum in Opposition to Plaintiffs' Motion for Recommendation of the Special Master, May 16, 1977, pp. 3-4.)

The CHA argument is quite unpersuasive, as we show in the footnote below.* But wholly apart from it, the third clause of §9 respecting the eminent domain power, and the broad power to acquire by negotiated purchase, are themselves (separately) sufficient to rebut CHA's position that its acquisition power is confined to blighted or slum areas.

B. No Contrary Case Law

CHA has cited no case which supports its argument, either as to negotiated purchase or eminent domain. Our research

*The first sentence of §17(g) defines "project" as "all lands, buildings, and improvements, acquired...by a housing authority...." The sentence does not say that only such lands, buildings, etc. as were acquired prior to the effective date of the statute are included in the definition and that lands, buildings, etc. acquired later are excluded. Such a strange construction can hardly even be imagined to have been the legislative intent. (Indeed, it posits an impossible situation: acquisition by a non-existent housing authority.) Certainly no such intent is expressed.

Such a construction is also at odds with the remaining portion of the definitional sentence: "...which are planned as a unit, whether or not acquired or constructed at one time even though all or a portion of the buildings are not contiguous or adjacent to one another...." The statute does not say which were planned as a unit, and if only previously acquired properties were intended to be covered there would have been no need to talk about contiguity or time of acquisition.

discloses none. To our knowledge, no Illinois court has been presented with or decided CHA's contention that its acquisition power can only be exercised in blighted or slum areas. Illinois cases dealing with analogous questions do not support CHA's position.* In the absence of determinative case law, of course, the plain reading of the statute should govern.

*The Illinois Supreme Court has decided an analogous "slum clearance" issue under other sections of chapter 67-1/2. In Cremer v. Peoria Housing Authority, 399 Ill. 579, 78 N.E.2d 276 (1948), the Peoria Housing Authority had used state funds under I.R.S. chapter 67-1/2, §§53-62 (the "1947 State Grant Act") to purchase property which was "not located in a blighted or slum area" for resale to a private housing developer. 78 N.E.2d at 280. This use of state funds by the local housing authority was challenged as being "in no way connected with slum clearance, low-rent housing or any other conceivable public purpose." Id. at 281. The housing authority argued that the acquisition served a public purpose "even in the absence of slum clearance." Id. The Court held,

"In facilitating the supply of additional housing facilities, the 1947 State Grant Act [I.R.S. ch. 67-1/2, §§53-62] strikes directly at the social evils inherent in the existing acute shortage of adequate dwellings. This, along, constitutes a proper public purpose for the expenditure of State funds." 78 N.E.2d at 282 (emphasis added).

The Court went on to note that this independent purpose was "supplemented" by indirectly facilitating slum clearance. Id. In a later case, People ex rel. Gutknecht v. City of Chicago, 414 Ill. 600, Ill. N.E.2d 626, 632-33 (1953), the Court reiterated that in Cremer it had "pointed out that facilitating the supply of additional housing was alone sufficient to constitute a public purpose for the expenditure of State funds." (Emphasis added.)

C. Support from Practice of Other Housing Authorities

We have inquired of two housing authorities in the Chicago area - the housing authorities of Cook and Lake Counties - to determine whether it has been the practice of those authorities to limit the exercise of their acquisition powers to blighted or slum areas. In each case we have been told that there has been no such limitation.

II. CHA SHOULD IDENTIFY INDIVIDUAL BUILDINGS IN NEED OF REHABILITATION AND THEN DETERMINE WHETHER THE AREA IN WHICH SUCH BUILDINGS ARE LOCATED CAN BE DESIGNATED AS BLIGHTED OR SLUM

Under the Housing Authorities Act, a "blighted or slum area" is defined as "any area of not less in the aggregate than two (2) acres which...has been designated by municipal ordinance or by the Authority as an integrated project for rehabilitation, development or redevelopment, where [certain conditions exist]...." Section 9. The designation of which the Act speaks is thus not the designation of an area as blighted or slum but rather the designation of an area "as an integrated project...." (Emphasis supplied.)* When an area is designated "as an integrated project...." the designated area becomes a "blighted or slum area" by definition. Ibid.

*Such a designation may be made only in the event that one of several conditions exists. One condition is the presence of "buildings or improvements [which], by reason of dilapidation, obsolescence, overcrowding, faulty arrangement or design,... are a detriment to public safety, health or morals, or welfare." The statute does not specify a requisite number of "buildings or improvements" which must be present to justify a designation; conceivably only one building, or even less than an entire building, could be appropriate for designation.

The Act does not define "integrated project." However, "project" is defined as

all lands, buildings, and improvements, acquired, owned, leased, managed or operated by a housing authority, and all buildings and improvements constructed, reconstructed or repaired by a housing authority, designed to provide housing accommodations and facilities appurtenant thereto (including community facilities and stores) which are planned as a unit, whether or not acquired or constructed at one time even though all or a portion of the buildings are not contiguous or adjacent to one another ... [as well as] a slum or blighted area which is predominantly residential in character.... Section 17(g). (Emphasis supplied.)

What emerges from the statutory definition of "blighted or slum area" and "project" is that CHA may identify individual buildings in need of rehabilitation whose land area in the aggregate is two acres, and then designate that land area "an integrated project for rehabilitation...." Because such a project may be comprised of buildings which are not contiguous or adjacent to one another and need not be acquired at one time, there is no reason for CHA to confine its search for buildings to certain geographic areas (CHA's 85 "blocks") it designates as "blighted or slum."

A focus on identifying suitable individual buildings anywhere in the general public housing area could significantly increase the number of buildings found to be suitable for acquisition under CHA's acquisition program. Even if CHA's power to acquire buildings were limited to "blighted or slum areas" (as it clearly is not), the statute thus permits CHA to acquire buildings in need of rehabilitation wherever located so long

as, in the aggregate, the land area to be acquired is at least two acres.

Respectfully submitted,

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