

have been duly executed. If it had been the purpose of the Act to include mechanics' liens, the Legislature would have used language sufficiently broad enough to have included them. It did not do so. It specifically referred to mortgages, bills of sale and conditional sales contract and brought such instruments within the Act. It must be assumed, of course, that the Legislature had knowledge of the great number of mechanics' liens that are constantly filed, but having had this knowledge the Legislature did not specifically set out or mention, as it did other instruments, in the Act that they were subject to the Intangibles Act.

In construing Section 1 of the Intangibles Act, I am of the opinion that your question should be answered in the negative.

HOUSING, STATE BOARD OF: Funds to be deposited pursuant to Chapter 3, Acts of 1937. Funds secured by State Sinking Fund.

May 17, 1940.

Hon. Walter E. Stanton,

Legal Adviser and Executive Secretary,
State Housing Board of Indiana,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter referring particularly to the applicability of Chapter 3 of the Acts of 1937, the Sinking Fund Act, to local housing authorities organized under Chapter 207 of the Acts of 1937. Two previous opinions have been written touching upon certain phases of the application of the Sinking Fund Act to the funds of local housing authorities.

In view of the developments which you set out in your letter you now submit three additional questions, as follows:

"1. Is there any change in your opinion that the funds of a public housing authority should be deposited pursuant to Chapter 3 of the Acts of 1937 as amended, and when so deposited, are they secured by the State Sinking Fund?

"2. Is there any change in your opinion considering the separate corporate entity and boundaries of

each local housing authority as determined by the Supreme Court in the *Edwards v. Housing Authority* case, and your opinion of February 20, 1940, as to corporate boundaries, as to whether the proper board of finance for a local authority is the board of finance of the municipality whose action placed the local authority in operation or the board of commissioners of the housing authority itself?

"3. If it is your opinion that housing authority funds are subject to the provisions of said Chapter 3 of the Acts of 1937, *supra*, can the provisions of said chapter be modified as to local housing authorities by agreements with the government, entered into pursuant to the authority of section 20 of Chapter 207 of the Acts of 1937, so as to permit the selection of one depository for continuous service without annual selection?"

Section 4 of Chapter 207 of the Acts of 1937 provides in terms that:

"In each city, town, and in each county of the state there is hereby created a public body corporate and politic to be known as the 'housing authority' of the city, town or county." * * * Acts of 1937, p. 1038.

Section 8 of the same Act provides that:

"An authority shall constitute a public body corporate and politic, exercising public and essential governmental functions, and having all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this act, including the following powers in addition to others herein granted."
* * * Acts of 1937, p. 1041.

Referring now to the Sinking Fund Act, which is Chapter 3 of the Acts of 1937, the term "municipal corporation" is defined to mean "all political subdivisions or municipal corporations of the State of Indiana, including, but not in limitation of the foregoing, counties, cities, towns, townships, school cities, school towns, school townships, taxing districts and special assessment districts." Acts of 1937, p. 8.

While it is doubtless true that a local housing authority is not a municipal corporation in the more restricted meaning of that term, it seems to me that in the broad sense in which the term is used in Chapter 3 of the Acts of 1937, as evidenced by the above provision, local housing authorities are municipal corporations. It was upon that theory that I held in an opinion dated November 10th, 1938, and addressed to the Secretary of the State Board of Depositories, that the Public Depositories Act of 1937 applies. Opinions of Attorney General, 1938, p. 413.

I do not think that the decision of the Court in the case of *Edwards et al. v. Housing Authority of City of Muncie, et al.* (Supreme Court), 19 N. E. (2), p. 741, is in conflict with this decision.

If a local housing authority is a municipal corporation within the meaning of the Sinking Fund Act clearly its officers are local officers within the meaning of the same Act and the funds coming into the possession of such officers by virtue of their office would be public funds. (See Acts of 1937, p. 8.) I do not find any reason for changing the opinion above referred to, to the effect that the funds of a public housing authority are public funds and should be deposited pursuant to Chapter 3 of the Acts of 1937, and when so deposited that they are secured by the State Sinking Fund.

The first part of your first question is answered in the negative.

The second part of your question in which you inquire as to whether funds of a local housing authority when deposited according to the Sinking Fund Act are secured by the State Sinking Fund, is answered in the affirmative; that is, such funds when so deposited are secured by the State Sinking Fund Act.

In my opinion of February 20, 1940, I held that housing authorities established under Chapter 207 of the Acts of 1937 possessed the qualities of a separate political entity from that of the city or county, as the case may be. It was pointed out in that opinion that they are more than mere administrative bodies and are endowed as separate entities with geographical boundaries and with attributes commonly possessed by political entities such as towns or cities. I adhere to that opinion.

The question, however, remains as to whether the proper board of finance for such an authority within the meaning of the Sinking Fund Act is the board of finance as provided in Section 9 of the Sinking Fund Act. In view of the fact that the two corporations, that is, the cities or towns, and the housing authority are separate and distinct entities, as was held in my opinion of February 20, 1940, and as seems to have been held in the case of *Edwards et al. v. Housing Authority of the City of Muncie, et al., supra*, there is, in my opinion, some doubt as to whether the depositories should be selected by the board of finance set up in Section 9 of the Sinking Fund Act. The situation, it seems to me, has not been anticipated and provided for in specific language. It is provided, however, in Section 11 that when "Any two or more municipal corporations, under authority of law, consolidate or join in the construction or operation or maintenance of any property or enterprise * * * the body authorized by law to govern or manage the property or enterprise of the consolidated or joint district shall be and constitute a board of finance and shall have supervision of all public funds of the consolidated or joint district and of the safekeeping and deposit thereof. * * *"

If that is true with respect to a joint enterprise much more so would it be true, it seems to me, with respect to an enterprise which is supervised and managed entirely by the new entity. Upon that basis I think that the proper board of finance for a local housing authority is the housing authority itself, and your second question is answered accordingly.

As to your third question, I do not find anything in Chapter 3 of the Acts of 1937 which can be held as authorizing the modification of Chapter 3, *supra*, as to local housing authorities. It remains to be considered whether under Section 20 of Chapter 207 of the Acts of 1937 a local housing authority for the purpose of securing aid from the Federal government may agree to the selection of a single depository for a continuous service, notwithstanding the provisions of Chapter 3 of the Acts of 1937.

Section 20 of this Act provides as follows:

"In addition to the powers conferred upon an authority by other provisions of this act, an authority is empowered to borrow money or accept grants or

other financial assistance from the federal government for or in aid of any housing project within its area of operation, to take over or lease or manage any housing project or undertaking constructed or owned by the federal government, and to these ends, to comply with such conditions and enter into such mortgages, trust indentures, leases or agreements as may be necessary, convenient or desirable. 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 undertaking, construction, maintenance or operation of any housing project by such authority. An authority is hereby empowered to accept aid from the State of Indiana, cities, towns, counties and private or individual persons or agencies.”

Acts of 1937, p. 1051.

I do not think that even the above provision can be held to authorize a modification of the provisions of Chapter 3 of the Acts of 1937 as applied to local housing authorities. If it does anything at all on the subject it authorizes local housing authorities to agree to whatever conditions the Federal government imposes as a condition of the granting of aid, one of which conditions might possibly be the agreement to deposit any funds in some particular method as required by the Federal government. In such event, however, Chapter 3 would not be modified in any sense of the term but the particular local housing authority so agreeing would take itself completely out of the protective benefits of the Sinking Fund Act by a contract which the Legislature apparently has authorized such authority to make.

Your third question is answered accordingly.