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OFFICIAL OPINION NO. 24

June 28, 1960

Hon. Carrol F. Dillon
State Representative
305 Court Building
Evansville, Indiana

Dear Representative Dillon:

This is in reply to your recent request for an Official Opinion concerning the power of a housing authority, created pursuant to the Indiana Housing Authorities Act, to dispose of surplus real estate owned by the authority. Your letter presents the following specific question:

"Question: Does the Housing Authority created by this act through its Board of Commissioners have the power by resolution to dispose of real estate in accordance with the terms and conditions of the resolution? Stated differently: does the Housing Authority have to follow, in the sale of real estate, the procedure set up for other governmental units as provided for in Burns' 48-1407?"

The Housing Authorities Act is Acts of 1937, Ch. 207, as amended, and is found in Burns' (1950 Repl., 1959 Supp.), Section 48-8101 et seq. The act provides that a public body corporate and politic known as the "housing authority" is created in each city, town, and county, and such body may exercise its powers after the governing body of the city, town, or county, by proper resolution, has declared that there is a need for an authority to function in that particular political subdivision.

Your letter specifically asks whether the housing authority, through its commissioners, has the power to dispose of real estate in accordance with the terms and conditions of a resolution adopted by the commissioners.

A housing authority, a public body corporate and politic, is a creature of the statute under whose provisions it was established, and has only such powers and liabilities as are specifically granted and imposed by the organic act by which it is created, plus such other powers as are incidental and necessary to carry out those which are expressly granted.
Burns' 48-8105, supra, provides that the powers of each authority shall be vested in the five appointed commissioners thereof in office from time to time.

The powers of a housing authority are set out in Burns' 48-8108, supra, which provides as follows:

"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:

"(a) * * * and to make and from time to time amend and repeal by-laws, rules and regulations, not inconsistent with this act, to carry into effect the powers and purposes of the authority.

* * *

"(d) * * * to sell, lease, exchange, transfer, assign, pledge or dispose of any real or personal property or any interest therein; * * *

* * *

"(h) To exercise all or any part or combination of powers herein granted: Provided, however, that no housing authority shall initiate any project under this act until the governing body of the city, town or county, as the case may be, has first approved such project.

"All provisions of law with respect to the acquisition, operation or disposition of property by other public bodies shall be applicable to an authority unless the legislature shall specifically so state." (Our emphasis)

The problem involved here resolves itself into a matter of interpretation of the statute as enacted. Where the language of a statute is clear and unambiguous, there is no necessity for the application of any rules of construction other than the rule that words and phrases used in a statute shall be taken in their plain, or ordinary and usual, sense.

2 R. S. 1852, Ch. 17, Sec. 1, as found in Burns' (1946 Repl.), Section 1-201;
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1952 O. A. G., page 222, No. 54.

Only those statutes which are ambiguous and of doubtful meaning are subject to the process of statutory construction.

Sutherland, Statutory Construction, 3rd Ed., Vol. 2, Sec. 4502, p. 316.

Indiana Law Encyclopedia, Vol. 26, Statutes, § 101, p. 308, states in this connection:

“The construction of a statute is necessary only where the statute is ambiguous and of doubtful meaning, and if the language of a statute is plain and unambiguous there is no occasion for construction to ascertain the meaning of the statute; it must be accepted as the solemn declaration of the sovereign.

“An unambiguous statute must be held to mean what it plainly expresses, and its plain and obvious meaning may not be enlarged or restricted.”

It is true that all parts, provisions, or sections of a statute or of a section must be read, considered, or construed together, and each must be considered with respect to, or in the light of, all the other provisions or sections, and construed in connection or harmony with the whole.

82 C. J. S. Statutes § 345, p. 694.

By the terms of Burns' 48-8108 (d), supra, the housing authority has the power to sell or dispose of any real property. Since the powers of each authority are vested in the commissioners, the commissioners are thereby specifically empowered to sell or dispose of real estate. However, subsection (h) of the same section provides that “All provisions of law with respect to the * * * disposition of property by other public bodies shall be applicable to an authority unless the legislature shall specifically so state.” The provisions of subsections (d) and (h) are not contradictory and must be construed in a manner which gives effect to each. Subsection (h) must therefore be considered as a limitation upon the broad and general power given under subsection (d) to sell the real property.
However, it must be admitted that the requirements in subsection (h) stating that "All provisions of law with respect to the * * * disposition of property by other public bodies shall be applicable to an authority * * *" are ambiguous in that the various other public bodies of the state are required to comply with differing statutory provisions with respect to the disposition of real property, and it would, of course, be impossible for a housing authority to comply with all the provisions of the special acts of other public bodies.

It is a rule of statutory construction that, in regard to a statute, it is presumed that no absurd or unreasonable results were intended by the Legislature. In Marks v. State of Indiana (1942), 220 Ind. 9, 40 N. E. (2d) 108, the Court at page 18 adopted the following language:

"'It is presumed that the Legislature does not intend an absurdity, and such a result would be avoided if the terms of the act admit of it by a reasonable construction; and "absurdity" meaning anything which is so irrational, unnatural, or inconvenient that it cannot be supposed to have been within the intention of men of ordinary intelligence and discretion.' Words and Phrases, Permanent Edition, Vol. 1, p. 177, and cases cited."

Inasmuch as a housing authority may be created in a city, town or county, it is reasonable to assume that the Legislature intended that the housing authority, with respect to the disposition of real property, should comply with the law of the particular public body in which such housing authority was created. To hold otherwise would impose upon such housing authority restrictions so impractical, inconvenient and burdensome that such cannot be supposed to have been within the intention of the Legislature.

Therefore, assuming that the housing authority to which you refer was created in a city, it is my opinion that the commissioners of such authority have the power to sell real property belonging to the authority but the resolution authorizing such sale must comply with the procedure for the sale of real property by cities, which is Acts of 1905, Ch. 129, Sec. 53, as found in Burns' (1950 Repl.), Section 48-1407, Clause Fiftieth.