



STATE OF WEST VIRGINIA
OFFICE OF THE ATTORNEY GENERAL
CHARLESTON 25305

CHARLIE BROWN
ATTORNEY GENERAL

March 18, 1987

Mr. Michael E. Caryl
State Tax Commissioner
State Capitol, Bldg. 1, Room W-300
Charleston, West Virginia 25305

Dear Commissioner Caryl:

We are in receipt of your letter of October 8, 1986, requesting an opinion from this office with regard to the authority of the State Tax Commissioner, as Chief Inspector and Supervisor of Public Offices, to audit housing authorities created in accordance with Chapter 16, Article 15, of the West Virginia Code.

As pointed out in your letter, the authority of the Chief Inspector to examine the affairs of local public offices is addressed in West Virginia Code § 6-9-7, which provides in pertinent part:

"The chief inspector shall have power by himself, or by any person appointed by him to perform the service, to examine into all financial affairs of every local governmental office or political subdivision and all boards, commissions, authorities, agencies or other offices created under authority thereof and shall make such an examination at least one a year, if practicable. * * *" (Emphasis added.)

The above-quoted provision specifically states that "authorities" are to be subject to examination by the chief inspector. This indicates that the West Virginia Housing Authority would in all probability fall within the provisions of Code 6-9-7. To determine if this is the case, one must refer to Code 16-15-3,

which creates city and county authorities. That section declares:

"In each city and in each county there is hereby created a public body corporate and politic to be known as the 'housing authority' of the city or county: Provided, however, that such authority shall not transact any business or exercise its powers hereunder until or unless the governing body of the city or the county, as the case may be, by proper resolution, shall determine at any time hereafter that there is need for an authority to function in such city or county * * *."

Evidence of the nature of these public corporations is found in Code 16-15-2, which sets forth the Legislature's declared need for the creation of these authorities. That section provides:

"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 public corporate bodies to be known as housing authorities * * *."

The above-quoted provision makes it clear that it was the Legislature's intent that the authorities were created to protect public health, safety, morals, and welfare -- traditional concerns of governmental bodies.

It should be noted that a previous opinion of the Attorney General's Office, 49 Ops. Att'y Gen. 339 [1962], concluded that the public housing authorities perform a governmental function and constitute political subdivisions. This reasoning is buttressed by Chapman v. Huntington Housing Authority, 121 W. Va. 319, 3 S.E.2d 502 (1939), in which the court concluded that the activities of the public housing authority are within the police power of the Legislature and are for a public purpose. Further, it was found that the state housing act was tied to the United States Housing Statute. The purpose of the United States Act was said to "assist the several States and their political subdivisions." 3 S.E.2d at 508. (Emphasis added.)

Accordingly, it is the opinion of this office that the term "authorities," as set forth in Code 6-9-7, clearly embraces

housing authorities created pursuant to Code 16-15-3; such authorities are, therefore, subject to audit by the State Tax Commissioner in his capacity as Chief Inspector and Supervisor of Public Offices.

Very truly yours,

CHARLES G. BROWN
Attorney General

By


MARIA FAKADEJ

Assistant

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