Housing authority, jurisdiction over housing projects

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Subject:
Housing authority, jurisdiction over housing projects

Ms. Bonnie Hochman Rothell
Krooth & Altman, L.L.P.
1850 M Street, Northwest
Washington, D.C. 20036-5803

RE: PUBLIC HOUSING AUTHORITIES – MUNICIPALITIES – PUBLIC HOUSING – jurisdiction of city housing authority to exclusively administer public housing projects. Part I, Ch. 421, Fla. Stat.

Dear Ms. Rothell

As attorneys for the Lauderhill Housing Authority you have asked for my opinion on the following question:

Is the Lauderhill Housing Authority authorized by Florida law to exercise exclusive jurisdiction over the administration of all "housing projects" in the City of Lauderhill?

In sum:

The Lauderhill Housing Authority is the exclusive agency under provisions of general law that has been authorized by the City of Lauderhill to exercise jurisdiction over the administration of "housing projects" within the city.

You advise that you represent the Lauderhill Housing Authority and have joined with the authority's General Counsel, Alfreda D. Coward, Esq., to request an Attorney General Opinion on the issue of the authority's jurisdiction to serve as the public housing authority for the City of Lauderhill under Florida law. You have not asked about a particular housing program and my comments are, therefore, limited to a general consideration of Florida law on this subject.

Part I, Chapter 421, Florida Statutes, the "Housing Authorities Law"[1] provides for the identification and clearance of slum areas in the state and the provision of safe and sanitary dwelling accommodations for persons of low income.[2] The "area of operation" of an authority is prescribed in section 421.03(6), Florida Statutes, which states that:

"(a) In the case of a housing authority of a city having a population of less than 25,000, [the area of operation] shall include such city and the area within 5 miles of the territorial boundaries thereof; and

(b) In the case of a housing authority of a city having a population of 25,000 or more [the area of operation] shall include such city and the area within 10 miles from the territorial boundaries thereof; provided however, that the area of operation of a housing authority of any city shall not include any area which lies within the territorial boundaries of some other city as herein defined; and further provided that the area of operation shall not extend outside of the boundaries of the county in which the city is located and no housing authority shall have any power or jurisdiction outside of the county in which the city is located."

Within its area of operation, a housing authority is empowered to exercise "the public and essential governmental functions" set forth in Chapter 421, Florida Statutes, which include, *inter alia*, the power to contract, to rent and lease dwellings, operate housing projects, and to invest funds not required for immediate disbursement in certain property or securities.[3] Specifically, a housing authority, such as the Lauderhill Housing Authority, is empowered:

"(2) *Within its area of operation*, to prepare, carry out, acquire, lease, and operate housing projects; to provide for the construction, reconstruction, improvement, alteration, or repair of any housing project or any part thereof.

(3) To arrange or contract for the furnishing by any person or agency, public or private, of services, privileges, works, or facilities for, or in connection with, a housing project or the occupants thereof . . . .

(4) To lease or rent any dwellings, houses, accommodations, lands, buildings, structures, or facilities embraced in any housing project and, subject to the limitations contained in this chapter, to establish and revise the rents or charges therefor; to own, hold, and improve real or personal property; to purchase, lease, obtain options upon, acquire by gift, grant, bequest, devise, or otherwise any real or personal property or any interest therein; to acquire by the exercise of the power of eminent domain any real property; to sell, lease, exchange, transfer, assign, pledge, or dispose of any real or personal property or any interest therein; to insure or provide for the insurance of any real or personal property or operations of the authority against any risks or hazards; to procure or agree to the procurement of insurance or guarantees from the Federal Government of the payment of any such debts or parts thereof, whether or not incurred by said authority, including the power to pay premiums on any such insurance.

(6) *Within its area of operation:* to investigate into living, dwelling, and housing conditions and into the means and methods of improving such conditions; to determine where slum areas exist or where there is a shortage of decent, safe, and sanitary dwelling accommodations for persons of low income; to make studies and recommendations relating to the problem of clearing, replanning, and reconstruction of slum areas and the problem of providing dwelling accommodations for persons of low income; to administer fair housing ordinances and other ordinances as adopted by cities, counties, or other authorities who wish to contract for administrative services and to cooperate with the city, the county, the state or any political subdivision thereof in action taken in connection with such problems; and to engage in research, studies and experimentation on the subject of housing." (e.s.)

Based on the specific grant of authority to operate within its area of operation, this office, in Attorney General Opinion 2002-43, stated that "the Legislature has specified the manner in

which a housing authority may operate outside its jurisdiction, thereby precluding the exercise of such powers in any other manner." That opinion concluded that a municipal housing authority and a county housing authority could, by resolution, join or cooperate with each other or enter into an interlocal agreement as a means to allow the county authority to assist the municipal authority in its continued operation.[4]

An administrative agency or officer possesses no power not granted by statute, either expressly or by necessary implication, and any reasonable doubt as to the lawful existence of a particular power sought to be exercised must be resolved against the exercise thereof.[5] Implied powers accorded administrative agencies must be indispensable to powers expressly granted, that is, those powers which are necessarily or fairly or reasonably implied as an incident to those powers expressly granted.[6] Section 421.08, Florida Statutes, specifically addresses the scope of the powers of housing authorities under Chapter 421, Florida Statutes, by providing that such authorities "constitute a public body corporate and politic, exercising the public and essential governmental functions set forth in this chapter. . . ."

The Lauderhill Housing Authority was created by resolution of the City Commission of the City of Lauderhill in 2002.[7] The area of operation for the Lauderhill Housing Authority is the City of Lauderhill and an extraterritorial area of 10 miles outside the territorial boundaries of the city.[8] The authority is authorized by section 421.08, Florida Statutes, and by its local enabling document to exercise the "public and essential governmental functions" set forth in the "Housing Authorities Law."[9] Among these is the authority, within its area of operation, to prepare, carry out and operate housing projects, and to arrange or contract for the furnishing of services, privileges, or facilities for housing projects or the occupants thereof.[10] A "housing project" is defined in section 421.03(9), Florida Statutes, to include any work or undertaking:

"(a) To demolish, clear, or remove buildings from any slum area; such work or undertaking may embrace the adaption of such area to public purposes, including parks or other recreational or community purposes; or

(b) To provide decent, safe and sanitary urban or rural dwellings, apartments or other living accommodations for persons of low income; such work or undertaking may include buildings, land, equipment, facilities and other real or personal property for necessary, convenient or desirable appurtenances, streets, sewers, water service, parks, site preparation, gardening, administrative, community, health, recreational, educational, welfare or other purposes; or

(c) To accomplish a combination of the foregoing. The term 'housing project' also may be applied to the planning of the buildings and improvements, the acquisition of property, the demolition of existing structures, the construction, reconstruction, alteration and repair of the improvements and all other work in connection therewith."

Therefore, it is my opinion that the Lauderhill Housing Authority is the exclusive public body authorized by resolution of the City of Lauderhill and by Florida's "Housing Authorities Law" to exercise jurisdiction over the administration of "housing projects," as that term is defined therein, within that city.

Sincerely,

Pam Bondi
Attorney General

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[1] *See* s. 421.01, Fla. Stat., for the short title of the law.

[2] *See* s. 421.02, Fla. Stat.

[3] Section 421.08(1)-(5), Fla. Stat.

[4] Section 421.27(3), Fla. Stat., provides that the area of operation of a county housing authority "shall include all of the county for which it is created except that portion of the county which lies within the territorial boundaries of any city as defined in the Housing Authorities Law, as amended."

[5] *State ex rel. Greenberg v. Florida State Board of Dentistry*, 297 So. 2d 628 (Fla. 1st DCA 1974), *cert. dismissed*, 300 So. 2d 900 (Fla. 1974); *City of Cape Coral v. GAC Utilities, Inc., of Florida*, 281 So. 2d 493 (Fla. 1973).

[6] *See State v. Atlantic Coast Line R. Co.*, 47 So. 969, 974 (Fla. 1908); *Keating v. State*, 167 So. 2d 46, 51 (Fla. 1st DCA 1964); *Gardinier, Inc. v. Department of Pollution Control*, 300 So. 2d 75, 76 (Fla. 1st DCA 1974); *St. Regis Paper Company v. State*, 237 So. 2d 797, 799 (Fla. 1st DCA 1970); and *Williams v. Florida Real Estate Commission*, 232 So. 2d 239, 240 (Fla. 4th DCA 1970).

[7] *See* Resolution 02R-08-139 of the City Commission of the City of Lauderhill; and s. 421.04(1) and (2), Fla. Stat., providing for the creation of housing authorities and that the governing body may do so by resolution.

[8] Section 421.03(6)(b), Fla. Stat. This 10-mile extraterritorial area cannot include "any area which lies within the territorial boundaries of some other city" and "shall not extend outside of the boundaries of the county in which the city is located[.]"

[9] *See* s. 421.08, Fla. Stat., and Resolution 02R-08-139 of the City Commission of the City of Lauderhill.

[10] Section 421.08(2) and (3), Fla. Stat.