

Declaration of Tax Exemption for Property of Housing Authority

By amendment to the Housing Authority Law, the Ninety-Eighth General Assembly has declared that "All property, both real and personal, acquired or owned by the housing authority and used for the purpose of exercising the powers set forth in the housing authority law shall be public property used exclusively for a public purpose within the meaning of article XII, Section 2 of the constitution, and shall be exempt from all taxation."¹ By a similar amendment to Section 5356 of the General Code, housing authority property is declared to be "public property used exclusively for a public purpose" and is added to the list of public properties exempted from taxation by that section.²

In *Columbus Metropolitan Housing Authority v. Thatcher*³ the Supreme Court of Ohio held that property owned by the housing authority and rented to private families was not exempt from taxation. This decision was followed in several later cases,⁴ one of which, involving property owned by the Federal Public Housing Authority, was reversed by the Supreme Court of the United States.⁵ In the Columbus case the majority of the Court concluded (1) that housing authority property rented to private families was not "public property used exclusively for any public purpose" within the meaning of Article XII, Section 2 of the Constitution of Ohio and hence could not be exempted under that provision and (2) that, since statutory language must be read in the light of constitutional provisions, neither the housing authority law, which declared that housing authority property should be "deemed public property for public use",⁶ nor the general section of the Code

¹ Amended House Bill No. 179. OHIO GEN. CODE § 1078-36 (amended). Effective date, October 6, 1949.

² Amended House Bill No. 273, OHIO GEN. CODE § 5356 (amended). Effective date, October 6, 1949.

³ 140 Ohio St. 38, 42 N. E. 2d 437 (1942). Williams and Zimmerman, JJ., dissented. See the criticism of this case in McDougal and Mueller, *Public Purpose in Public Housing: An Anachronism Reburied*, 52 YALE L. J. 42 (1942).

⁴ Dayton Metropolitan Housing Authority v. Evatt, 143 Ohio St. 10, 53 N. E. 2d 896 (1944); Youngstown Metropolitan Housing Authority v. Evatt, 143 Ohio St. 268, 55 N. E. 2d 122 (1944); Federal Public Housing Authority v. Guckenberger, 143 Ohio St. 251, 55 N. E. 2d 265 (1944) *rev'd*, 323 U. S. 329 (1945). *cf.* City of Shaker Heights v. Zangerle, 148 Ohio St. 361, 74 N. E. 2d 318 (1947), noted 9 OHIO ST. L. J. 177 (1948).

⁵ City of Cleveland v. United States, 323 U. S. 329 (1945), *reversing* the Guckenberger case, *supra*, note 3.

⁶ OHIO GEN. CODE § 1078-36, prior to the current amendment.

which exempts "public property used for a public purpose"⁷ were intended to make housing authority property tax exempt.⁸

The express exemption from taxation contained in the current amendments settles the question of legislative intent. The further declarations, that housing property used for the purposes of the act is "public property used exclusively for a public purpose," hardly can be decisive of the constitutional question.

F. R. S.

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⁷ OHIO GEN. CODE § 5351.

⁸ With reference to the housing authority law the Court said: "It will be noted that the Legislature has not attempted to declare that such property shall be deemed public property used *exclusively* for any public purpose. ***we assume that the Legislature was mindful of the constitutional limitation."