Housing Legislation in Kentucky

Byron Pumphrey

1936

Follow this and additional works at: https://uknowledge.uky.edu/klj

Part of the Housing Law Commons, and the State and Local Government Law Commons

Right click to open a feedback form in a new tab to let us know how this document benefits you.

Recommended Citation
Available at: https://uknowledge.uky.edu/klj/vol24/iss3/4
LEGISLATION

HOUSING LEGISLATION IN KENTUCKY

With the passage, in 1933, of the Municipal Housing Commission Act, Kentucky took its place in the still thin ranks of those states having public housing legislation.

The enactment of this law, however negligible a step forward one may regard it, marked a decided change in the state's former housing policy. In order fully to understand and evaluate this new legislation it seems essential: (1) to appraise, briefly, the conventional housing legislation of the past; (2) to understand something of the theories of the various housing advocates; (3) to see in what measure these theories have been embodied into Federal legislation; (4) to find in what degree such Federal legislation has influenced the enactment of state legislation on the housing problem.

Conventional Housing Legislation of the Past. Prior to the passage, in 1926, of the New York State Housing Law, the legislation upon one of the most important social problems of modern times was almost wholly restrictive.

A century ago, in 1834, the city health inspector of New York called attention to the connection between high death rates and bad housing conditions, and their relation to the spread of epidemics. It was not until 1867, however, that the New York legislature passed the first tenement house law for New York City. This constituted the first exercise of the police power in this country to regulate the use of such private property as tene-

---

1 Ky. Acts 1933, c. 89.
2 By public housing is meant housing carried on by a public body such as a municipality or a state. Such housing may or may not be constructed by such public body, but would at least be administered by it. Limited dividend housing companies, part of the income of which goes to the payment of dividends to private investors, are not public bodies within the meaning of the term. States other than Kentucky having such legislation include New York, Ohio, South Carolina, Delaware, Illinois, New Jersey, Michigan, Maryland, and West Virginia. Fourteen states, California, Illinois, Florida, Ohio, Arkansas, Kansas, South Carolina, North Carolina, Delaware, Texas, Massachusetts, Virginia, New Jersey, and New York have laws providing for state-regulated limited dividend corporations.
4 N. Y. Laws 1867, c. 908.
ment houses in the interest of the health, safety and morals of the tenants. "For the first time it became illegal in one American city to build a tenement house covering 100 per cent of its lot. A ten-foot yard had to be left at the rear for light and air. A wholly subterranean room could no longer be rented for human habitation."^5

The New York tenement house law^6 was followed by general restrictive legislation in the form of state housing codes. The first of these was a tenement house law for cities of the first class,^7 passed by Pennsylvania in 1895. New York followed in 1901 with a tenement house law for cities of the first class. Some dozen or fifteen states passed similar legislation, Kentucky adopting its tenement house law in 1910. Like the New York and Pennsylvania legislation, the Kentucky law applied only to cities of the first class. Hence only the single city of Louisville^10 was subject to any sort of housing legislation as late as 1910 in Kentucky. And the Kentucky statute differed in no important degree from legislation of a similar kind in other states. It had to do merely with limiting the height and bulk of buildings in relation to the ground they occupy, with the provision of sanitary facilities and light and ventilation, and with the precautions that must be taken against the spread of fire. Nevertheless, the step here taken was undeniably a necessary one in housing reform.

The next important advance in legislation of this type was the enactment by Michigan, in 1917, of a Housing Law. This legislation was based upon the model housing law prepared by Lawrence Veiller and published by the Russell Sage Foundation in 1914. This new housing code regulated private, or one and two family dwellings, as well as the multiple, or three family

---

*Wood, A Century of the Housing Problem, 1 Law and Contemporary Problems 137 at 138. An entire issue of this magazine is devoted to the problem of low-cost housing and slum clearance. While articles dealing with legal problems are the most numerous, the editors of the periodical have seen to it that the subject is presented from other angles than the legal one. This symposium constitutes a most valuable addition to the subject and it will be necessary, in the course of this writing, to refer many times to articles appearing in this issue of the publication.

*Supra, note 4.

^Penn. Laws 1895, p. 178. See also Penn. Laws 1885, p. 37.

^N. Y. Laws 1901, c. 334.

^Ky. Laws 1910, c. 41, p. 120.

^*Carroll's Ky. Stats., c. 89, Article 1 (1930).

dwellings. The standards set were high and the Act dealt in
detail with light and ventilation, sanitation, fire protection,
alteration, maintenance, improvements, etc. A similar act, in
general, embodying in it the standards laid down in the Michi-
gan Act, was adopted by the Kentucky General Assembly in
1920. But the Kentucky Housing Act was limited in its appli-
cation to cities of the first class whereas the Michigan Act ap-
plied to all corporate bodies having a population of 10,000 or
more. Even this small gain was overcome when, in 1922, the
Kentucky General Assembly repealed the Act in its entirety.

Scarcely conventional, but belonging definitely to the cate-
gory of restrictive legislation, was the New York emergency
measure, enacted in 1919, restricting rents and the rights of
landlords in New York City to recover possession of their prop-
erty from tenants.

This legislation came as an almost inevitable result of the
nearly complete cessation of building during the war, the growth
of population in New York City, and the abnormally high cost
of building that prevailed immediately after the war. While it
constituted something of an answer to the housing problem at
that particular time—an opiate, perhaps, to a serious social con-
dition—such legislation is obviously not, nor is it intended to be,
a solution to the problem of decent housing. It fails, as all re-
strictive legislation must necessarily fail, in furnishing what is
most needed—a stimulus to the erection of more buildings. For
while restrictive legislation can prevent the erection of objec-
tionable living quarters, or can prevent the landlords from tak-
king advantage of a social condition, it fails to supply the really
vital element necessary in a housing policy—the building of
homes for those who need to be housed. Restrictive legislation
forms a necessary and complementary part to the positive legis-
lation being passed today, but in itself it constitutes no solution
to the problem.

It was in recognition of this that immediately following the
enactment of the New York Rent law, that the Legislature

---

12 Supra, note 11.
13 Ky. Acts 1920, c. 68.
25 N. Y. Laws 1920, c. 130–139. Similar legislation also was passed
in New Jersey, Massachusetts, Maine, Delaware, Illinois, Colorado,
Wisconsin, and in the District of Columbia.
25 Supra, note 15.
passed, as an inducement to production, an act permitting cities, counties, towns, or villages to exempt from local taxation for a period of ten years any new dwellings, except hotels, erected prior to 1922. This date later was extended until the exemption feature was applicable, with some restrictions, to dwellings which were begun prior to April 1, 1924.

New York City took advantage of the act by passing a local law in February, 1921, granting the exemptions permitted. The law was followed by an enormous construction boom.

Not all of the conventional housing legislation of the past has been purely restrictive in character. For decades building and loan associations had been serving the middle classes, and had published far and wide the slogan, "Own your own home." Lower-wage income groups, however, could not benefit by this legislation, and it is housing for these groups which constitutes our chief problem. Undoubtedly, however, such associations are a factor for much good when one considers housing legislation as a whole. Kentucky passed an act providing for such associations as early as 1893. Such, then, has been the housing policy followed in the past. We are now in a position to examine the theories of the present day housing advocates.

Theories of Present Day Housing Advocates. Not all of the housing policies advocated by the diverse groups of today have remained theories, for the ideas of some of them have been lifted to the plane of action, the outstanding example being the passage, in 1926, of the New York State Housing Law. While this law may be said to represent a conservative approach to the problem of low-cost housing, it is nevertheless a progressive measure.

In return for the free advice and supervision of the state housing board, the power of eminent domain, and possibly tax exemption for twenty years for the buildings erected, companies formed under the New York law are subject to two principle limitations or restrictions, namely, limitations of rent and of dividends.

An examination of the law reveals the conservative character of the legislation. We may notice, first, the entire reliance placed upon private capital, for inasmuch as the measure ex-
cluded the use of public funds, it must necessarily have been predicated upon the assumption that the necessary money would be forthcoming from private sources. In essence the law was an instrument which gave to private capital the opportunity of providing certain types of low-cost housing.

As an inducement to private capital, we discover the tax exemption feature of the law. It was seen, how greatly this feature stimulated the production of houses following the World War, when the housing situation was acute. But with limitations placed on its profit, capital was not so ready to fulfill the obligation which the New York legislation pressed upon it. A further distinction between the times should be noticed. Whereas after the war, there was an acute shortage of quarters at any price, at the time of the New York legislation the problem was the more difficult one of providing a certain element of the population decent housing at a price it could afford to pay.

Although the tax exemption feature as applied here, in effect amounting to an indirect subsidy to the tenant, enabling private capital to erect and rent suitable dwellings at a cost within the restriction imposed by the legislature and the capacity of the wage earner's pocketbook, it is not a radical practice. For decades municipalities have offered like inducements to manufacturing concerns, the effect of which has been to subsidize such concerns during the period in which they are exempted from taxation. The only distinction perceived is that one policy was fashioned to appeal to the profit motive of the individual entrepreneur while the other is designed to induce him to provide adequate living facilities for human beings.

The more liberal provision of the bill was eliminated by opponents. This called for a state housing bank to finance limited dividend housing projects under the supervision of the state board. However, in order to enable the public limited dividend companies to more easily secure funds, bonds, mortgages, and income debenture certificates of all companies incorporated under the act were declared to be instrumentalities of the state, created for public purposes, and exempt from taxation. Dividends from their stock likewise were exempt. In addition, first lien bonds of such companies, when secured by mortgages not exceeding two-thirds of the estimated cost prior to completion of the project, or two-thirds of the appraised value of the actual cost, which-
ever should be less, after such completion, were declared securities into which all public officers and bodies of the state and of the municipal subdivisions, all insurance banks, savings banks, saving and loan associations, executors, administrators, trustees, and all other fiduciaries in the state might properly and legally invest funds in their control.

In judging the entire measure it can be said that it represents a conservative, but intelligent, approach to the problem of low-cost housing. Its weakness is its assumption, implicit in the Act, that private capital can, or will, even with the inducements offered and concessions made, provide low-cost housing on a scale of sufficient magnitude to be socially effective. That this assumption was unsound is shown by: (1) New York was the only community which undertook to operate under the Act; (2) the result during the years 1927 to 1932 was the building and operation of but eleven garden apartment projects housing just under 2,000 families, some of these being projects undertaken by cooperative enterprises.

As I have indicated, the theories of the various housing advocates can be classified as Liberal or Conservative. The basic assumption of the Conservative advocates of housing reform is the ability of private capital to do the job. Direct governmental aid is, among these theorists, something to be deplored. One intelligent Conservative approach to the housing problem has been examined. Let us now see what else has been offered.

Less realistic than the New York plan, but more nearly in line with traditional Conservative principles, is the plan advocated by Herbert U. Nelson. Mr. Nelson believes that "the most valuable assistance that the Federal government can give to the whole great social movement is . . . through setting up instruments for very broad general use." In line with this he has advocated what he terms the Home District Plan.

This plan contemplates the enactment of a law which would allow seventy-five per cent of the property owners owning

---

20 In 1932 Congress passed the Emergency Relief and Construction Act. Inasmuch as the adoption of this Act constituted the Liberal, as opposed to the Conservative, policy, providing, as it did, direct government aid for housing projects, it is important that the two periods be kept separate if we are properly to evaluate them.

21 Secretary and Manager, National Association of Real Estate Boards, Chicago, Ill.

22 1 Law and Contemporary Problems 158.
seventy-five per cent of the area affected to act under the police power to wipe out adverse use and so, according to Mr. Nelson, provide an instrument whereby owners could come together in a practically effective way to change the character of the neighborhood. "Zoning laws," he says, "at the best protect only against new invasions of adverse use. They give no lever through which the people of a district may, by majority cooperative action, throw out an adverse use."23

Not only does his proposal seem dubious from the standpoint of enlisting property owners for action in bettering their neighborhoods, but it is likewise questionable whether such a "legal instrument" would prove effective in the face of the due process clause of the Federal Constitution.

For the low-income group Mr. Nelson advocates a plan "such as to retire capital in approximately twenty or thirty years, providing, every year, a small undistributed dividend. Every tenant, at the end of each year of occupancy, would be credited with his share of the 'dividend' for that year. He could not draw out his dividend, but in case he incurred sickness or unemployment and could not pay his rent the amount would be available and be applied to cover his current rent bill. If he moved from the apartment the accumulated dividend would have a certain cash surrender value, such as is given life insurance policies. Persons remaining in a building conducted on this cooperative principle might accumulate sufficient cooperative interest in the building's earnings to assure them, after a time, rent free quarters over a considerable period in the building or in another of equal quality under the same cooperative society."24

What Mr. Nelson is proposing is simply a form of rent insurance which, if the payments are kept up over the designated period, might possibly result in the tenant acquiring part ownership in the building. Such a project will be financed by private capital and will be administered, without salaries, by high minded millionaires. The proposal is seriously offered by Mr. Nelson as a substitute for the inadequacies of the limited dividend housing plan.

Still others who place their faith in the ability of private enterprise to provide decent housing for everyone are pointing

23 supra, note 22.
24 1 Law and Contemporary Problems 158 at 165.
to the possibilities of mass production of pre-fabricated houses. These advocates insist that modern technology, given the chance, can do for the home what it did for the automobile; and that by providing such housing it can do for American industry today what it did, through the automobile, from 1917 to 1929. Streamlined, air-conditioned homes, priced at from $1,000 to $10,000 is the idea here. So far, however, it has remained largely on paper, although a dozen or more firms, including the well known A. O. Smith Company of Milwaukee, are probing its possibilities.

The foregoing plans are the best the Conservative housing advocates have to offer. What of the Liberal programs? Possibly the most moderate proposal comes from those advocating cooperative housing. The plan outlined is essentially like that of Mr. Nelson's tenant participation plan with the important difference that private capital is not depended on to supply the necessary funds. According to Mr. James P. War-basse,25 the money would be supplied by the government in the form of a loan to a cooperative association. The loan would be amortized over a term of years by the tenants in their monthly payments. The whole principal would be repaid the government to be used again as a revolving fund for more cooperative homes.

Splendid as this proposal is, its realization cannot provide homes for the lower income group, but only for the skilled wage earner and certain of the white collar workers. Such a plan has met with the most success in Europe, where a strong trade union movement, trained in the traditions of cooperative enterprise, has provided, with the help of the government, decent and comfortable homes for millions of skilled workers. In this country, the Amalgamated Cooperative House on Grand Street, New York City, the home of the needle trades union, is a notable example of its kind. Were the government to initiate such a policy, probably the stronger unions could provide resources and leadership competent enough to house their workers. But the social vision of the present leaders does not inspire confidence.

Notwithstanding this, it is believed that such a plan should form an integral part of the present housing policy. If government funds were made available, on easy terms, to cooperative

---

*3 Common Sense 26.
societies, much might be accomplished in the direction of stimu-
лating the actual building of adequate houses.

The other important Liberal proposal is that the Federal
government make loans, part of which would be an outright
grant, to public authorities, or that it go to building and admin-
istering housing projects itself. Whether it should do the one
or the other, there is a wide divergence of opinion. If, however,
the lower-wage income groups and the slum dwellers are to be
reclaimed, if the disease and the death rate in these sections are
to be cut down, if we are to have as our primary purpose ade-
quate housing for all classes, some such action must be taken.
Certainly, if the Administration plans to carry out a system of
public works in an effort to provide employment, hardly a more
beneficial project than adequate housing could be conceived.

It has been estimated that only by an investment of from
thirty to forty billions of dollars could the present shortage in
low-rental housing needed to take care of the lower-income
groups be met. Five years employment of the entire building
industry—organization, machinery, and workers—would be re-
quired.

It is thus pointed out by these advocates that the policies
followed thus far have resulted in housing for only a handful
of skilled wage earners. It is argued that in order to house the
lower-income groups the Federal government should bridge the
gap between wages and rents by a more liberal use of public
money. As Mr. Carol Aronovici puts it, "there is no reason why
government credit should not be granted at two per cent even if
the rate paid on government bonds for housing were three per
cent. On a billion dollars this would only amount to ten millions
of dollars a year, an insignificant sum when compared with the
many commercial outright subsidies granted to shipping and air-
mail service. This amount of money would be reduced annually
by the amount of amortization till it amounted to an insignificant
sum when looked upon in the light of the vast Federal
budget."

The Theories Embodying Into Federal Legislation. It was
not unnatural that the Federal government should follow the
conventional pattern when it first came to deal with the housing
problem. Thus the first Federal legislation, enacted in July

1 Law and Contemporary Problems 148 at 156.
of 1932, and known as the Home Loan Bank Act, was an effort to put savings and loan associations into localities previously weak in credit facilities. Such a step, although of importance in financing the small home owner with sufficient credit to borrow, manifestly cannot stimulate the production of the kind of housing most needed.

Immediately following the passage of this law there was enacted the Emergency Relief and Construction Act, under which the government was empowered "to make loans to corporations formed wholly for the purpose of providing housing for families of low income, or for reconstruction of slum areas, which are regulated by state or municipal law as to rents, charges, capital structure, rate of return, and areas and methods of operation, to aid in financing projects undertaken by such corporations which are self liquidating in character."

At the time of the adoption of this Act (July 21, 1932) only New York had a state housing law providing for the organization of corporations which could qualify under the above quoted provision.

It was expected, of course, that the other forty-seven states would immediately enact similar legislation and that private capital, rising nobly to its opportunity, would set about providing that much needed housing lacked by more than one-third of the population. Production would boom, unemployment would decrease! Such a result, needless to say, failed to materialize. Only thirteen states passed the required legislation, and only a few limited dividend corporations were organized.

On June 16, 1933, the liberal Roosevelt administration secured the approval of the National Industrial Recovery Act, Section 202 of which read, in part, as follows:

"The Administrator, under the direction of the President, shall prepare a comprehensive program of public works, which shall include among other things the following: . . . (d) construction, reconstruction, alteration, or repair under public regulation or control of low-cost housing and slum clearance projects."

And Section 203 (a) provides among other things that

"With a view to increasing employment quickly (while reasonably securing any loans made by the United States) the President is authorized and empowered, through the Administrator or through such
other agencies as he may designate or create, (1) to construct, finance, or aid in the construction or financing of any public works project included in the program prepared pursuant to Section 202; (2) upon such terms as the President shall prescribe, to make grants to states, municipalities, or other public bodies for the construction, repair, or improvement of any such project, but no such grant shall be in excess of 30 per centum of the cost of the labor and materials employed upon such project.

Under this Act the President, through his Administrator, could continue to lend money to the limited dividend corporations; he could make direct grants of up to thirty per centum of the cost of the labor and materials employed upon such projects to states, municipalities, or other public bodies (limited dividend corporations not being public bodies within the meaning of the act); or he could himself construct or finance such works.

Here, then, was legislation under which it was possible to go as far as the most liberal proponents of housing reforms desired. The Administration, however, chose not to use the third alternative except to a very limited extent. Only a few of the states, pressed by communities whose hungry eyes were on the thirty per centum grant of the cost of labor and materials, passed legislation enabling the state, municipality, or other public body to carry on low-cost housing or slum clearance projects.

Meanwhile, the Administration secured the enactment of the National Housing Act on June 27, 1934. In it there was inserted a provision for insuring loans up to $2,000. It is safe to predict that its operation and effect will be confined largely to the middle and lower middle classes who happen to have the requisite credit. For judging from the past, it is unlikely that private capital operating through limited dividend companies will take advantage of it, despite the provision for insuring loans on large-scale housing projects. As regards the municipalities, none is likely to borrow from this fund while there is still a chance of getting the thirty per centum grant permissible under the N. I. R. A.

Theoretically, however, the Act provides a clever device for releasing large sums of private capital for low-cost housing developments. For by Section 1709 (U. S. C. A.) of the Act, insurance up to one billion of dollars is authorized on property and low-cost housing projects existing on June 27, 1934, and a

similar amount is authorized on property and low-cost housing projects after that date. By Section 1713 (U. S. C. A.), insurance can be provided on single projects up to ten millions of dollars. That the provisions of this Act relating to low-cost housing are regarded as of little, or no, significance, is seen in the publicity campaign waged after the passage of the Act. Here, the emphasis was placed wholly on the loans which could be secured for building individual dwellings or for renovation and repairs. That it had no actual significance is shown by the fact that no projects have been undertaken under this provision.

The Degree in which Federal Legislation has Affected State Legislation. It has already been seen that the passage, on July 21, 1932, of the Emergency Relief and Construction Act,32 resulted in the enactment, by thirteen states, of laws providing for the organization and operation of limited dividend corporations; also, that the passage on June 16, 1933, of the N. I. R. A.33 led ten states, including Kentucky, to adopt legislation meeting Federal requirements for prospective loans. Since only the single state of New York had laws authorizing the operation of limited dividend companies and no state had laws providing for the operation of low-cost housing projects by public bodies, the conclusion is inescapable that any serious movement for decent housing conditions must be taken by the Federal government, since the states, with the exception of New York, have acted only under the stimulus of Federal legislation.

BYRON PUMPHREY, Attorney at Law,
Lexington, Kentucky.

(To be Concluded in the May Issue.)

* Supra, note 28.
** Supra, note 30.