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HOUSING LEGISLATION IN KENTUCKY (Cont.)

PART II: THE KENTUCKY ACT

It has been established that positive state legislation on the housing problem, with the notable exception of the New York State Housing Law, has resulted from Federal statutes. The enactment of the N. I. R. A. gave to the government power, if it but cared to use it, directly to employ large sums of Federal money in the building of low-cost housing. Doubtless the Public Works Emergency Housing Corporation was formed with this in mind. But the Administration has used this power only in a very cautious fashion. It has sought to rely, instead, upon concurrent action by the states, and it has sought to induce such action on the part of the states by granting up to thirty per centum of the cost of labor and materials on such projects as are undertaken. Not only was this subsidy necessary if suitable housing was to be provided for the low-income groups, but it was likewise necessary if certain states or cities were to be encouraged to embark upon social programs of the kind envisaged in the Act. Something substantial enough to offset the howls, sure to be raised, of socialism and paternalism in government was advisable.

Even with this inducement only ten states have enacted the legislation necessary for them to qualify for loans and grants under the Act. Only thirteen communities, acting under the authority of such state legislation, have established housing authorities. And even in some of these states and communities, such necessary legislation and ordinances as have been passed appear to have been done from selfish motives. Certain provisions in these laws seem designed to further the interests of particular groups. Very rapidly it develops that housing is to be subject to all the conditions of graft, sensitiveness to vested interests, etc., that those advocating the keeping of housing out of politics (i. e. housing provided by government initiative) had predicted.

Supra, note 3.

New York, Schenectady, Buffalo, Cincinnati, Cleveland, Columbus, Dayton, Toledo, Warren, Youngstown, Columbia, East St. Louis, and Lexington (Ky.).
But surely neither a seer nor a reactionary was needed to foretell this. As pointed out by Ernest J. Bohn,36 in his article on Housing As a Political Problem,37 "'America is faced today with the task of improving its government, rather than keeping government out of activities it should be in.'" Again, in the same article, he says: "'Either the government will participate in housing, and housing will be subject to all the abuses that other governmental activities are subject to; or, the government will keep out and we shall have no solution to our housing and slum problems.'"

Possibly, as many of the Liberal advocates of housing reform suggest, it would have been better from both an economic and political standpoint had the Federal government itself undertaken to build and operate low-cost housing projects. Certainly powerful minority interests in state and municipal politics would not have been afforded the opportunity which they today have of defeating and discrediting housing reform. On the other hand it is doubtful that public opinion on a national scale can be mobilized unless concurrent action by the states and municipalities is invited. Once the issue of good housing has become important, one may expect to see the passage of more model statutes. In the meantime the political education which is so sadly needed in America today will not have counted for nothing.

If, then, the policy of concurrent action by states and municipalities on the one hand and the Federal government on the other is to be finally adopted, it behooves every citizen to scrutinize closely the housing laws of his own particular state. In the light of the foregoing, let us proceed to examine the Kentucky Act.38

Briefly, the principal provisions of this Act are: (1) that cities of the first and second class be authorized "'to acquire, establish, erect, maintain and operate low-cost housing projects within the corporate limits of such municipality (italics ours) . . . for the purpose of providing adequate and sanitary living quarters for individuals and families; (2) that as a matter of

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36 Member, Cleveland City Council, Chairman the first National Conference on Slum Clearance (Cleveland) 1933. President, National Association of Housing Officials, Chicago.
37 1 Law and Contemporary Problems 176.
38 Ky. Acts 1933, c. 89.
legislative determination and "in order to promote and protect the health, safety, morals and welfare of the public it is necessary in the public interest to confer these powers upon cities"; (3) that the city may create a Municipal Housing Commission with powers to engage in low-cost housing and slum clearance projects; (4) that the commission so appointed or created have the power of eminent domain; (5) that such projects be financed by issuance of the Housing Commission's Revenue bonds which "shall not constitute an obligation of state, city or other governmental subdivision, agency, or instrumentality thereof, but shall be payable only out of the properties, revenues and assets of the Housing Commission"; (6) that nothing contained in the Act shall be construed "to authorize or permit any city of the first or second class to incur any indebtedness of any kind or nature as contemplated by the provisions of the Constitution of the Commonwealth in relation to the indebtedness of cities"; (7) that the Housing Commission be authorized to borrow money and enter into contracts with the Federal government; and that bonds issued to provide funds for housing projects shall be exempt from taxation.

Inasmuch as the benefits of the Act are limited to cities of the first and second classes, only six communities are afforded an instrumentality whereby proper housing can be provided. It seems strange indeed that a state whose population is predominately rural should put upon its statute books legislation designed to favor only the large communities. Thus, forty-two communities in Kentucky with a population of 2,500 or more are cut off from procuring Federal funds for needed housing projects. But even as to the large communities the Act has a serious defect as an instrument for the promotion of low-cost housing. Such projects can be acquired, established, erected, maintained and operated only within the corporate limits of the municipality. Thus, by virtue of this clause, every housing de-

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39 Louisville, Lexington, Covington, Newport, Paducah, and Ashland.
40 Apparently the Federal government intends to shoulder the entire responsibility of providing decent housing for rural workers, small farm owners, and villagers. Most of this work is apparently being done by the Division of Subsistence Homesteads of the Department of the Interior. However, the rural rehabilitation Division of the Federal Emergency Relief Administration is also undertaking a number of similar projects. The work is being done in cooperation with the states.
development undertaken in Kentucky is to be nailed to the cross of slum clearance. That there is a wide distinction between slum clearance and low-cost housing, the testimony of such distinguished authorities as Edith Elmer Wood,41 Carol Aronovici,42 and Lewis Mumford43 bears ample witness.

According to Miss Wood, none of the countries which have engaged in extensive housing activities have sought to reclaim the slums, but have built on lew land. This is notably true of Germany, which has built more than one million working class apartments since the war, but has not been clearing slums.44

Such a policy is termed by Mr. Aronovici the last resort of the slum owner and the investor in dead mortgages. "It is designed," he says, "to save the skin of those who have been exploiting the slums as a matter of sound business practice and to keep the supply of housing down to the present level so as to avoid competition in quantity of accommodation if not in quality. . . . Since most slums are intensively built up, the capitalization and assessed values of the land and buildings involve high land cost, compensation for buildings, and expenses in the assembling of parcels of land and the demolition of existing buildings. . . . Once we provide decent housing within reach of places of employment, the slums will vanish by the sheer weight of their obsolescence, and with them, the burden of taxation and mortgage interest rates which can for the present be extorted from helpless slum dwellers who can find no place to go at the rental rates which they can afford to pay."45

Inasmuch as suitable vacant areas at an acceptable price within the corporate limits of Kentucky cities are very scarce, the Kentucky Act,46 by the provision limiting such developments to the corporate limits of such cities, has in effect guaranteed the holder of slum properties in those communities seeking to operate under it a price for his land.

44 "Member of the N. J. State Housing Authority; Consultant to Housing Division of P. W. A.; Author of The Unskilled Wage Earner, Housing Progress in Western Europe, and Recent Trends in American Housing.
45 Director of Housing Orientation Study, Columbia University; Editor, The Community.
46 Author, Technics and Civilization; noted architect.
47 1 Law and Contemporary Problems 146.
48 Housing the Poor: Mirage or Reality, 1 Law and Contemporary Problems 148.
49 Supra, note 39.
How different is the Michigan Act47 which provides that "any county, city, incorporated village, township, school district, or metropolitan districts of the State of Michigan is authorized to purchase, acquire, or construct housing facilities . . . either within or without the limits of such county, city, . . . ."

The Michigan and Kentucky acts show very clearly indeed the distinction between legislation designed to provide genuine low-cost housing and that designed solely to promote slum clearance and to salvage the private owner and the real estate interests.

The evil effects of the Kentucky Act have been avoided in Lexington, thus far the only city in Kentucky to set up a Municipal Housing Commission under the provisions of the Act.48

According to the report prepared for the Federal authorities by the Lexington Municipal Housing Commission, the city has a total population of 45,736. The total white population is given as 33,977 and the Negro population as 12,759. What proportion of either are slum dwellers is not mentioned. However, the city is said to have six slum areas, the majority of whose population is composed of Negroes. There has been no marked shift of the population (i. e. slums are on a stable basis), but those of the population residing in the older better class houses are moving gradually into suburban areas.

The buildings housing the inhabitants of the slum areas are described as two or three room wooden structures, poorly erect-

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48 The Federal government is itself undertaking the Louisville housing development. In order to carry out the project it was found necessary to condemn certain private property. It was held that the Federal government lacked this power. U. S. v. Certain Lands in City of Louisville, 9 Fed. Supp. 137 (1935). To discuss the question whether low-cost housing is a public use in the sense that the Federal government has the power of eminent domain for such purpose would be to wander too far afield. See, however, 1 Law and Contemporary Problems 232. It must be acknowledged that other than this case, which the United States will appeal, there is no decision clearly in point on the subject. For the time being those proponents of housing who advocate concurrent action by Federal and State governments have an additional argument in their favor. For admittedly, the state's power to condemn land for such a purpose is much more clear. See State ex rel. Twin City Building and Investment Company v. Houghton, 144 Minn. 1, 176 N. W. 159 (1920); Green v. Frazier, 44 N. D. 336, 176 N. W. 11 (1920); Green v. Frazier, 253 U. S. 233, 241 (1920); People ex rel. Durham Realty Corp. v. La'Fetra, 230 N. Y. 429, 130 N. E. 601 (Writ of error dismissed, 257 U. S. 665, 1921).
ed, leaky, needing paint and structural repairs and lacking proper heating and lighting facilities. The majority of the buildings have no proper sanitary equipment, in many cases the outdoor privy being the only toilet facility. Gas and electricity are available, but are not used. There are no park spaces, and the house and outbuildings take up practically all of the lot. The buildings are from twenty to fifty years old.

Regarding the social condition, it is said that there is a far greater per inhabitant cost of police, public health service and delinquency correction in these areas than in others in the city. Most of the time and money of the social service organizations are spent here.

The average income per person in these areas is given as from $40 to $75 per month. The average rental paid is $10.91 per month.

The largest area has a population of 1,034. The immediate neighborhood is one of railroad tracks and tobacco warehouses. It was originally planned to sink a total of $1,000,000 in a housing project for this area. Fortunately for the city and the government, however, a tract of land comprising some 66 acres was thrown upon the market by the Kentucky Racing Association. The whole of this area is within the city limits. The Federal authorities purchased this property, and it is now proposed to build two low-cost housing units to cost approximately $1,500,000. Recognition of the fact that "new houses for old and in the same place may be too simple and superficial a remedy for a disease which has its causes in forces more deep, varied and complex than the size, character and conditions of the old buildings," has been shown.

Even a change in environment together with all the assistance that experienced social workers can render is often not enough to rehabilitate some slum dwellers. Under the best possible conditions, patience will be demanded if the people we propose to rehouse are to be converted into socially responsible individuals. Merely to reclaim slum areas by the building of new dwellings, and without taking into consideration the immediate surrounding environment, would be to invite disaster. Lexington is to be congratulated in being able to start its hous-

* 1 Law and Contemporary Problems 206.
ing developments in so auspicious a manner, but can it be expected that other cities will be equally fortunate.

It should not be concluded from the foregoing that areas now known as slums should not in any case be reclaimed. Often-times where modern facilities already are available and the surrounding territory is not sufficiently devoted to industry, the restoration of the neighborhood may be the wise course to follow. The primary factor to be considered is whether or not the area is fit for residential use. Then the item of cost and delay should also be taken into consideration. If the price demanded is so high as to make genuinely low-cost housing impossible, or if the buying of the property would necessitate long drawn out condemnation proceedings, it would seem better to undertake the housing projects in areas more favorable. The city might then, under its police power, condemn all the unsightly and unsanitary buildings in the former areas which, due to the former housing shortage, it could not afford to have razed to the ground. At some future time, possibly, these areas might be effectively reclaimed. Where, however, such areas can never be fit for residential use, they could be zoned for industry and business. In any case, the essential point of a housing program should be to salvage people—not the slum owner—and to make that salvage permanent by creating sound community environment for living. But under the Kentucky Act, which restricts planning in any fundamental sense, those charged with this responsibility labor under a great handicap.

Aside from these two features, namely, the confining of the benefits of the Act solely to first and second class cities and the provisions limiting housing developments to the corporate limits of the particular city, there is little else that is objectionable.

It remains silent on the controversial issue of tax exemptions. The power to tax such improvements would therefore be implicit. But that the city should make some contribution to a local project, at least for a certain period, would not seem an unreasonable expectation.

A problem certain to arise is the question of providing

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50 Supra, note 38.
funds to carry on the initial work. Under the Kentucky Act,\textsuperscript{52} no authority is given to the city to make loans for such preliminary work. Thus far it seems to have been carried on by the Federal government through the Federal Emergency Relief Administration.

From the standpoint of allowing the necessary liberty of action on the part of the Housing Commission the Act is well drawn. Thus the provision authorizing the establishment of by-laws, rules and regulations governing the conduct of the affairs of such housing agencies and to otherwise act as a corporate body in the performance of its functions should prove a splendid instrument in the hands of efficient and socially-minded members of such commissions. The provision authorizing salaries is likewise admirable. For otherwise the members of such commissions, having expended their first wave of creative enthusiasm, might lapse into indifferent servants of the public trust which is theirs.

CONCLUSION

So appears that low-cost housing on an effective scale will be undertaken only when public opinion has been aroused and educated to its value. As set forth in the National Industrial Recovery Act, the Federal government’s interest in housing lies primarily in its worth as a measure for giving employment. This accounts for the indecision and change in government policy. Subject, as it necessarily is, to all forms of pressure from special interests having a great deal to lose by housing developments carried out on a large scale, the government has allowed the huge sums at its disposal to be allocated to more conventional forms of public works, such as roads, sewers, airports, etc. This will continue to be the case where a small band of social reformers, architects, and public health authorities are pitted against great financial interests. How to enlist the support of the mass of people is a tactical problem that will call for increasing study on the part of all those interested. It is not too much to say, however, that some theory of action should be adopted which will in so far as possible resolve the conflicts now being waged by the various housing theorists, both Liberal and Conservative.

\textsuperscript{52} Supra, note 38.
It is suggested that the Liberals concentrate on a policy having as its immediate object the allocation of Federal funds to provide housing for that proportion of the population whose income is not sufficient to buy decent housing without the aid of a government subsidy. For the present, let a policy be adopted which will compete in only the slightest degree with private capital. At the same time the government should make it clear that it is looking to private enterprise to provide adequate housing facilities to those whose income has proven sufficient to meet the rental charges of the limited dividend corporations. Such a policy, might do much toward moving private capital to accept what is after all its social responsibility. Cooperative associations operating under such laws might be allowed to borrow from the Federal government, if unable to procure funds from private sources.

In order to provide private capital with the opportunity of functioning with real effect, a great many more states would have to enact limited dividend housing acts on the order of the New York Housing law. It is possible that private capital

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53 In all probability the survey now in progress by the Civil Works Administration would give the necessary statistical data. A distinction would necessarily be made between those whose income levels could not provide them with decent housing and those who are unemployed. As pointed out by Messrs. Draper and Augur in their article entitled The Regional Approach to the Housing Problem, oftentimes a solution will be found in the removal of surplus population to points where they can afford a decent living. That the present Administration has seen this problem is shown by a provision of the National Industrial Recovery Act (40 U. S. C. A. 408), where it is provided that to aid in the “redistribution of the overbalance of population in industrial centers, $25,000,000 is hereby made available to the President, to be used by him through such agencies as he may establish and under such regulations as he may make, for making loans and otherwise aiding in the purchase of subsistence homesteads.” An example of the concrete working of this measure may be seen in the project at Woodlake, Texas, where 100 families were selected by the Texas Relief Commission and taken off the relief rolls and provided with subsistence homesteads. Each family is provided with a house, barn, and three acres of land. The average cost of this is $1,490, but since $670 is in relief labor, the net cost is only $820. In addition to the three acres provided each member, there are two large community tracts of 600 acres each. There is a community part of 255 acres, with school, community house, bath house and trading post, the community house being used also as a church. The houses are constructed of brick, with a stone fireplace. All have modern plumbing. They are leased for a period of three years at a rental of $180 a year. The rent is paid in farm and poultry surpluses to the Texas Rural Communities, Inc. (See 77 Architectural Record 12.)

54 Supra, note 3.
would force the passage of such measures once it was assured that the government was providing it with one last chance to shoulder its responsibility in this field, for the public utility idea as applied to housing is a concept that is gaining increasing force.

Kentucky can play an important part in such a program only if the present Municipal Housing Commission Act is amended so as to remove the limitations as to first and second class cities and as to place of construction. It would likewise be necessary to enact legislation similar to the New York Housing law.

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55 Supra, note 38.

56 An abortive attempt to enact a law under which private capital might operate so as to provide low-cost housing was made by the Kentucky legislature in 1933. (Ky. Acts 1933, c. 32. See Sec. 833h-1 et seq.) This law provided that “any corporation organized under the laws of the State of Kentucky for the purpose of construction, reconstruction, alteration or repairs under public regulation and control of low-cost housing and slum clearance projects, in any city in this state, as provided by subsection d, of section 202 of the National Recovery Act,” is given the power of eminent domain. The ensuing sections give the planning and zoning commission or the legislative bodies of the particular cities the powers of approval and supervision of such projects, and it is presumably these bodies who would regulate the rents, charges, capital structure and rate of return of such companies. Also, the operations of the private company, as is the case of the municipal housing commission, are confined to the city limits, but no restrictions obtain as to the class of cities permitted to operate under this legislation.