1967

Public Housing in Oklahoma

Finis Smith

Follow this and additional works at: http://digitalcommons.law.utulsa.edu/tlr

Part of the Law Commons

Recommended Citation
Finis Smith, Public Housing in Oklahoma, 4 Tulsa L. J. 1 (2013).

Available at: http://digitalcommons.law.utulsa.edu/tlr/vol4/iss1/2

This Article is brought to you for free and open access by TU Law Digital Commons. It has been accepted for inclusion in Tulsa Law Review by an authorized editor of TU Law Digital Commons. For more information, please contact daniel-bell@utulsa.edu.
PUBLIC HOUSING IN OKLAHOMA

FINIS SMITH*

American cities have entered an age of renaissance. The physical symbols of change are the bulldozer and wrecking ball, which in time give way to great skyscrapers and apartments. Less spectacular, but more important, are the modest public or private low-rent housing projects now found in almost every city over the nation. The Thirtieth Oklahoma Legislature adopted the Oklahoma Housing Authorities Act\(^1\) thereby ushering in an era of change for Oklahoma. The purpose of this article is to look at the program commonly known as “public housing.”

HISTORY

The interest shown by cities, counties, and Indian tribes of Oklahoma in activating housing authorities marks the beginning of a new, comprehensive and effective means of attack against the existence of slums and substandard housing. There are now seventy-seven local housing authorities in Oklahoma with applications for more than 10,000 housing units.\(^2\)

Although the need for legislation to cope with the existence of slums was recognized more than 100 years ago in the passage of state laws regulating tenements and safety conditions in tenement houses, the broad scope of the prob-

*LL.B. 1954, University of Tulsa College of Law. Mr. Smith is a partner in the law firm of Smith, Brown & Martin, Tulsa, Oklahoma; is presently representing Tulsa County in the State Senate; was co-author and floor manager of the Oklahoma Housing Authorities Act; and is counsel for the Tulsa Urban Renewal Authority.

\(^1\) OKLA. STAT. tit. 63 §§ 1051-82 (1965).

\(^2\) As of October 1, 1966.
lem did not become evident until 1892 when the United States Commissioner of Labor was directed to make a full investigation "relative to what is known as the slums of cities." The report of this investigation, although not immediately productive of remedial legislation, proved to be the forerunner of numerous studies of this ever increasing problem. Preventive regulations resting upon the police power, such as planning boards, building codes and comprehensive zoning ordinances were enacted to slow the spread of blight. However, these offered little aid for the many already deteriorated areas of the community and enforcement was often erratic and soft.

The idea of public housing, like all other major social movements, evolved slowly over the years out of the experiences of local communities and central governments here and in Europe. Public housing during the First World War and the pump-priming approach taken during the early 1930's, however, served to lay the ground work for

---

8 Entering the housing business on an emergency basis, the U.S. Housing Corporation carried on 40 projects in 26 localities, and owned and operated accommodations for 6,000 families and 8,000 single men and women; furthermore the U.S. Shipping Board built homes for 28,000 individuals. This venture into public housing was concluded shortly after the war.

4 The Emergency Relief and Construction Act of 1932, 47 Stat. 709 (1932), authorized the Reconstruction Finance Corporation to make loans to private limited dividend corporations under State or municipal control and for self liquidating projects. The major reason for the overall failure of the program (one project, Knickerbocker Village of New York City was built) was the limitation placed on the dividends of the development corporations.

Under Title II of the National Industrial Recovery Act of 1933 establishing the Federal Emergency Administration of Public Works for low-cost housing projects and slum clearance under Federal control, the PWA Housing Division was authorized in 1935 to grant up to 45 percent of the capital cost of such projects, the remainder coming in the form of Federal loans covering a 60 year period. 51 projects containing 21,700 units were built under this Authority, but their rents still proved too high for most slum dwellers.
later acceptance by Congress in 1937 of low-rent public housing as a permanent federal policy. As stated in the United States Housing Act of 1937, the interest of Congress was to "promote the general welfare of the nation by employing its funds and credit . . . to assist the several states and their political subdivisions . . . to remedy the unsafe and unsanitary dwellings for families of low incomes. . . ." To administer this policy it created the United States Housing Authority (forerunner of the present Housing Assistance Administration, formerly the Public Housing Authority) contemplating a housing program, decentralized among the states and their subdivisions, with federal participation limited to financial assistance to the local projects.

When the United States entered World War II the initial low-rent program for the entire country was only about half complete. Some of the projects already planned were completed under war priorities for low-rent operation where they would also serve war needs, others that would not directly contribute to the war effort were deferred. In 1940 an amendment to the 1937 Federal Act made unused funds available for construction of projects to house war workers, but to be turned over to the low-rent use as soon as the war need ended. Agreeing to forego the low-rent for the low-income families character of these projects, priorities were granted to the authorities and construction was completed. Still another form of public housing arose when it became apparent in early 1940 that the job of providing necessary housing in the quantities needed to aid in the defense effort would require further governmental assistance. Conse-

Further work relief projects, the three Greenbelt towns, were started by the Resettlement Administration as examples of modern suburban developments for lower-salaried office and professional workers in the city. Finally, the Subsistence Homesteads division in the Department of Interior started 31 projects as work relief to provide housing for unemployed families.

7 Ibid.
8 54 Stat. 681 (1940).
quently, Congressional authority was granted in the Lanham Act\(^9\) for the construction, at Federal expense, of housing in centers of defense activity where the temporary nature of the demand would not justify private investment.

The inadequacies of the 1937 Federal program, suggested by the inability of local authorities to utilize Federal programs and made even more apparent by the general trend toward reliance on state and local programs, amplified the need for a reconsideration of the public housing field and a comprehensive slum clearance and rehabilitation policy. Although war time efforts in housing deviated considerably from the original low-rent aims, Congress began discussions on post war public housing as early as 1944.\(^{10}\) It was not until July, 1949, however, that Congress enacted the necessary legislation.\(^{11}\) This is known as The Housing Act of 1949.\(^{12}\)


\(^{10}\) Both Houses appointed Special Committees on Postwar Economic Policy and Planning (S. Res. 102, 77th Cong. extended by S. Res. 33, 77th Cong.; H.R. Res. 408, 78th Cong., extended by H.R. Res. 60, 79th Cong.). Hearings before these committees resulted in the proposal of housing in late 1945: S. 1342 (Aug. 1, 1945; Wagner, Ellender,) S. 1592 (Nov. 14, 1945; Wagner, Ellender, Taft). Hearings were held before the subcommittee of the Committee on Banking and Currency (Nov. 1945-Jan. 1946) which reported S. 1592 on April 8, 1946. The Senate Bill S. 1592 passed in the Senate on April 15, 1946. In the House, however, the opposition of the committee chairman Wolcott pigeon-holed the companion House bills, thereby delaying Congressional action until the 80th Congress. On March 17, 1947, a bill only slightly modified from those introduced in the prior session was presented by Senators Taft, Ellender and Wagner and discussed in the Senate subcommittee between March 18 and April 9, 1947. This bill, S. 866, was reported favorably and passed the Senate on April 22, 1948. The House debated this bill between March 3 and June 8, 1948, but again failed to report it out.

\(^{11}\) Introduction by President Truman as a prominent feature of his “Fair Deal” program, and growing pressure from civic, rural, labor and veteran’s groups, brought about early action. The Administration bill, S. 138, introduced by Senator Ellender on Jan. 4, 1949, was debated at length and compromise bill S. 1070 was passed April 21, by the Senate. House bill, H.R. 4008,
Against this background of development, the social evolution in Oklahoma culminating in the passage of the Oklahoma Housing Authorities Act effective June 18, 1965, would seem unduly delayed to those impatient to use the tools of public housing to upgrade the living standards of the less fortunate. However, an objective chronological analysis reveals the contrary to be true. Comparing the rate of progress achieved in other sections of the nation to that in Oklahoma, which is just approaching its 60th birthday, proves a relatively early effort is being made to overcome the problems generated by slums. The building boom in Oklahoma communities occurred in the late 1920’s. The life of the structures generally survived without the onset of decay and deterioration until the commencement of World War II in the 1940’s. The congestion and problems of concentrated masses of people and automobile traffic was thus postponed until the 1950’s by reason of the war. New construction during the 1950’s was unable to keep pace with demand and older structures therefore commanded higher rents. Maintenance was carried on at a higher level. The older structures were thus preserved beyond their normal life expectancy. In the era marked by 1960, it became apparent that fine old homes and apartment houses were becoming tenements and slums. Once proud areas of our finest cities were beginning to take on the appearance of the slum sections in the older seaboard cities. Downtown business areas were allowed to deteriorate as suburban shopping centers sprang up on the perimeter of the expanding city and many business houses were relocated. The cancer of slums and poor housing was growing. But it had not yet reached the shocking proportions that exist in so many of the cities of this country. Although Oklahoma was one of the last states to adopt enabling legislation to authorize public housing projects, it has acted timely to permit

was passed on June 29. After a Senate-House conference to iron out differences in the bills approved by the two chambers, the Housing Act of 1949 became Public Law 171 of the 81st Congress.

a more effective use of the program than has been possible in other sections of the country.

PHILOSOPHY

At the time of the enactment of the United States Housing Act of 1937, there was essentially no provision for Federal aid for the housing of the nation's lowest one-third income group. The Home Owners Loan Corporation and the Federal Housing Administration represented public aid to the middle income group, to the savings banks and to mortgagees. The fifty-one federally constructed and owned housing projects and the seven limited dividend projects comprised an attempt to relieve employment more than they did to succor families of low income. Yet, there was little disagreement over the inability of a large segment of the population to own homes, to secure "decent, safe and adequate housing at rent they could afford to pay" and to escape from the slums and their attendant danger. What to do? It had always been recognized that private capital is unable to build good housing at rents low enough to return a profit and meet the need of the families of low income. The constant, irreversible rise in the cost of land, labor and materials which has so sharply increased the cost of redevelopment of our urban areas that the ultimate product is unmarketable because the rent or sales price is too high exists as a factor now as it did in the early history of public housing. As a consequence, either the redevelopment cannot take place at all or some form of government aid must be applied to bring down the cost to economically feasible levels.

This problem does not exist in super-luxury areas which apparently can command unlimited rents. But in most areas of the cities, towns and villages of Oklahoma where the cost level is sharply limited by the rent-paying ability of the local community, it is crucial. Whether we like it or not, as soon as we dip below the top luxury level in urban areas, private enterprise is found wanting, and unless it receives a stimulant in the form of some assistance or subsidy it is unable to do the job and the only appreciable source for such aid is the government. History has proven that the ac-
quisition and assemblage of slum properties, usually in diverse ownership, by negotiation has proved economically unfeasible. The right of eminent domain is essential to the urban redevelopment process.

Despite the general recognition of the need for comprehensive, rather than piecemeal legislation, to offset recurring housing emergencies and equalize government aid, the movement toward a comprehensive housing program did not materialize until 1949 when the Congress reaffirmed its policy on public low-rent housing.

THE HOUSING ACT OF 1949

The Oklahoma Housing Authorities Act creates a housing authority in each city and county of the state\(^{13}\) and allows the Authority after being implemented by the local governing body, to take advantage of The Housing Act of 1949, as amended.\(^{14}\) Let us look at this program. The Housing Act of 1949 endeavors to attack the nation’s housing problem by providing assistance for the separate programs of public housing, slum clearance, farm housing and housing research. In attaining the national housing objective—"a decent home and a suitable living environment for every American family . . ."— the policies to be followed are that private enterprise will be encouraged to serve as large a part of the total need as it can, government assistance will be utilized to enable private enterprise to serve this need, and local agencies will be encouraged to provide assistance in the development and redevelopment of communities.\(^{15}\)

The low-rent public housing title is basically an amendment to the United States Housing Authority Plan inaugurated in 1937, improving the program on the basis of 12 years experience in the field of housing low-income families.

It has been amended in various manners, reflecting the additional experience and a changing society, by each Congress

\(^{13}\) OKLA. STAT. tit. 63 § 1055 (1965).
since its enactment, but has maintained its essential characteristics as spelled out in 1949. It is a recognition of the demonstrated fact that the nation-wide slum problem requires joint action by both the Federal government and local communities. By offering financial assistance to the local public bodies in the construction of low-rent housing conditioned upon the equivalent elimination of slum dwellings, the Federal statute provided an opportunity for communities to undertake the elimination and redevelopment phases of a practical slum clearance program. As urban redevelopment projects emphasized the increasing need for standard relocation facilities and the ever increasing spread of substandard housing became more apparent, Oklahoma's first reapportioned legislature seized this opportunity by enacting the enabling legislation creating local public bodies to carry out community slum clearance and low-rent housing programs.\(^8\)

**THE STATUTES**

The Oklahoma Statutes which authorize the acquisition and clearance of slum areas by exercise of the powers of eminent domain and the construction of low-rent, and provide for the exemption of such housing authorities from taxation, are founded constitutionally on the inherent "public purpose" of such programs. The constitutionality has been upheld in many states over the nation, but undoubtedly will, and should be, tested and ultimately determined by the Oklahoma Supreme Court.

The Act\(^7\) creates a housing authority in each city and county and with respect to each Indian tribe, band, or nation in the state.\(^8\) The respective housing authorities are dormant until implemented by the local governing body. The housing authority is prohibited from activation until the local governing body, by proper resolution, declares that there is a need

---


Once effectively implemented, the local governing body appoints five persons as commissioners of the authority, with the power to carry out and effectuate the purposes and provisions of the Oklahoma Housing Authorities Act including the following powers:

(a) To sue and be sued;

(b) To prepare, carry out, and operate projects and to provide for the acquisition, construction, reconstruction, improvement, extension, alteration, or repair of any project or any part thereof;

(c) To undertake and carry out studies and analyses of housing needs and ways of meeting such needs;

(d) To arrange with others for the provision of necessary services or facilities for or in connection with its projects;

(e) To lease, rent, sell, or lease with option to purchase any dwellings, accommodations, lands, buildings, structures or facilities embraced in any project and to establish the rents therefor; to purchase, lease, obtain options upon, acquire by gift, or otherwise, any real or personal property or interest therein; to acquire by the exercise of the power of eminent domain any real property or interest therein; to sell, lease, pledge, or otherwise dispose of any real or personal property; to make loans for the provision of housing for occupancy by persons of low income;

(f) To invest reserve funds;

(g) To determine where slum areas exist;

(h) To conduct examinations and investigations, to hear testimony, and to take proof, under oath, at public meetings.

Acting, perhaps in an abundance of caution, the Legislature specifically limited the powers of an authority to exclude the following:

19 Ibid.
1. the power to appropriate funds of a city or county;
2. the power to levy taxes and assessments;
3. the power to zone or rezone; or,
4. the power to make exceptions to zoning ordinances or building regulations of a city or county.22

The operation of a housing project for a profit is likewise prohibited.23 The law provides that in the operation or management of housing projects, an authority may rent or lease dwelling accommodations to persons of low income and at rentals within the financial range of such person of low income.24 The total rent may be established to equal that amount necessary to offset the costs, but the project may not be operated at a profit.

The authority is granted the right to acquire any real property or interest therein by eminent domain proceedings25 in the manner now provided for railroad corporations under the laws of Oklahoma.26 Perhaps the greatest number of legal questions involving similar enabling legislation in other states revolve around the question of constitutionality of such legislation. It would be appropriate to summarize and review these decisions.

THE LAW

The arguments most often presented against the constitutionality of similar legislation of other states and Congress may be classified in three groups: (1) Non-public use; (2) Prohibited tax exemptions; and, (3) Excessive public debt. Uniformly the states have upheld state housing legislation against all these contentions.

23 Ibid.
25 Ibid.
1. NON-PUBLIC USE

Like Oklahoma, many state constitutions specifically provide that private property may not be taken, even with just compensation, except for public uses.\(^{27}\) The same restriction has been imposed by the Courts under the due process clauses of the state constitutions and the Fourteenth Amendment of the Federal Constitution.\(^{28}\) Opponents of legislation for low-cost housing and slum clearance have contended that such legislation is for the benefit of particular individuals or classes, that no public use is involved, and that consequently, the legislative body has no power to appropriate money or exercise (or delegate) the power of eminent domain in connection therewith. The Courts have held that a legislative declaration that housing activity is a public use, though not conclusive, is entitled to great weight.\(^{29}\)

"Public uses are not limited, in the modern view, to matters of mere business necessity and ordinary convenience, but may extend to matters of public health, recreation and enjoyment."\(^{30}\) The essential purpose of the legislation is not to benefit a particular class, but to safeguard the whole public against the menace of slums. Low-cost housing necessarily accompanies slum clearance in the accomplishment of this purpose.

In review of the many decisions concerned with a definition of "public use" it is clear that the legal concept of public use is broad and inclusive. It must also be conceded that all courts have some difficulty in defining the terms. Justice Douglas in the landmark case of \textit{Berman v. Parker}, defined public welfare as:

\begin{quote}
Public safety, public health, morality, peace and quiet, law and order—these are some of the more conspicuous examples of the traditional application of the police
\end{quote}

\(^{27}\text{OKLA. CONST. art. II., §§ 23-24.}\)

\(^{28}\text{Southern Ry. Co. v. City of Memphis, 126 Tenn. 267, 148 S.W. 662 (1912).}\)

\(^{29}\text{Arthur v. Board of Commissioners, 43 Okla. 174, 141 Pac. 1 (1914).}\)

\(^{30}\text{Rindge v. Los Angeles County, 262 U.S. 700, 707 (1923).}\)
power to municipal affairs. Yet they merely illustrate the scope of the power and do not delimit it. . . . Miserable and disreputable housing conditions may do more than spread disease and crime and immorality. They may also suffocate the spirit by reducing the people who live there to the status of cattle. They may indeed make living an almost insufferable burden. They may also be an ugly sore, a blight on the community which robs it of charm, which makes it a place from which men turn. The misery of housing may despoil a community of as an open sewer may ruin a river.

We do not sit to determine whether a particular housing project is or is not desirable. The concept of the public welfare is broad and inclusive. . . . The values it represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well balanced as well as carefully patrolled. . . .

Once the object is within the authority of Congress, the right to realize it through the exercise of eminent domain is clear. For the power of eminent domain is merely the means to the end.31

This definition was propounded in upholding the constitutionality of the District of Columbia Redevelopment Act of 1945.

Although our Courts have not been presented with the specific question relating to public housing, the Oklahoma Supreme Court has concluded that the term, "public use" is not capable of a rigid, inflexible definition, but must be applied in light of legislative enactments and social change. In determining the power of a rural cooperative to condemn land, our court recognized the doctrine stated in Berman v. Parker, supra. In its opinion in McGrady v. Western Farmers Electric Cooperative, the Court said:

It is undisputed that an authorized exercise of the eminent domain power depends upon the fact that the property is being taken for a "public use" (Art. 2, Sec. 31 348 U.S. 26, 32-33 (1954).
24, Okla. Const.), and that the determination of the character of the use is a judicial question. Thus the definition of the term “public use” could be of controlling importance. We find, from our examination of the authorities, that the term has undergone somewhat of a metamorphosis in contemporary decisions from the formerly understood meaning of “use by the public”. The “housing authority cases” climaxed by the decision in Berman v. Parker... comprise an analytical delineation of that change.\textsuperscript{32}

In upholding the electric co-op’s activities as a public use, the Oklahoma Supreme Court made the following comment:

Condemnation by them is as much for public use as is a condemnation for turnpikes airports public housing, industrial port facilities, parking lots, public hunting grounds, and agrarian reform, all of which involve reasonable restrictions on use and all of which have received judicial approval from various courts. But our conclusion likewise obviates any necessity for an examination by us of the proper definition of the term “public use.” Under even the more restricted definition and understanding of that phrase, this situation qualifies as one in which the power is properly exercised.\textsuperscript{33} (emphasis added.)

It is not necessary that every member of the public benefit from the expenditure directly in order to constitute it one for a public use; use of a proposed structure, facility or service by everybody or anybody is then one of the abandoned universal tests of a public use. The fact that private interests are benefitted will not be allowed to defeat the benefits that will accrue to the public. The Legislature has made a reasonable classification of the members of the public and has provided that all members of the public who presently, or in the future fall within that classification, shall be entitled to the accommodation of low-cost housing. It is no violation of the constitutional guarantee here involved for the state to provide direct benefits for certain groups to the exclusion of others unless done by arbitrary stand-

\textsuperscript{32} 323 P. 2d 356, 359 (Okla. 1958). (Citations omitted.)
\textsuperscript{33} Id. at 361.
The land dealings of the housing authority do not amount to the operation of a real estate business nor to competition with private enterprise, but are merely incident to the main purpose of the Act, which is impossible for private capital and industry to accomplish. From these principles it follows that agencies of the state government may exercise the power of eminent domain and make appropriations of public funds to promote a program of slum-clearance and low-cost housing. The use of eminent domain is not restricted to the acquisitions of lands in slum areas; but may be extended to acquisition of other lands deemed necessary for the housing project.

The first Federal slum-clearance and low-cost activity arose as a part of the Public Works Administration in 1933. The initial challenge of the constitutionality of Federal participation by acquisition of lands and construction of project came about in United States v. Certain Lands in the City of Louisville. That case held unconstitutional the attempted taking of property by eminent domain for use in the Federal Housing Program because that activity was not a public use. After having appealed to the Supreme Court from the adverse decision in the Circuit Court of Appeals for the Sixth Circuit, counsel for the Government dismissed the case. Three years later the Court of Appeals for the Tenth Circuit upheld the right of states to condemn private property for Federally aided public housing. In Oklahoma City v. Sanders, the Court stated:

The Congress of the United States has declared such a low-cost housing and slum-clearance project to be a public use. . . . Through such a project elimination of unsanitary unhealthy conditions is brought about by clearing such premises of such buildings and removing

35 Spahn v. Steward, 268 Ky. 97, 103 S.W.2d 651 (1937).
36 Housing Authority of City of Dallas v. Higginbotham, 143 S.W. 2d 79 (Tex. 1940).
37 78 F. 2d 684 (6th Cir. 1935).
the degraded and unwholesome conditions existing in such surroundings. . . . It may be that some parts of the nation may not immediately feel the benefits of such activity, but the increasing of employment and stimulation of industry, and reducing illness, disease, and crime, has a beneficial effect upon the nation as a whole and promotes the public welfare. 38

It is somewhat ironic that the first case holding housing to be a public use arose in Oklahoma. However, the decisive resolution of the limits of governmental power in this field came when, in 1954, the U. S. Supreme Court decided the case of Berman v. Parker, supra, which finally held that private property could be taken in condemnation if only to promote a well-balanced community despite the destruction of good homes and structures in the process. Under the Berman case definition of public use, forty-five states have had urban redevelopment laws upheld by their courts.

2. Prohibited Tax Exemptions

By judicial decision to the effect that the property of the housing authority is employed for the public use,39 or employed in a charitable use,40 or that the authority is a governmental instrumentality41 or by express legislative declaration in the housing act,42 property of local housing authorities has been exempted from general property taxation and, in some cases, from special assessments.43 Opponents have contended that such exemption amounts to a violation of the equality and uniformity provisions in the state constitutions.

The Courts have rejected this contention whether the exemption was judicial or legislative in its declaration. Two

38 94 F. 2d 323, 327 (10th Cir. 1938).
42 OKLA. STAT. tit. 63 § 1066 (1965).
classifications have been used in upholding the tax exempt status of the property while owned or held by housing authorities: either that it is property of a public agency—an instrumentality of the state—held for the use and benefit of the public, or that it is property used exclusively for charitable purposes.

Low-cost housing projects owned by governmental bodies and the property of housing authorities are generally held to be exempt from taxation by virtue of express statutory provisions or because such property is deemed to be within the general exemption provisions. Such property has been held to be public property and used for public purposes within constitutional and statutory provisions for exemption from taxation. The test of constitutionality of tax exemption falling within the self-executing provisions of the State Constitution is restated in *Assessment of First National Bank of Chickasha*:

> Exemptions, when properly made, must be determined in the legislative discretion, which is not, however, arbitrary; there must underlie its exercise some principal of public policy that can support a presumption that the public interest will be subserved by the exemptions allowed.

It is seen that the validity of the exemption, if authorized must depend upon the existence of a public benefit arising therefrom.

Opponents have contended that property owned by a Housing Authority is not property "of the United States, of this state; and of counties and municipalities of this state".  

---

44 In Re: Opinions of the Justices, 235 Ala. 485, 179 So. 535 (1938); Loret Inv. Co. v. Dickmann, 345 Mo. 449, 134 S.W.2d 65 (1939); Mallard v. Eastern Carolina Regional Housing Authority, 231 N. C. 334, 20 S.E. 2d 281 (1942); Wels v. Housing Authority of Wilmington, 213 N. C. 744, 197 S.E. 693 (1938).


state;" that Article V, Section 50, Oklahoma Constitution, prohibits the designation of tax exempt status to property of the Authority. Analogous propositions were raised in Board of County Comm’rs v. Warran, Application of Oklahoma Turnpike Authority, and State ex rel City of Tulsa v. Mayes, and were answered in those cases by the court’s upholding the validity of the tax exemption. In the Warran case, the Court said:

This constitutional exemption was construed in State ex rel City of Tulsa v. Mayes, where the Court was considering the taxation of property belonging to the Tulsa Water Department and located outside the city. Under the Tulsa City Charter, this water agency was an independent agency, and was held to be exempt from taxation.

The Court seemingly laid down the test of ultimate public benefit in concluding that public trusts, though independent agencies, which have one or more government entities as beneficiaries are exempt from all forms of taxation in Oklahoma. The cases also recognize the rule that an “Authority” is an instrumentality of the State.

The other classification of cases supporting the tax exempt status of housing authorities relates to constitutional provisions exempting property “used” for “charitable purposes.” A housing authority is a nonprofit agency operated by the public for the use and benefit of the public to accomplish a public purpose.

The definition of “charitable purpose” within the meaning of the Oklahoma Constitution has been defined by the Oklahoma Supreme Court in such liberal terms that a use

51 Supra. note 48, at 1042, (citations omitted).
of property for purposes of a housing project would seemingly come within the meaning of the term. A broad term definition of "charitable" as used in tax exemption cases was recognized by the Court in *Re: Farmers Union Hospital Ass'n of Elk City*:

"Charitable" is defined in 14 C.J.S. p. 407, in its broader sense as comprehending all kindly inclinations which men ought to bear toward one another, irrespective of class, conditions and invidious distinctions. . . . "[C]harity" is said to embrace the sense of benevolence, philanthropy and goodwill, and good affections which men ought to bear toward mankind.55

In upholding the tax exempt status of housing authority the Missouri Supreme Court held: "Those uses are declared by the General Assembly to be public uses and to be 'governmental functions of state concerns.' That this is charity of the most practical character we are firmly convinced."56 A similar declaration is found in the Oklahoma Housing Authorities Act.57 Decisions in other states reach the same conclusion.58

3. EXCESSIVE PUBLIC DEBT

Many state constitutions contain restrictions on the amount of public debts.59 Since housing authorities are

55 190 Okla. 661, 126 P. 2d 244, 246 (1942).
56 Bader Realty & Inv. Co. v. St. Louis Housing Authority, 358 Mo. 747, 217 S. W. 2d 489 (1949).
58 Hogue v. Housing Authority of North Little Rock, 201 Ark. 263, 144 S.W. 2d 49 (1940); Williamson v. Housing Authority of Augusta, 186 Ga. 673, 199 S.E. 43 (1938); Springfield Housing Authority v. Overaker, 390 Ill. 403, 61 N.E. 2d 373 (1945); Dornan v. Philadelphia Housing Authority, 331 Pa. 209, 200 Atl. 834 (1938); Knoxville Housing Authority v. City of Knoxville, 174 Tenn. 76, 123 S.W. 2d 1085 (1939); Marvin v. Housing Authority of Jacksonville, 133 Fla. 590, 183 So. 145 (1938); State ex rel Porterie v. Housing Authority of New Orleans, 190 La. 710, 182 So. 725 (1938); Housing Authority of City of Dallas v. Higginbotham, 135 Tex. 158, 143 S.W. 2d 79 (1940); New York City Housing Authority v. Muller, 270 N. Y. 333, 1 N.E. 2d 153 (1936).
usually financed at least partially by bonds, the problem of constitutionality of the debt is presented. Courts have relied on the special-fund doctrine to remove this doubt of constitutionality.\textsuperscript{60} As both principal and interest of housing authority bonds are payable out of a special fund (the income from the property of the project for which the bonds were issued), they are not obligations of the city, county, or state within the constitutional prohibitions.

CONCLUSION

When viewed in the light of the needs of this state, the impetus given both public and redevelopment housing by the Oklahoma Housing Authorities Act cannot be expected to be adequate for sometime. Although the Housing Act, when considered with urban redevelopment acts, appears to look beyond immediate needs, and authorizes programs reaching more deeply into the roots of the problems, the effort cannot be expected to automatically satisfy the requirements of a decent home for every Oklahoma family. Still open is the question of the extent to which government can extend its activities to satisfy that requirement. The line of demarcation will be drawn eventually by taxpayers in their role of voters. Wisely, the Legislature has left a continuing control of the expansion of projects and programs directly in the hands of the local voters. The statutes provide a means for initiating the submission of a question to the local voters which, in its essence asks: Have we gone far enough?\textsuperscript{61} But even under these new programs, the advances are still far from threatening the entry of government into competition with the vast bulk of the housing

\textsuperscript{60} Sheldon v. Grand River Dam Authority, 182 Okla. 24, 76 P. 2d 355 (1938); Armstrong v. Sewer Improvement District No. 1, 201 Okla. 531, 199 P. 2d 1012 (1948), aff'd on rehearing, 207 P. 2d 917 (1949); Application of Oklahoma Turnpike Authority, 203 Okla. 335, 221 P. 2d 795 (1950). See also Norman and Merrill, \textit{Urban Renewal in Oklahoma}, 14 Okla. L. Rev. 249 (1961); Housing Authority of County of Los Angeles v. Dockweiler, \textit{supra} note 41.

\textsuperscript{61} OKLA. STAT. tit. 63 § 1056 (b) (1965).
industry. As long as the programs can be interpreted as governmental action in fields where private enterprise is unable, or has failed to act, the value of legislation and its authorized programs is unquestionable. The creation of housing authorities and a means to provide low-income families with decent, safe housing by the Thirtieth Legislature must necessarily serve immediate needs. It constitutes, however, a positive acceptance by the Legislature of its role in the discharge of its obligations to act in the interest of public welfare. Time, experience and judicial review will serve to refine, limit and define the operations and boundaries of such programs.