NOTES

PUBLIC HOUSING IN ILLINOIS

Although the anti-social effects of bad housing had long been a subject of comment, it was the depression, with its accentuation of the condition of the poor and its widespread unemployment in the building trades, which furnished the effective stimulus for the initiation of a comprehensive program of government building of dwelling houses.\(^1\) Public housing activity has been justified as a means of alleviating depression conditions, and as such it can hardly be expected that funds will be appropriated for the indefinite extension of the program.\(^2\) While there is general agreement that housing for the very low-income groups cannot presently be furnished without substantial governmental

\(^1\) Except for the housing of war industry workers undertaken by the Federal Government during World War I, the only attempts at government housing before 1932 were those of California and Wisconsin. Federal Housing of War Industry Workers, 52 Monthly Lab. Rev. 5 (July, 1940); Ebenstein, The Law of Public Housing 14-15 (1940).

subsidies, it may be seriously questioned whether direct government building of houses is a proper means of extending relief to the low-income groups. It appears, moreover, that the recently initiated defense housing program will, at least temporarily, absorb most of the funds which might otherwise have been used for low-cost public housing.

Public housing, however, has purported to be more than a mere "pump priming" or relief activity. It has also been a recognition of the necessity for affirmative government assistance in the solution of the larger problem of eradicating urban blight and slum conditions. In recent years, increased realization of the need for a controlled policy of land use, more detailed and persuasive studies of the effects of inadequate housing upon health, juvenile delinquency, and crime, concern about the cost of fire and police protection and health services for slum areas—together with the momentum generated by other forms of

Wood, Housing, 7 Encyc. Soc. Sci. 512 (1932), indicates that the cost of building a housing unit is such that it would require a rental of over $500 per year to meet the cost, and that the occupant would therefore need an annual income of at least $2,000; but that the income of one-third of the people in the United States is below $1,200, and of another one-third is below $2,000.

New York's limited-dividend housing attempts, even with a twenty-year tax exemption, failed to provide housing for low-income groups. Limited-dividend companies produced fourteen projects, but at high rentals of $9 to $12.50 per room per month. New York State Superintendent of Housing Report 7 (1940). See also Ebenstein, Law of Public Housing 13 (1940); New York Housing Authority v. Muller, 270 N.Y. 333, 342, 1 N.E. (2d) 153, 156 (1936). Likewise, the "garden-type" projects in Chicago have failed to produce housing for low-income groups. Rents in the Michigan Boulevard Garden Apartments in Chicago, for instance, were $11.55 per room per month in 1936. Michigan Boulevard Garden Apartments, Seven Year Report (1937).

It may perhaps be said, however, that some of the criticism of public housing is due to the dual nature of its objectives. Strunk, Low-Cost Housing under the USHA Experiment, 16 J. of Land & Pub. Util. Econ., No. 1, at 96, 99 (Feb., 1940): "It appears that the dual objectives of the USHA Act—providing better housing for low income families and stimulating employment in the building trades, which accounts for the necessity of building new homes—may result in the failure of this noble social experiment. One objective may be secondary or the by-product of the other, but linking the objectives together may prove the weakening of the whole program and the failure to accomplish either goal."


Walker, Urban Blight and Slums (1938).


In a West Side blighted area in Chicago in 1938, it was found that the juvenile delinquency rate was 22.9, as compared with an all-city rate of 4.2. Chicago Housing Authority, Report of January 1, 1940, at 33 (1940).

For routine services in one slum area in Chicago, the city in 1930 paid out $3,200,000; it levied $1,200,000 in taxes, of which it collected only $586,061 during the following three years. Ibid., at 33. In 1934, an area in Cleveland was absorbing 44 per cent of expenditures for police protection, 7 per cent of those for health services, 144 per cent of costs for fire services, while
social legislation—have combined to produce a substantial agreement that housing is a necessary and proper concern of government. Many students of the housing problem insist, however, that direct building is not the proper means for government participation in the solution of this problem. They argue that urban blight and slums are the result of such factors as speculative land use, inadequate city planning, monopolistic practices in the building industry, and unwise methods of taxation; and that government functioning is properly limited to correction of these conditions, with the actual building of dwellings being done by private industry. It is the purpose of this note to survey the public housing activity in Illinois, to point out the criticisms that are being made and the alternatives that are being suggested, and finally to consider the recent defense housing legislation in relation to the public housing program.

THE ILLINOIS PUBLIC HOUSING PROJECTS

The first public housing in Illinois consisted of three projects in the city of Chicago totalling 2,414 family dwelling units, financed and built by the Housing Division of the Federal Emergency Administration of Public Works in 1934-37. Dissatisfaction with centralized administration, and doubt at the time as to the constitutionality of the Federal Government's exercise of the power of eminent domain for housing, led to the discontinuance of the PWA program paying only three-fourths of one per cent of the tax bill. Crane, Public Housing in Illinois, 19 Ill. Municipal Rev., No. 2, at 27, 28 (Feb., 1940).

This situation was recognized in the introductory section of a bill introduced in the Illinois Legislature in 1939. Public Service Building Corporation Act, Ill. H.R. 604 (1939).


Walker, Urban Blight and Slums 350-54 (1938), is the most thorough presentation of this view. "The three major functions of government—Federal, state, and local—in rehabilitation and housing are regulation, research, and demonstration, and the first two are of much more far-reaching significance than the latter." Ibid., at 354. "If we disabuse our minds of the idea that the Federal Government alone, or the Federal and local governments combined, can reclaim the blighted areas and rehouse the lower third of our population, it may be possible for us to find a way in which governmental activity may serve as a lever to bring about the accomplishment of these objectives." Ibid., at 350.

As to the monopolistic practices in the building industry, see Arnold, The Bottlenecks of Business 36-44 (1940). Further anti-trust activity is urged by a leading real estate publication. Seconding Thurman Arnold, 14 Real Estate, No. 48, at 7 (Dec. 2, 1939). An obnoxious restraint appears to be the prevention of the use of prefabricated materials. Lindell, A Proposed Housing Plan for the City of Chicago, 14 Real Estate, No. 50, at 12 (Dec. 16, 1939).

Jane Addams Houses, two miles west of the Loop (Chicago "downtown" district); Julia Lathrop Houses, four miles north of the Loop; and Trumbull Park Houses, thirteen miles south of the Loop. A "unit" means "living quarters—of two or more rooms—for one family."


The power was denied in United States v. Certain Lands in Louisville, 78 F. (2d) 684 (C.C.A. 6th 1935), discussed infra p. 316.
and the enactment of the United States Housing Act of 1937. Under this act, the initiative and immediate responsibility were placed in local groups, with the United States Housing Authority (USHA) furnishing most of the funds and exercising a restrictive control. Appropriate Illinois enabling legislation was enacted, local housing authorities were established, and additional projects have been undertaken. The Chicago Housing Authority (CHA) has almost completed one project of 1,652 dwelling units, and has signed a contract with the USHA and started land acquisition activities for another. In addition, the CHA leases and operates the three PWA-built projects.

In Peoria, construction is approximately halfcompleted on two projects totaling 1,093 units. The Alexander County Housing Authority has most of the land under option for a 400-unit project; Granite City has acquired the land and let the construction contract for a 151-unit project; Springfield has let the building contract for a 600-unit project; and the St. Clair Housing Authority has a loan contract for 499 units. In addition, housing authorities have been organized in fifteen other Illinois communities, but the building of projects is contingent upon the appropriation of further funds by Congress.

Projects are financed by the issuance of three per cent, one-to-sixty-year bonds by the local housing authority, of which the USHA agrees to purchase up to ninety per cent. In addition, the USHA contracts to make an annual grant of as much as three and one-half per cent of the total development costs.


The nature of the control exercised by the USHA has been criticized in some quarters, however, as being much more than “restrictive.” Public Housing and National Policy (The American Life Convention, Mortgage Bankers’ Association of America, National Association of Real Estate Boards, United States Chamber of Commerce, United States Savings and Loan League) 17-18 (Feb., 1940): “The loan and grant powers have been utilized merely to circumvent the legislative intent. Through the exercise of implied powers, the USHA fixes construction standards, living appointments, and services, without the consent or advice of the local citizenry. . . . The power which this agency might exercise over the daily lives of millions of people in our cities would be tremendous if this program were on nearly the scale proposed by public housing enthusiasts. The problems of housing are altogether too intimate, the responsibilities too great to be given to public officials in far-off capitals.”

Ida B. Wells Homes, four miles south of the Loop, for Negro occupation.

The proposed site is one mile north of the Loop.

After the enactment of the Housing Act of 1937 the PWA projects were, by executive order, turned over to the USHA, which now leases them to local authorities.

National Association of Housing Officials, [1939] NAHO Yearbook. Information was also obtained from local housing authorities.

Under the Housing Act, the “total of such loans outstanding on any one project . . . shall not exceed 90 per cent of the development or acquisition cost of such project.” 50 Stat. 891 (1937), 42 U.S.C.A. § 1409 (Supp. 1939).

Section 10(b) of the United States Housing Act of 1937 provides as a maximum “a sum equal to the annual yield at the going Federal rate of interest at the time such contract is
As a condition of making an annual grant, the USHA requires that the local government shall contribute annually at least twenty per cent of the amount of the grant, and also that the project shall include provisions for the elimination, by repair, vacation, or demolition, of substandard housing in the city equal to the amount of new public housing. To date, local governments have made their contribution in the form of a tax exemption. Municipal services, such as police and fire protection, schools, parks, and playgrounds, are obtained by the payment of a service charge which, in the absence of agreement by the local authority and local government is equal to five per cent of the rentals. Rents, including heat, gas, electricity, and water, have ranged from $8.75 to $27.50 per unit per month—an amount which is approximately forty-five per cent of the total cost (including amortization of the structure) of furnishing the housing. Fifty-five per cent of the cost has been covered by the government subsidy; of this subsidy, the local government's tax exemption has been approximately half, and the federal subsidy half.

LEGAL STATUS OF PUBLIC HOUSING IN ILLINOIS

Illinois legislation relating to public housing is found in four different acts. The Housing Authorities Act, passed in 1934, enabled the State Housing Authority to make grants with a provision that the local government shall contribute annually at least twenty per cent of the amount of the grant. The Chicago contract calls for not more than 3.5 per cent. Critics of the program charge that housing administrators, in explaining how the financing works, attempt to create the impression that because the loans made by the Federal Government will be amortized in sixty years, the program will cost the Federal Government nothing. Public Housing and National Policy, op. cit. supra note 16, at 21. The fact is, of course, that although a large part of the annual grant made by the Federal Government is used to amortize the loans, the annual grant does nevertheless amount to a subsidy.

As to the enforceability of the Congressional promise to make the annual grants, see Keyserling, Legal Problems in the Housing Field 35-36 (Nat'l Resources Planning Board Housing Monographs No. 2, 1939).

32 § 10(a) of the United States Housing Act of 1937.

24 The provision does not mean that the elimination must occur at the exact place where the new properties are built. Section 10(a) provides that the elimination be of "dwellings situated in the locality or metropolitan area."

25 § 10(a). It is interesting to note that the agreement is subject to revision after ten years, and each five years thereafter, "to make adjustments in rents to compensate for any change in the ability of lower income groups to pay"; and that "according to Sir Raymond Unwin, noted housing authority, rents and ability to pay should advance within thirty years enough to make the properties self-sustaining." Chicago Housing Authority, Report of January 1, 1940, at 21 (1940).

26 Ibid.


29 See note 73 infra, and accompanying text.

Board\textsuperscript{31} to establish local housing authorities\textsuperscript{32} for the purpose of investigating housing conditions,\textsuperscript{33} eliminating slums, and undertaking building projects.\textsuperscript{34} Local authorities were granted the power of eminent domain,\textsuperscript{35} and were authorized to make agreements with the Federal Government "in connection with the borrowing of funds, or otherwise."\textsuperscript{36} No provision was made enabling local governments to grant a tax exemption. The Peoria Housing Authority was formed under the provisions of this act, but made only preliminary investigations.\textsuperscript{37} In 1934 the mayor of Chicago designated persons to serve on a local authority, but the State Housing Board refused to confirm them, and the mayor made no further appointments for three years.\textsuperscript{38} When the United States Housing Act was passed in 1937, the USHA refused to make loans to Illinois authorities under the existing state legislation because of the absence of provisions enabling local governments to meet the requirements of the United States Housing Act.\textsuperscript{39} Consequently, the Illinois legislature passed (1) the Housing Cooperation Act,\textsuperscript{40} permitting local governments to enter into agreements to meet the requirements of the USHA, such as demolition of slums; (2) the Validating Act,\textsuperscript{41} validating the actions of all authorities established prior to the act; and (3) an amendment to the Revenue Act,\textsuperscript{42} exempting from taxation all land of housing authorities, "title of which land has been or shall be acquired from the Federal Government."\textsuperscript{43}

\textsuperscript{31} The board was established by the State Housing Act of 1933. Ill. Rev. Stat. (1939), c. 32, § 504. The provisions of the act will be considered infra p. 310. The State Housing Board consists of seven members, appointed by the Governor, by and with the advice and consent of the Senate. Members serve without salary.

\textsuperscript{32} Although the local governing body makes the initial request for a housing authority, and, after a favorable investigation by the State Housing Board, appoints the five members of the local housing commission (with the approval of the State Housing Board), it appears that once an authority has been established, the local government is without statutory power to prevent the construction of a project. The matter has been raised in Galesburg, Illinois, where, after the appointment of the authority and the making of the loan contracts, the local council voted \textsuperscript{14} against a project. It appears, however, that the project is going to go forward regardless of the adverse vote.

\textsuperscript{33} Ill. Rev. Stat. (1939) c. 672, § 8. \textsuperscript{34} § 8. \textsuperscript{35} §§ 8, 9. \textsuperscript{36} § 12.

\textsuperscript{37} See Krause v. Peoria Housing Authority, 370 Ill. 356, 19 N.E. (2d) 193 (1939), discussed infra p. 302.

\textsuperscript{38} Metropolitan Housing Council of Chicago, Where Are We in Public Housing? xi (1937).

\textsuperscript{39} The most serious difficulty with the then existing Illinois legislation appears to have been the doubt as to whether the projects could be made tax exempt by local governments. Chicago Housing Authority, Report of January 1, 1940, at 21 (1940).

\textsuperscript{40} Ill. Rev. Stat. (1939) c. 672, §§ 28-35.

\textsuperscript{41} Ill. Rev. Stat. (1939) c. 672, § 36.

\textsuperscript{42} Ill. Rev. Stat. (1939) c. 120, § 500 (12).

\textsuperscript{43} The restricted language of this act perhaps indicates that it was passed for the specific purpose of enabling the CHA to secure contracts with the USHA for the Ida B. Wells project. The land upon which that project is built was assembled by the PWA, and then turned over
The first project attempted under the legislation immediately became involved in litigation. Taxpayers, challenging the constitutionality of the legislation, sued to enjoin the Peoria Housing Authority and the city of Peoria from continuing the project. The Illinois Supreme Court, in its opinion rendered in January, 1939, discussed most of the constitutional issues raised by the new laws; and while much of the discussion is not necessary to the decision in the case, it is couched in terms so definite that it may fairly be said that most of the constitutional issues are now put at rest. In line with decisions in eleven other states, the court held that the building of projects was for a public purpose, thereby upholding the expenditure of public funds and the exercise of eminent domain in aid of housing. While it is true that the Peoria Housing Authority had not attempted to use the eminent domain power at the time suit was brought, it would seem that to reach a different result now as to the constitutionality of the use of the eminent domain power for public housing would require the court to repudiate everything stated in its 1939 opinion as to the public nature of the housing projects. In the one eminent domain proceeding since undertaken by an Illinois housing authority, the authority was successful, and no appeal was taken.

Since the statutory provision specifically relating to the tax exemption of property of housing authorities dealt only with land purchased from the Federal Government, the court, in order to uphold the exemption in the Peoria case, was forced to rely upon the section of the Revenue Act granting an exemption to "public charities." This statutory construction might become of importance to the CHA. In Krause v. Peoria Housing Authority, 370 Ill. 356, 19 N.E. (2d) 193 (1939), the court construed this provision, together with other sections of the Revenue Act, as granting an exemption to all public housing projects. See p. 302 infra.


45 Eleven states had upheld their housing laws at the time of the decision; since then, fifteen more have joined. Housing Legislation in the United States, 51 Lab. Rev., No. 4, at 917 (Oct. 1940); for a recent, typical case, see Ryan v. Housing Authority of Newark, 15 A. (2d) 647 (N.J. 1940).

46 The state determination as to whether the projects are for a "public purpose" would probably not be reconsidered by the United States Supreme Court. Green v. Frazier, 253 U.S. 233 (1920).

47 The Peoria Housing Authority found it necessary to bring friendly condemnation proceedings against several parcels in order to clear up title. In only one instance, however, was the use of eminent domain occasioned by the owner's refusal to sell. The CHA filed eminent domain proceedings against some of the parcels in the proposed new project area on Nov. 10, 1940, in the Cook County Circuit Court (40 C. 8831); a traverse has been filed, questioning, among other things, the right of the CHA to exercise the power.

48 Ill. Rev. Stat. (1939) c. 120, § 500 (12).

49 Ill. Rev. Stat. (1939) c. 120, § 500 (7). The court also found a manifestation of legislative intent to exempt in that section of the Housing Authorities Act, Ill. Rev. Stat. (1939) c. 67, § 29, providing for the payment of a service charge; the service charge, it was reasoned, could not be meant to be in addition to a tax.
tance if, in the future, a taxpayer should seek to enjoin the granting of an ex-
emption to a particular project on the ground that, because of failure to house
low-income groups, the particular project was not a "public charity." The ex-
emption was said to extend only to general taxes, however, and not to special
assessments. Furthermore, relying upon the fact that the bonds of the local
authority are secured by the revenues of the authority, and not by the city, the
court held that the bonds were not debts of the city within the prohibition of
the constitutional debt limitation. Nor did the provision permitting the city
to contract for the amount of the service charge on behalf of all of the taxing
bodies violate the constitutional requirement that each taxing body shall de-
determine the amount of its taxes, since the amount collected is not a "tax."
Finally, the statutory standards for the guidance of local housing authorities
in the selection of tenants were held to be definite enough to avoid the charge
that arbitrary discretion was placed in the hands of the local authority.

In view of the unambiguous language used by the Illinois Supreme Court in
dealing with this wide variety of issues, one may, perhaps, agree with the execu-
tive secretary of the Chicago Housing Authority that the legal status of public
housing is fully defined, and that the remaining problems are almost entirely
administrative. The possibility remains, however, that even these adminis-

50 In some states, housing projects are exempt from all taxation, including special assess-
ments. In Dornan v. Philadelphia Housing Authority, 331 Pa. 209, 200 Atl. 834 (1938), even
though the statute provided that housing projects would be exempt from all taxes "except school
taxes," the court refused to impose school taxes, saying that the general exemption granted
because of the public nature of the property made necessary a direct legislative imposition of
any tax.

In Illinois the constitutional provisions are such that no property is exempt unless specifi-
cally stated by the legislature to be so; consequently tax exemption statutes are strictly con-
strued. There appears to be no reason, however, why an Illinois statute expressly providing
for exemption from special assessments would not be upheld. Cf. County of Adams v. Quincy,
130 Ill. 566, 577, 22 N.E. 624, 628 (1889).

In reaching the conclusion that the exemption extends only to general taxes, the court in
the Krause case relied upon the section dealing with lands acquired from the Federal Govern-
ment (Ill. Rev. Stat. (1939) c. 120, § 50 (x2)). That section specifically provides that the
property shall not be exempt from special assessments. In view of the general Illinois rule
that exemptions are to be strictly construed, the same result might have been reached
by applying the "public charities" section (Ill. Rev. Stat. (1939), c. 120, § 500 (7)).

51 Ill. Const. art. 9, § 12.
52 Ill. Const. art. 9, §§ 9, 10.
53 Ill. Rev. Stat. (1939) c. 67, § 25. The delegation of power to the State Housing Board
to create local housing authorities was also stated to be constitutional; but since the Peoria
Housing Authority was (by the enactment of the Validating Act) in fact created by an act of
the legislature itself, the adequacy of the standards was not directly involved in the litigation.

54 Statement by Miss Elizabeth Wood in an interview with a staff member.

That the constitutionality of the United States Housing Act itself has not yet been ques-
tioned in the courts would seem to be an indication of the opinion of the legal profession regard-
ing its status. The power of Congress to spend for the general welfare is firmly established,
United States v. Butler, 297 U.S. 1, 65 (1936), and public housing would seem to come within
trative matters will give rise to litigation. There has as yet been little occasion in the United States for judicial definition of the position of a housing authority as an administrative body. Whether courts will reconsider an authority's determination that a project should be built, that it should be built at a particular location, or that it can be built at a cost to house low-income groups, are questions upon which little may be said with assurance. Such statements as courts in other states have made upon these questions indicate that there is general recognition that the factors involved in reaching these determinations are so intricate as to render it impracticable for courts to reconsider the matters. Nor is there any discussion as to the need for giving notice and hearing to interested

the general welfare category. The most serious question is that arising from the holding in the Butler case (invalidating the Agricultural Adjustment Act) to the effect that even though Congress has power to spend for the general welfare, it may not, in so doing, invade a field reserved to the states. That holding has never been directly disapproved by the Supreme Court, but two considerations render it improbable that the case would be of any great weight in determining the constitutionality of the Housing Act. In the first place, it is doubtful whether anyone has a standing in court to contest the validity of the act. The fact that the funds spent for housing are part of the general reserve, rather than particular assessments such as those in question in the Butler case, appears to bring a taxpayer plaintiff within the doctrine of Massachusetts v. Mellon, 262 U.S. 447 (1923); and a plaintiff suing as a competitor would seem to be precluded by Alabama Power Co. v. Ickes, 307 U.S. 681 (1937). In the second place, even if a plaintiff should be granted a standing to sue, it might well be argued that the Housing Act comes within the doctrine of Steward Machine Co. v. Davis, 301 U.S. 548 (1936), where the social security legislation was upheld and distinguished from the Agricultural Adjustment Act on the ground that it did not "coerce" the states into compliance. The necessity, under the Housing Act, for state legislatures to pass enabling acts before local authorities may participate in the program, seems to make compliance sufficiently voluntary to insure the validity of the act, even if the Court should be disposed to apply the criterion of the Steward case. It is entirely possible, of course, that the present Court would simply overrule the Butler case and adopt the logical proposition that a superior power, once admitted, cannot be qualified by any inferior power. Cf. the dissenting opinion of Holmes, J., in Hammer v. Dagenhart, 247 U.S. 251 (1918).

81 In eminent domain proceedings, it is generally said that the decision of a properly authorized condemnor as to whether to undertake a public work will not be reconsidered by the courts. Nichols, Eminent Domain § 390 (1909).

82 In Stockus v. Boston Housing Authority, 24 N.E. (2d) 333, 337 (Mass. 1939), the court, in holding that the housing authority's demurrer had been properly sustained, stated: "The plaintiffs have no right to ask the court to substitute its judgment for that of the defendant." See also Chapman v. Huntington Housing Authority, 3 S.E. (2d) 502 (W.Va. 1939) (authority's determination as to existence of a slum is final); Riggins v. Dockweiler, 104 P. (2d) 367 (Cal. 1940). But cf. Matthaei v. Housing Authority of Baltimore, 177 Md. 506, 9 A. (2d) 835 (1939), holding that it may be questioned in court whether the proposed project will in fact provide housing for low-income groups. In England a public hearing is granted upon appeal to the Minister of Health, to determine whether the building is properly within a clearance area. Hamilton, Principles and Practice of Compulsory Purchase 64-72 (1938); and although appeal may be taken to the High Court, the review is limited to the finding of some evidence to support the order. Jennings, Courts and Administrative Law—The Experience of English Housing Legislation, 49 Harv. L. Rev. 426 (1936).
persons in reaching these determinations. In a Maryland case, however, it was held that findings of the authority are not conclusive as to the need for the project and the possibility of housing low-income groups. The court's decision was based partly upon a statutory construction, but partly upon the ground that to construe the statute as granting finality would be to raise a serious question as to the constitutionality of the statute.

**CRITICISMS OF THE PUBLIC HOUSING PROGRAM**

The criticisms of the public housing program arise in part from a belief that governments should never engage in direct building of dwellings; in part, from a disagreement as to the methods by which the government building program has been conducted. While admitting that there are large numbers of the population who cannot pay an "economic rent," critics of the program urge that the direct building of homes for the low-income groups is not a desirable method of granting relief. It is pointed out that since the public housing program has thus far been able to furnish dwellings for only a very small percentage of the low-income groups, the housing program constitutes a special privilege in favor of a very few of the "deserving." And completion of the program so as to house all the low-income groups would, it is said, require the expenditure of an amount of public funds far greater than even the most zealous public housing advocate would care to suggest. Moreover, it is urged that relief in the form of housing leads to an undesirable stifling of the initiative of the recipients.

As to statutory provisions, it is interesting to note that whereas the Housing Authorities Act (§ 8) incorporates some parts of the State Housing Act (providing for limited dividend companies), it does not incorporate that provision of the State Housing Act (§ 22) providing that the State Housing Board should conduct public hearings in determining whether a given project should be undertaken at a given place.

Matthaei v. Housing Authority of Baltimore, 177 Md. 506, 9 A. (2d) 835 (1939). Upon trial on the merits, the court decided in favor of the housing authority, and no appeal was taken.

Meaning, an amount of rent sufficient to pay all the costs of providing the housing, including operating expenses, taxes, and amortization of building costs.

Theobald, Pending Legislation Affecting Housing, 15 Real Estate, No. 21, at 8 (May 25, 1940); Public Housing and National Policy, op. cit. supra note 16, at 17, 25.


Address of Binns, op. cit. supra note 61. The statement has been made that a capital outlay of $45,000,000,000 would be required. Strunk, Low Cost Housing under the USHA Experiment, 16 J. of Land & Pub. Util. Econ., No. 1, at 96, 98 (Feb., 1940). Public Housing and National Policy, op. cit. supra note 16, at 4, puts the figure at $42,000,000,000, with a "fixed annual tax liability of $1,700,000,000 to be paid each year for 60 years."

Note 64 infra, Angell, Face the Facts on Urban Rehabilitation, 15 Real Estate, No. 28, at 11 (June 15, 1940) deplors the class consciousness developed by the projects. "The day should never come where some people in the land shall be recognized as permanently poverty-stricken wards of the government." See also Public Housing and National Policy, op. cit. supra note 16, at 19-20.
that the fear of being required to move out of the public housing accommodations removes the incentive for the tenants to make an effort to increase their incomes.64

Even when it is admitted that government building may be desirable, it is charged that the cost has been much greater than necessary, and that the results obtained have not been those which were intended. It is urged that the poor need not be housed in $5,000–$6,000 modern units in the heart of a city;65 that rehabilitation of existing dwellings, or the building of less pretentious units on the cheaper lands on the outskirts, could be accomplished at a much lower cost. Moreover, it is contended that the public housing projects do not in fact house the very low-income groups;66 that, on the contrary, the tenants have incomes which would permit them to pay an "economic rent."67 Nor has the pub-

64 The CHA did in fact serve notice to move on 652 families on April 3, 1940. Some of the tenants later tried to secure an injunction against the CHA, on the ground that the United States Housing Act did not authorize the procedure; but they were unsuccessful.

For a discussion of the conflicting considerations with which the CHA is faced in deciding whether to serve such notices, see Chicago Housing Authority, Housing for Excess Income Families (1940). It is suggested by Strunk, Low-Cost Housing under the USHA Experiment, 16 J. of Land & Pub. Util. Econ., No. 1, at 96, 99 (Feb., 1940), that "Probably if public housing projects were built on a lower standard, the housing authorities wouldn't have such a problem on their hands when they have to evict tenants whose incomes have risen above the maximum of five times the rent."

65 The estimated total cost per unit for the Ida B. Wells Homes is $5,305; for the Jane Addams Houses, $6,350; for the Julia Lathrop Homes, $5,645; for the Trumbull Park Homes, $5,728. Figures based on information contained in Chicago Housing Authority, Report of January 1, 1940, at 11 (1940). Glos, USHA Projects Now Spell "Unfair Competition"—Not "Slum Clearance," 15 Real Estate, No. 22, at 9 (June 1, 1940), objects to the "Fireproof living quarters with all modern conveniences—such as steam heat, refrigeration, modern gas stoves, built-in bathtubs, modern laundry sinks in kitchens, adequate electrical outlets and other conveniences. . . ." Strunk, Low-Cost Housing under the USHA Experiment, 16 J. of Land & Pub. Util. Econ., No. 1, at 96, 98 (Feb., 1940): "It hardly seems logical that middle and upper income groups should be providing slum dwellers with approximately the same priced homes that they are building for themselves." See also Public Housing and National Policy, op. cit. supra note 16, at 27.

66 Theobald, Pending Legislation Affecting Housing, 15 Real Estate, No. 21, at 8 (May 25, 1940); Glos, USHA Projects Now Spell "Unfair Competition"—Not "Slum Clearance," 15 Real Estate, No. 22, at 9 (June 1, 1940); Public Housing and National Policy, op. cit. supra note 16, at 15.

67 The incomes of the tenants in the Jane Addams Houses, as reported by Chicago Housing Authority, Report of January 1, 1940, at 38 (1940), are as follows:

<table>
<thead>
<tr>
<th>Type of Unit</th>
<th>Income Range</th>
<th>Income Range Less Extremes</th>
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<tbody>
<tr>
<td>2 Room Apt.</td>
<td>$780–$1,128</td>
<td>$780–$1,128</td>
</tr>
<tr>
<td>3 Room Apt.</td>
<td>504–2,020</td>
<td>655–1,683</td>
</tr>
<tr>
<td>4 Room Apt.</td>
<td>637–1,000</td>
<td>700–1,763</td>
</tr>
<tr>
<td>4 Room G. H.</td>
<td>1,071–2,040</td>
<td>1,071–1,840</td>
</tr>
<tr>
<td>5 Room Apt.</td>
<td>910–2,288</td>
<td>1,064–1,992</td>
</tr>
<tr>
<td>5 Room G. H.</td>
<td>796–2,642</td>
<td>1,231–2,016</td>
</tr>
</tbody>
</table>

See note 72 infra, for income figures on all Chicago families. There is some indication that the CHA is attempting by eviction of high-income families and by admitting only lower-income
lic housing program aided in solving the larger problem of the elimination of urban blight and slums; it has not, it is said, accomplished any substantial slum clearance. Finally, the tax exemption feature of the program arouses heated objection.

The criticisms are not without some justification. The public housing projects in Chicago at present house only two per cent of those families which the CHA estimates should be reached. It cannot be denied that the recent action of the CHA in sending notice to 652 tenants that their incomes had arisen above the level permitted by law (in order to avoid the charge that the CHA is not housing the low-income groups) will tend to remove the desire of the remaining tenants to increase their incomes. The cost of the government building operations has doubtless been increased by a desire on the part of some of the officials to "demonstrate" what can be done if only sufficient funds are made available; families, to reduce the general income level of tenants. The eviction of 652 families in 1940 has already been referred to (see note 64 supra); and the incomes of the 269 families admitted since October 1, 1939, are listed in Chicago Housing Authority, Housing for Excess Income Families, at 9 (1940), as follows:

<table>
<thead>
<tr>
<th>Range</th>
<th>Number of families</th>
<th>Per cent of total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Under $600</td>
<td>17</td>
<td>6.3</td>
</tr>
<tr>
<td>$600-$799</td>
<td>67</td>
<td>24.9</td>
</tr>
<tr>
<td>$800-$999</td>
<td>134</td>
<td>49.8</td>
</tr>
<tr>
<td>$1,000-$1,199</td>
<td>39</td>
<td>14.5</td>
</tr>
<tr>
<td>$1,200-$2,000</td>
<td>12</td>
<td>4.5</td>
</tr>
</tbody>
</table>

68 The sites of the Jane Addams Houses and the Ida B. Wells Homes were formerly slum areas; those of the Julia Lathrop Homes and the Trumbull Park Homes were vacant land. Chicago Housing Authority, Report of January 1, 1940, at 11-12 (1940). On the Ida B. Wells site in Chicago, 1,536 units were demolished in order to build 1,708 units, [1938] Annual Report USHA 24, and the Peoria projects involved a demolition of 340 units in order to build 1,939, [1939] Annual Report USHA 12.

Fifty-two per cent of the USHA-aided projects in the United States have been built on predominantly slum areas, [1939] Annual Report USHA 10. The three PWA-built projects in Chicago were not built under a program requiring "equivalent elimination." To the extent that the USHA-aided program in Chicago has not accomplished the equivalent elimination by actually building in slum areas, the program has been credited with those demolitions accomplished with WPA labor in the voluntary demolition program carried on by WPA in 1934-39.

Critics state that they would not find the "failure" to eliminate slum structures so bad, if the program in fact housed former slum dwellers. On that point the USHA has published no figures.

69 The CHA estimates that it could build 150,000 units without encroaching on the private market. Chicago Housing Authority, Report of January 1, 1940, at 8-9 (1940). The 3,066 units built constitute only 2.04 per cent of that amount. It should be noted, of course, that that estimate presupposes no change in the amount of private building, and no change in the rigor of the enforcement of the housing ordinances. The effect which a vigorous enforcement of building standards would have on the supply of low-rent housing is problematical; on the one hand, it might be said that the elimination of the slum dwellings would produce an even greater shortage of low-rent housing; on the other, that enforcement would force owners to repair, and so reduce the number of substandard dwellings.

70 The notice was given in April, 1940; but as of Dec. 8, 1940, only 200 of the families had moved.

71 Early efforts of the Federal Government in housing were frankly called "demonstration" projects. The "Greenbelt Towns," for instance, were called by their planners (the defunct Resettlement Administration) "A Demonstration in Suburban Planning."
and while the more recent projects are less pretentious than the earlier ones, they are still far from being mere rehabilitations of existing dwellings. The incomes of the tenants in the Chicago projects, except for a few extreme cases, do range from $780–$2,016—which is above that of the very lowest income groups in Chicago.72 The tax exemption does amount to $150 per family per year;73 and although the United States Housing Act requires the local government to grant a subsidy amounting to only twenty per cent of the amount of the annual grant made by the USHA,74 the local tax exemption is in fact almost equal to the federal subsidy.75

Nevertheless, the fact remains that the only tangible results Chicago has had in the attack on the slums and in the effort to provide better housing for low-income groups, have been produced by the public housing program. While difficulties of land acquisition, making it necessary to acquire large tracts from single owners rather than assembling many smaller tracts of slum properties, have made it necessary to build on vacant land in some cases, the projects do stand in areas which were formerly predominantly slum, and have to some extent changed the nature of those neighborhoods. Limitations on the subsidy (making it necessary to meet operating costs out of rents), and the desire to avoid the granting of double relief, do make it necessary for the CHA to demand that prospective tenants be not entirely destitute; but it is doubtful whether the housing of people able to pay not more than $25 per month rent really amounts to competition with existing private housing in Chicago.76 The tax exemption, while large, does not in fact represent an actual taking from the other property owners of an amount which the public housing projects, fully

72 Note 67 supra shows that the incomes of CHA tenants, not counting extreme cases, is $780–$2,016. Those figures may be compared with figures given by United States Department of Labor, Bureau of Labor Statistics, Family Income in Chicago 1935–36, at 4 (1938), to the effect that 22.1 per cent of Chicago families have incomes of less than $750; 13.7 per cent have less than $500; 7 per cent have less than $250.

73 This is the unpublished estimate made by the CHA for the Ida B. Wells Homes. From data published in Chicago Housing Authority, Report of January 1, 1940, at 32 (1940), it appears that the tax exemption per family per year on the Jane Addams PWA-built project amounts to $177.

74 § 1410.

75 On the Ida B. Wells project, for instance, the unpublished estimate of the CHA is that the annual tax exemption (less service charge) will amount to $150 per family per year, while the federal subsidy will amount to $154 per family per year.

For the three PWA-built projects, the proportion of local subsidy to federal subsidy is less. The federal subsidy per family per year is estimated to be $224, while the local subsidy per family per year (on the Jane Addams Houses) is $177. These figures are based on data reported in Chicago Housing Authority, Report of January 1, 1940, at 17, 32 (1940).

76 When it was determined in the spring of 1940 that 652 of the CHA families should move because of high incomes, the CHA asked the Chicago Real Estate Board for listings of available apartments. Upon investigating the 827 listings, the CHA found only 10 "standard" vacant apartments renting for less than $25 per month including heat. Chicago Housing Authority, Housing For Excess Income Families, at 6 (1940).
assessed, would pay; the only immediate loss in taxes is the amount of taxes that the project sites were formerly producing. Moreover, the huge costs for fire, police, and health protection of slum areas have been amply demonstrated; and to the extent that the public housing projects have eliminated the slums and rehoused the slum dwellers, those costs have been removed. While the results in Chicago in terms of actual building are not particularly impressive (as compared with the results in New York, for instance), it should be noted that those results have been obtained despite the long-continued doubt as to the constitutionality of the program, despite the critical attitude of the press, and despite the lack of interest on the part of local officials.

ALTERNATIVES AND SUGGESTIONS

One of the suggested alternatives to public housing is the plan for the formation of "redevelopment corporations." The suggestion is based upon the assertion that the area which the CHA proposes to use for its new project (Illinois 2—2), for instance, has been levied at $24,000 per year for the past 10 years. $16,000 per year has been paid. The service charge to be paid will amount to approximately $6,000; consequently the immediate loss in income to the city will be $10,000 per year, instead of the much higher figure that the project, fully assessed, would pay in taxes. The CHA is unable to give the comparative figures for the other project sites.

It is sometimes argued that the amount of the tax exemption is more properly figured by inquiring whether the people living in the projects actually came from the costly slum areas. No figures are available on that question, except that the CHA states that 45 per cent of the people living in the Jane Addams project formerly lived in the slum area on which the project was built.

New York City has completed 5,694 units with USHA aid, as compared with the 1,662 units completed in Chicago. [1939] Annual Rep. USHA 4. Between 1919 and 1934, 31 per cent of all dwellings erected in England were built by government agencies. Bassin, The British Government in Housing 55 (FWA Housing Division Study, 1937).

In conversation with a staff member, Miss Elizabeth Wood stated that the lack of Illinois legislation at the time the United States Housing Act was passed, and the doubts after enactment of the Illinois legislation as to its validity, go far to explain the greater amount of housing activity in New York.

See, e.g., articles in the Chicago Tribune: col. 8, p. 33 (May 16, 1940) (CHA gave up its attempt to get options on land for a new project; also stressing the amount of the tax exemption); § 2, col. 3, p. 10 (Mar. 10, 1940) (amount of tax exemption); col. 5, p. 1 (Feb. 15, 1940) (men sent to appraise property during land acquisition activities pose as G-men; CHA does not cooperate with the city council; plight of small homeowners who are to be evicted to make room for the new projects); col. 2, p. 30 (May 4, 1938) ("Lunatic Fringe Blamed for Rise of Housing Cult").

The lack of political leadership perhaps mirrors the public apathy toward the whole housing problem. While several citizens' organizations do exist, their activity appears to be of negligible value. Certainly there is no such public interest as there is in New York, where, upon the failure of Congress to appropriate more funds to the USHA, New York voters amended the state constitution to enable the state to engage in public housing. N.Y. Const. art. 18.

This suggestion has been made repeatedly. Fitch, Centralized Plan for Decentralized Cities, 15 Real Estate, No. 39, at 12 (Sept. 28, 1940) (emphasizing value of plan as means of preventing decentralization); Angell, What of Urban Redevelopment Corporations? 15 Real
The assumption that one of the principal impediments to private industry's undertaking new construction or improvements in the slum areas is the difficulty of assembling any large area of land; and that unless the development covers a large area, no improvement can be expected long to stay above the level of its neighborhood. The "redevelopment corporation" proposal, then, is essentially a matter of the state's granting the power of eminent domain to private corporations in return for the right to exercise a certain amount of governmental control over the activities of the corporations. Making provision for an amount of governmental control which will on the one hand leave sufficient incentive for undertaking the redevelopments, and at the same time allay the apprehension of those who fear placing the eminent domain power in the hands of private operators, is, of course, no small problem.

The Illinois State Housing Act (providing for "limited-dividend" housing corporations), passed in 1933, appears to have gone much too far in the direction of governmental control; no incorporations have been made under it. That act limits rentals to an amount slightly higher than the present scale in the public housing projects; limits dividends to six and one-half per cent (with provision for cumulation); and in addition requires the corporation to obtain the approval of the State Housing Board on a wide variety of matters, including the certificate of incorporation, the project plan, the building contracts and the purchase of materials, the details of financing, and the acquisition or sale of real property. In addition, the State Housing Board has rather broad powers of investigation into the activities of the housing corporations.

A bill introduced in the last session of the Illinois legislature made two significant changes, in that it placed no specific limitation on rentals or on dividends.
The bill did, however, retain essentially the same controls by the State Housing Board as those provided for in the State Housing Act, and was objected to on that ground. At present, two proposed drafts of redevelopment corporation bills are being discussed in Chicago. Both drafts make the additional change of placing the governmental control in a "Redevelopment Commission" appointed by the local governing authority, instead of in the State Housing Board. In certain other respects, however, the bills differ materially. According to the draft proposed by the Chicago Building Congress, the redevelopment commission would continue to exercise control during the entire existence of the corporation; and no tax exemption would be given. According to the draft proposed by two men prominent in this field (Messrs. Morton Bodfish and Horace Russell), redevelopment commission control would be limited to an initial approval of the corporation's plan, with the corporation giving a bond conditioned upon the execution of the plan; and, during the first ten years after redevelopment, the tax assessment valuation of the property would not be higher than that of the aggregate assessed valuation of all the property within the redevelopment area before improvement.

While the "redevelopment corporation" proposal is usually spoken of as being an alternative to the public housing program, it does not appear that these corporations are intended to provide housing for lowest income groups.

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89 Ill. H. R. 759 (1939). Earlier drafts of the bill are Ill. H.R. 376 (1939), and Ill. H. R. 604 (1939).

It should be noted that in contrast with a similar bill introduced recently in New York (Nos. 1844, 2757, Int. 1678 (Feb. 23, 1940)), the Illinois bill made no provision for a tax exemption of any kind. Under the New York bill, projects would be assessed at not more than double the assessment before improvement, for a period of not more than twenty years. Thereafter, they would be fully assessed. Dividends would be limited to 5 per cent during the period of limited taxation; thereafter, one-half of any amount more than 5 per cent would be paid to the municipality, unless a lump sum had been agreed upon.

90 The bill provided two important safeguards against abuse of the eminent domain power. The power was not to be exercised until the corporation had purchased or optioned a majority in area of the land within the proposed development (§ 31); and the Housing Board, in issuing certificates, was to give preference to those corporations whose shareholders owned land within the area (§ 17 (6)).

91 The fact that no incorporations have been made under the State Housing Act (see note 85 supra), with its rent limitations, is some justification for this statement. Further support is found in the fact that the limited-dividend and "garden-type" building (see note 3 supra) have failed to provide housing for low-income groups. A recent example is the proposed rehabilitation of a blighted area of eleven acres near the business district of Buffalo, N.Y.; there, it is contemplated that even with a partial tax exemption, the rents will be $20 per room per month. See Rebuilding a City, 7 Freehold, No. 1, at 18 (July 1, 1940).

It should be noted, however, that Arthur W. Binns, of Philadelphia, claims to have accomplished the rehabilitation of some 300 units, without tax exemption and without the power of eminent domain, to rent at $20 per month; and that he is making a 10 per cent profit in the process. Binns, Making Rehabilitation Pay, 4 Freehold, No. 8, at 268 (April 15, 1939). But see Childs, The Amazing Case of Mr. Binns (Tenants League of Philadelphia, 1940), to the effect that only twenty of Binns' homes are anything like low-rent; that the rest of them rent...
deed, it may be argued that there should be no attempt to combine low-cost housing and the elimination of blight and slum conditions; that the slum land, being closer to the business district, really should be used for better residences, with the cheaper land on the outskirts being used for low-rent housing.

Another proposal, being worked out by the Illinois State Housing Board, would make use of the FHA-insured financing, together with the local housing authority management, in order to permit members of low-income groups to become homeowners.92 Many people, with incomes slightly higher than those of the present tenants in public projects, are unable to make an adequate down payment on the cost of a home; the assumption is that these people are now considered poor credit risks because of the danger that the usual neighborhood deterioration would soon wipe out the owner's small equity. The proposal rests upon the assumption that large-scale operation, together with continued controls by the local housing authority, would so stabilize the whole development as to reduce the deterioration factor to a minimum.93 It is urged that with this assurance of stability, FHA insurance could be obtained for ninety per cent of the financing, with the additional ten per cent (less the small down payment of the purchaser) being obtained in the form of "character loans." The risk attendant upon these loans would be distributed by pooling the notes of the individuals with the housing authority, and issuing trust certificates against them.

Although the FHA-local authority proposal is being formulated by men with long experience in the field of large-scale housing, it is still so nebulous as to render extended discussion here unwarranted. In particular, the degree of dependence upon management by the local housing authority as a stabilizing factor makes it necessary to know much more about how that control would be effectuated, before the plan could be critically appraised.

In any event, whether housing and slum clearance is to be accomplished by direct public building, by private corporations, or by FHA-insured financing under local housing authority control, it appears that reform in the zoning provisions and the enforcement of housing standards is highly important for the success of any program. It is nowhere suggested that any one of the actual building plans heretofore described could be comprehensive enough in its scope for from $35-$75; that even on the twenty, the rents given by Binns in his speeches are shelter rents, and that the rent with heat, light, etc. is $30.50, as compared with that of $20 produced by the Philadelphia Housing Authority; that far from making a 10 per cent profit on the twenty houses, he has lost money.

92 The outline of the program is set forth in a four-page pamphlet published by the Illinois State Housing Board, entitled A Plan to Achieve Home Ownership for Low Income Families through Private Enterprise; and to Accomplish Substantial Slum Clearance (May, 1940).

That the use of FHA-insured mortgages is better than direct building under the USHA is urged by Wilson, Proper Housing's Place in Democracy, 15 Real Estate, No. 5, at 12 (Feb. 3, 1940).

93 The building would probably be done in the neighborhood of the public housing projects, so as to take advantage of the stability given by those projects.
to be successful unless it operated within the broad stabilizing influence of a carefully drafted zoning ordinance and rigidly enforced housing standards. Moreover, it would seem that zoning and enforcement of standards would, by decreasing the value of the slum-occupied lands, materially reduce the cost of new construction on those lands.

It is generally admitted that Chicago has a much larger area zoned for intensive apartment house and commercial purposes than will ever be used for those purposes. There is also general agreement that land so over-zoned has a speculative value that is entirely unjustified by any reasonable forecast as to its future economic use—a value which must be added to the cost of constructing any housing project undertaken on such property. Statements as to the extent and effect of over-zoning on land values are, of course, largely matters of opinion. A study made in Peoria indicates that over-zoning does actually operate to increase land values in the over-zoned areas; and the land use survey now being conducted in Chicago may be expected to furnish some clues as to the extent of overzoning there. Pending completion of this survey, any attempt to revise the zoning code, based on something less than a comprehensive plan for the entire city, would probably fail to reach its objective.

Assuming that the tenants of substandard buildings are already paying about all the rent they can possibly pay, one may argue that enforcement of housing standards would likewise tend to reduce the value of the slum lands; increased costs of providing the housing would reduce the amount of net income to be capitalized. But while there is little doubt that the municipal power to abate nuisances may be exercised to force the demolition, repair, or vacation of

9 Douglas, Rezoning Chicago—Piecemeal or Overall, 15 Real Estate, No. 36, at 9 (Sept. 7, 1940), estimates that as presently zoned, Chicago could house 100,000 people. See also Lindell, Proposed Housing Plan 5 (1939); Sullivan, Report to Chicago City Council Committee on Housing 14 (1938).


95 The results of the study are discussed by Shatts, op. cit. supra note 95, at 164–65.

97 The survey was started in 1939, with $1,600,000 of WPA funds. It was expected then that it would be completed in 1941, but present indications are that it will not. The results of the survey are now being published in preliminary reports.

98 Douglas, op. cit. supra note 94, insists that while the neighborhood efforts should be continued, it is a general rezoning that is required. Failure to have a fairly complete plan before starting to rezone might well result in a flood of amendments such as those following the last zoning law, which has been amended 935 times since 1923, with 12,000 properties now being used contrary to the original code. 15 Real Estate, No. 37, at 6 (Sept. 14, 1940); 15 Real Estate, No. 39, at 6 (Sept. 28, 1940). But see Lindell, A Proposed Housing Program for the City of Chicago, 14 Real Estate, No. 48, at 12 (Dec. 2, 1939), suggesting that the rezoning could go forward on a neighborhood basis.

99 Walker, Urban Blight and Slums 110 (1938).

substandard dwellings, such activities in Chicago have been largely a matter of voluntary cooperation between the owner and the WPA, and, having presumably operated on only the least profitable buildings, probably have not operated to reduce values.

The fact that the housing shortage appears to be the most immediate obstacle to the enforcement of housing standards simply emphasizes the point that no single attack on the housing problem can be expected to be adequate; enforcement of standards must be accompanied by building. The use of slums as a tool for some types of political operations, and the general lack of public interest in the enforcement of the housing standards, offers a serious problem; a problem of producing a heightened public awareness of the whole housing question. The consideration most often urged in explaining the failure to enforce the standards—fear of liability on the part of the enforcing officers or the city—appears to be the least serious. It is true that unless the substandard character of the property can be conclusively established before demolition takes place, there is danger of a court's later imposing liability upon the officers or the city. It is also true that, there having been no forced demolition in Chicago except in extreme cases, there has been no enforcement technique developed in Chicago. But it would seem that upon the manifestation of an actual desire to enforce standards, there would be little difficulty in avoiding

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102 Cummings v. Lobsitz, 43 Okla. 704, 142 Pac. 993 (1914); Sheaff v. Kansas City, 119 Kans. 726, 241 Pac. 439 (1926); Nashville v. Weakley, 170 Tenn. 278, 95 S.W. (2d) 37 (1937). Such doubts as exist appear to arise mainly from the fact that it may be necessary to give the owner an opportunity to repair or vacate before demolition. Health Dept. v. Dassori, 21 App. Div. 348, 47 N.Y. Supp. 641 (1897); Sings v. Joliet, 237 Ill. 300, 86 N.E. 663 (1908).

103 The IERC and, later, WPA furnished the labor for a voluntary demolition program, 1934–39. Chicago Housing Authority, Report of January 1, 1940, at 10 (1940). The compilers of the National Institute of Municipal Law Officers, Rep. No. 37 (1938), received the following reply from the Corporation Counsel's office of Chicago: "Whatever action has been compelled by city authorities has been largely because the buildings are fire hazards or when gross violations of health ordinances are found."

104 See Metropolitan Housing Council, Construction and Demolition of Dwelling Units in Chicago (Oct., 1939), to the effect that in the period 1930–39, 20,000 buildings in Chicago were torn down, while only 10,000 were built.


106 Note the picture appearing in the Southtown Economist, June 5, 1940, showing a Chicago building with the caption: "City Condemns Building after It Collapses." See also note 102 supra.
personal liability of officials; indeed, a proposed ordinance which appears to be adequate has been before the Chicago City Council for four years.\footnote{166}

**THE FUTURE: DEFENSE HOUSING**

The extent to which the defense housing program will affect the low-cost housing program is not clear. It was once hoped that the two objectives of defense housing and low-cost housing might be combined,\footnote{167} but present indications are that the defense housing program is going to result, for the time being at least, in an almost complete interruption of the low-cost program. For while a part of the defense housing legislation does retain the USHA-local organization,\footnote{168} the actual appropriations have been made to other governmental agencies.\footnote{169} Fears have been expressed in some quarters that defense housing will lead not only to a temporary interruption of the public housing program, but that it will also be used as a means of "easing" the public housing program permanently out of existence.\footnote{170}

Even though the low-cost program is continued, however, it will, for the time

\footnote{166} Ill. State Housing Board Rep. 23 (1936); see also National Institute of Municipal Law Officers, Rep. No. 39 (1938).

The suggestion made by the Corporation Counsel of Chicago (Op. Corp. Coun. No. 10099 (1939)), to the effect that the enforcement officials should simply go into a court of equity for a fact determination in the first instance, would undoubtedly reduce the liability hazard to a minimum. In view of the crowded court docket, however, the suggestion is administratively clumsy. Moreover, there is doubt as to whether a court of equity would hear the cases; the ordinary requirement of showing the inadequacy of the legal remedy would appear in itself to be a serious obstacle. In the Illinois case cited by the corporation counsel for the proposition that a city may apply to a court of equity to restrain a nuisance, the court denied the injunction on the ground that: "The existence of a nuisance not having been established by an action at law before bringing this suit in chancery, under all the authorities the facts must be clearly established and the law be without question before an injunction will issue." \footnote{National Association of Housing Officials, Housing in the National Defense Program (July 1, 1940).}

\footnote{167} H.R. 5822, June 28, 1940 (Pub. No. 671).

\footnote{168} H.R. 10263, Sept. 9, 1940 (Pub. No. 781) (appropriating $100,000,000 to the Army and Navy for defense housing); H.R. 10412, Oct. 14, 1940 (Pub. No. 849) (authorizing the Federal Works Administrator to acquire land for housing, and authorizing the appropriation of $150,000,000 for that purpose); H. R. J. Res. 614, Oct. 14, 1940 (Pub. Res. No. 106) (appropriating $75,000,000 to the Federal Works Administrator, and authorizing him to enter into contracts for an additional $75,000,000). Although the Army, Navy, and Federal Works Administrator are authorized to make use of the USHA-local authorities, an address delivered by C. F. Palmer, Housing Coordinator, before the Central Housing Committee, Washington, D.C., Oct. 5, 1940, indicates that such will not be the case.

The failure to use the USHA-local authorities for the defense program may, from one standpoint, be consistent with the desires of those groups themselves. Building of medium-income defense housing by the USHA-local groups might produce serious confusion in the public understanding as to the aims of the low-cost housing program.

being at least, be carried out under more centralized administration. The present act retains the USHA–local authority organization, but it clearly shifts the initiative from the local to the federal authority. The condemnation power is placed in the Federal Government, the slum elimination requirement is dispensed with, and no tax exemption is required.\textsuperscript{111} It does not appear, however, that this shift in control arose from any particular discontent with the decentralized administration; it is probably only a recognition that where emergency building is concerned the Federal Government can operate more efficiently in a direct manner than through local authorities. Where, however, public housing is viewed as a part of the attack on the whole housing problem, the prevalent opinion is that housing is a local problem, best undertaken by local authorities.\textsuperscript{112} Demolition of buildings, city planning, zoning, and real estate taxation are all local problems; and if, as appears to be the case, public housing must be carried on in cooperation with government activities in these fields, then public housing is likewise a local problem.

Moreover, while the federal power of eminent domain for housing is a constitutional exercise of authority under the war power, it has not been upheld under non-emergency conditions.\textsuperscript{113} The denial of the power by the circuit court of appeals in \textit{United States v. Certain Lands in Louisville}\textsuperscript{114} was one of the reasons for the decentralization of the housing program in 1937; and until the issue is decided otherwise by the Supreme Court,\textsuperscript{115} the doubt that exists might in itself be sufficient to thwart the use of the centralized program under non-emergency conditions.\textsuperscript{116}

\textbf{THE BERTRAND RUSSELL LITIGATION}

On February 26, 1940, the Board of Higher Education of New York City by unanimous vote appointed Bertrand Russell as Professor of Philosophy in the

\textsuperscript{111} H.R. 9822, June 28, 1940 (Pub. No. 67).

\textsuperscript{112} Walker, \textit{Urban Blight and Slums} 350 (1938); [1939] Annual Rep. U.S.H.A. 11; Metropolitan Housing Council, \textit{Where Are We in Public Housing?} 9 (1937). But see Laski, \textit{The American Presidency} 251 (1940): "Whether the issue is the unemployed or housing, public utilities like railroads and electric power, the position of the farmer, the place of trade unions in society, the level and methods of taxation, they are insoluble problems if they are met in a sectional way. Their range and intensity will compel the political parties more and more to confront them nationally."

\textsuperscript{113} Eminent domain for housing might conceivably be based on the war power even under non-emergency conditions. See statement of Harold Ickes (Report of House Committee on Banking and Currency, 75th Cong., 1st Sess., at 157 (1937)), to the effect that we need good housing at all times in order to have the kind of men who can defend the nation.

\textsuperscript{114} 78 F. (2d) 684 (C.C.A. 6th 1935).

\textsuperscript{115} The United States Supreme Court granted certiorari in \textit{United States v. Certain Lands in Louisville}, 78 F. (2d) 684 (C.C.A. 6th 1935), but the government obtained a dismissal a few hours before the case was to be argued. See Ebenstein, \textit{Law of Public Housing} 44-46 (1940).

\textsuperscript{116} There may be some significance, however, in the fact that whereas each section of Title I of the Act (note 111 supra) is stated to be an emergency measure, there is no mention of an emergency in Title II, which deals with public housing.