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RECENT SLUM CLEARANCE AND URBAN REDEVELOPMENT LAWS

PHILIP H. HILL*

The increasing interest shown by numerous communities and state legislatures throughout the country in the assistance to slum clearance and community redevelopment programs which has been made available by Title I of the United States Housing Act of 1949,¹ marks the beginning of a new, comprehensive and effective means of attack against the existence of slums and blighted areas throughout the country. In anticipation of or shortly after the passage of the federal law, thirty-four states, four territories, and the Congress for the District of Columbia have, since 1945, approved statutes permitting the undertaking of slum clearance and redevelopment projects in accord with the federal statute,² and some 250 communities have evidenced their intent to utilize the federal financial assistance which is available under this program.³ Combining as it does both the elimination of substandard areas and their redevelopment in accordance with an established community plan, this joint federal-local program offers a practical opportunity to communities to solve a problem which has generally beset them for at least the past half century.

Although the need for legislation to cope with the existence of slums was recognized 100 years ago in the enactment of state laws regulating tenements and safety conditions in tenement houses,⁴ the broad scope of this problem became evident some years later when the United States Commissioner of Labor was directed, in 1892, to make a full investigation "relative to what is known as the slums of

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¹Pub. Law 171, 81st Cong., 63 Stat. 413 (1949).

²Alabama, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Virginia, West Virginia, Wisconsin, Alaska, Hawaii, Puerto Rico and the Virgin Islands. The District of Columbia also has its own redevelopment law. The Kansas statute was declared unconstitutional by the State Supreme Court in October, 1951, for technical reasons not related to redevelopment powers. Citation to these statutes appear in the appendix of this article.

³See Monthly Summary of Operations, July 31, 1952, Division of Slum Clearance and Urban Redevelopment, Office of the Administrator, Housing and Home Finance Agency.

⁴See N. Y. Laws (1849) c. 84, N. Y. Laws (1856) c. 188, N. Y. Laws (1867) c. 908.

cities.”⁵ 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. The early tenement house laws were followed by state legislation authorizing the establishment of local planning boards,⁶ comprehensive zoning ordinances and building codes.⁷ Resting upon the police power for their constitutional validity,⁸ these attempts to stem the future tide offered no panacea for the many already deteriorated areas in the community. Such measures had a very salutary effect upon certain phases of the slum problem; indeed, broad legislation of this type is one of the foundations upon which a broad scale community slum clearance and urban redevelopment program must rest. They did not involve, however, any attempt actually to clear slum structures, and thus the basic character of existing substandard dwellings and areas was not, and under the police power could not be, changed. A recent attempt to re-vitalize the same approach to the problem of slums, known as the “Baltimore Plan,” which has been adopted in some communities, suffers from the same limitations although its importance in the over-all picture cannot be denied.⁹

Years of experience have demonstrated that efforts to overcome the problem of slums through legislation based only upon the state police power are largely ineffectual in terms of the over-all problem, and offer, at best, a partial answer which is soon dissipated when left standing alone. Necessary to any successful slum clearance program is the

⁵Pub. Res. 22, 52nd Cong., 27 Stat. 254.

⁶See “Comparative Digest, State Planning Laws as of January 1, 1951,” Division of Law, Office of the Administrator, Housing and Home Finance Agency, for a comprehensive analysis of all state planning laws. See also Comparative Analysis of State Subdivision Control Laws, January 1, 1945 prepared by the Office of the General Counsel, National Housing Agency (now the Housing and Home Finance Agency) which are presently being brought up-to-date prior to issuance in booklet form.

⁷See e. g. Mass. Acts and Resolves (1913) c. 494; 105-106 Ohio Laws (1915) 455; Calif. Laws (1915) c. 428; N. J. Acts (1913) c. 72; N. Y. Laws (1913) c. 699; Pa. Laws (1913) Act No. 229. A more recent type of police power statute established administrative procedures and standards for the closing down of substandard dwellings. See Ky. Acts (1942) c. 73; La. Acts (1938) Act No. 275; Miss. Laws (1938) c. 337; N. J. Laws (1942) c. 112; N. C. Laws (1939) c. 287, as amended; S. C. Acts (1939) Act No. 228; Tenn. Acts (1939) c. 152; Vt. Acts (1939) Act No. 238; W. Va. Acts (1941) c. 68.

⁸See e. g., *Village of Euclid v. Ambler Realty Co.*, 272 U. S. 365, 47 S. Ct. 114, 71 L. ed. 303 (1926).

⁹These limitations have been indicated even by the mayor of the city which has given its name to this plan. See testimony of Hon. Thomas D'Alesandro, Jr., hearings before the Subcommittee of the U. S. Senate Banking and Currency Committee on S. 138, 81st Cong., 1st Sess. 728 (1949). Many communities which have utilized the “Baltimore Plan” have found it necessary and desirable also to initiate comprehensive slum clearance and urban redevelopment programs under the federal statute.

establishment of practical, realizable plans for the reconstruction and redevelopment of slum areas for purposes which are both desirable and in accord with the trend of general community growth; and there must also be the means of carrying out such plans under legislation which recognize the "public purpose" inherent in such undertakings. The existence of unsafe and insanitary housing was the basic cause of most slum conditions, for the lack of safe and sanitary housing not only hindered community growth but also proved a major obstacle in any attempt to clear such slum areas. "Police power" statutes clearly could not reach this objective, and it was only natural that any new legislation utilizing additional tools based upon "public purpose" would deal initially with the question of providing adequate housing. The widespread need for low-rent housing throughout the country and the inability of local communities to meet the financial demands of a comprehensive slum clearance program was reflected first in the National Industrial Recovery Act and then in the initiation of a permanent federal program under the United States Housing Act of 1937.¹⁰ By offering financial assistance to local public bodies in the construction of low-rent housing, conditioned upon the equivalent elimination of slum dwellings, the federal statute provided an opportunity to communities to undertake the elimination and redevelopment phases of a practical slum clearance program. Seizing upon this opportunity, forty-three states enacted enabling legislation authorizing the creation of local housing authorities to carry out community slum clearance and low-rent housing programs.¹¹ These statutes which authorize the acquisition and clearance of slum areas by exercise of the power of eminent domain and the construction of low-rent housing, and provide for the exemption of such housing authorities from taxation, were founded constitutionally on the inherent "public purpose" of such programs and have been upheld in thirty-one states and the District of Columbia.¹²

Shortly after the initiation of the public low-rent housing program, claim was made that comparable slum clearance and housing programs could be successfully undertaken by private industry if similar "public powers" were made available. This challenge was met through the enactment of legislation authorizing the creation of private urban redevelopment corporations. Corporations organized under these

¹⁰Pub. Law 412, 75th Cong., 50 Stat. 888 (1937).

¹¹The only states without such legislation are Iowa, Kansas, Oklahoma, Utah and Wyoming.

¹²See p. 184, *infra*.

laws were limited in their profits, were required to secure community approval of plans for the acquisition, clearance and redevelopment of designated slum areas, and were offered real estate tax exemption for varying periods of time, in return for their agreement to construct rental housing in such areas at rentals to be approved by the community. These statutes also made available the eminent domain power to acquire the slum areas which were to be cleared, either directly to the corporation or indirectly through the municipality.¹³ One of the first of these statutes was enacted in the State of New York in 1941¹⁴ and the most noteworthy accomplishment to date has been the construction of a large scale housing project known as "Stuyvesant Town" in New York City.

Although some thirteen states have enacted such legislation to date,¹⁵ it was soon recognized that the inducements offered to urban redevelopment corporations were insufficient to meet the substantial cost of a broad slum clearance program. One of the main obstacles to the clearance and redevelopment of slum areas arises from the fact that the cost of acquiring an existing slum area is generally greater than the value of the land when cleared and prepared for redevelopment for use in accordance with general community plans.¹⁶ This problem proved an impediment to all previous attempts to maintain an effective slum clearance program. Again, as with the low-rent housing laws, these statutes were limited to the redevelopment of slum areas for housing purposes only, and this end result did not always coincide with general plans for community development and growth. Still another approach proved to be necessary because of the ever-increasing burden of slum conditions on local communities and its adverse impact upon the welfare of the Nation.

After numerous years of study and four years of intensive consideration of proposed legislative solutions, the Congress enacted Title I of the Housing Act of 1949 in recognition of the demonstrated fact that the nation-wide slum problem required joint action by both the

¹³See Comparative Digest, Principal Provisions of State Urban Redevelopment Legislation, National Housing Agency (now the Housing and Home Finance Agency), April 1, 1947, as supplemented October 15, 1950.

¹⁴N. Y. Laws (1941) c. 892. See also N. Y. Laws (1942) c. 845.

¹⁵Illinois, Indiana, Kansas, Kentucky, Louisiana, Massachusetts, Michigan, Minnesota, Missouri, New Jersey, New York, Virginia and Wisconsin. See Comparative Digest, Principal Provisions of State Urban Redevelopment Legislation, National Housing Agency, April 1, 1947, as supplemented October 15, 1950.

¹⁶See Sen. Rep. No. 84, 81st Cong. (1949); H. Rep. No. 590, 81st Cong. (1949).

federal government and local communities.¹⁷ The inadequacy of prior efforts by private enterprise and local communities did not reflect upon such groups but merely indicated the insufficiency of private and municipal resources alone to meet the cost of effective slum clearance and redevelopment. Title I of the Housing Act of 1949 made possible for the first time a comprehensive attack upon slums by local communities by offering financial assistance to cover large capital outlays and high write-down costs for preparing slum lands for reuse. It seems to cover the last obstacles not surmounted in previous legislation. Since this financial aid may be used only to acquire, clear and prepare the land, the cost of reconstruction of slum areas does not become a federal burden. The redevelopment of these areas is to be undertaken by private or public interests in the local community which may acquire the property for its proposed new uses at a price which is consistent with its economical development for such purposes. Such reconstruction must be in accord with general community plans and may therefore result not only in the creation of new housing, but also in the establishment of new commercial, industrial, recreational or other facilities which are most consistent with the needs of the community as evidenced in its general plan.

To achieve this vital objective, the Federal Act authorizes the Housing and Home Finance Administrator to make loans and capital grants to local public agencies for slum clearance and urban redevelopment projects.¹⁸ Such projects may include the acquisition of slum or deteriorated areas, or predominantly open land which is blighted; the clearance of such properties and the installation of streets, utilities, and other improvements necessary to prepare the land in such areas for redevelopment; and the sale or lease of such land for redevelopment at its fair value for the uses specified in a redevelopment plan approved by the governing body of the community.¹⁹ The federal government may make grants not to exceed two-thirds of the net cost (i. e. the difference between the cost of preparing necessary plans, acquiring and clearing the land, installing necessary site improvements and the proceeds received from its disposition at prices

¹⁷See Sen. Rep. No. 84, 81st Cong. (1949); H. Rep. No. 590, 81st Cong. (1949). The history of the legislative consideration of this measure which was initially introduced in 1945 in the 79th Congress as S. 1592, is set forth in these committee reports.

¹⁸Secs. 102 and 103. The statute also authorizes the appointment of a Director (of the Division of Slum Clearance and Urban Redevelopment) who administers this program under the direction and supervision of the Housing and Home Finance Administrator. See section 106 (a).

¹⁹Secs. 110 (c) and 105.

consistent with the new intended uses) of such undertakings with the remaining one-third to be borne by the local public agency through grants-in-aid by the local community, the state or other public body.²⁰ The acquisition, and preparation for development, of vacant land may also constitute a redevelopment project if such a project is an adjunct to or a necessary part of an established over-all local program for the clearance of slums and blighted areas, but in such event federal aid is limited to loans.²¹

Seizing upon this opportunity to solve their slum clearance problems, thirty-four states and four territories (and the Congress, for the District of Columbia) have enacted enabling legislation which vests in a local public agency the powers necessary to carry out slum clearance and urban redevelopment projects in accordance with the federal statute.²² Several others have had similar legislation under consideration although final determination has not yet been reached.²³

Financial assistance under the federal law may be extended only to local public agencies which are vested with power to acquire land in slum and blighted areas by eminent domain or otherwise, to dispose of such land for redevelopment, to finance redevelopment projects through the issuance of bonds or other obligations and to enter into contracts with the federal government for financial assistance; and it is essential therefore that the local redevelopment agency be a public corporate body.²⁴ The federal statute offers complete freedom to the local community and to the state in determining the most appropriate public agency to carry on redevelopment activities and the state statutes utilize differing solutions to this question. In numerous states where the enactment of the federal program was anticipated by the approval of enabling legislation in 1945, housing authorities were selected to be the local public agency and the enabling legislation took the form of a supplementary statute vesting in these public bodies redevelopment powers in addition to those already granted in connection with

²⁰Secs. 103, 104, and 110 (f).

²¹Sec. 110 (c) (iv).

²²See note 2, *supra*. Some statutes were enacted prior to but in specific anticipation of the passage of the federal bill which was considered by the 79th, 80th and 81st Congresses.

²³Bills of this nature were introduced in the 1951 sessions of the Arizona, New Mexico, Oklahoma, Texas and Washington legislatures, and in the 1952 session of the Mississippi legislature.

²⁴See "Basic Legal Powers Which Local Public Agencies Must Have To Be Eligible For Federal Aid For Slum Clearance and Redevelopment Projects Under Title I of the Housing Act of 1949," Housing and Home Finance Agency, November 21, 1949.

the undertaking of low-rent housing projects.²⁵ In several others, the statute created new public bodies known as "redevelopment agencies" and granted to them necessary powers to carry out their functions.²⁶ In still other states, communities evidenced a desire to include slum clearance and redevelopment activities among their regular municipal functions, and in such instances the statute vests the necessary powers directly in the community.²⁷ The most recently enacted statutes, like that in West Virginia, combine these three alternatives and afford local communities the freedom to choose the one most appropriate to meet the needs and demands of the particular community.²⁸ In anticipation of problems which might arise where slum areas and the economic basis for their redevelopment transcend local political boundaries, several states have left the door open for the establishment of regional agencies, to carry out slum clearance and urban redevelopment projects on a regional or unified metropolitan basis.²⁹ Regardless of the local public agency which is chosen, however, the initiative for a slum clearance and urban redevelopment program must come from the local community, through its governing body, which has the responsibility for starting, approving and directly assisting the undertaking of any project which is deemed necessary.

Where the state enabling legislation creates a new public body, the statute contains provisions for the appointment of its members and for the payment of their necessary expenses, and includes administrative procedures for the conduct of business, the exercise of its powers, the time and place of meetings and the employment of an executive director and other employees. Where an existing public body, such as a housing authority or municipality, are merely granted additional powers, such administrative provisions are, of course, unnecessary.

The powers expressly vested in local public agencies by these redevelopment laws vary according to the identity of the local public

²⁵Alabama, Arkansas, Florida, Georgia, Louisiana, Massachusetts, Minnesota, Nebraska, New Hampshire, Oregon, South Carolina, South Dakota, Tennessee, and Virginia. The Nebraska law is limited in its operation to the city of Omaha.

²⁶California, Maine, North Carolina, Pennsylvania and Rhode Island. The Maine statute is limited to the city of Portland.

²⁷Colorado, Connecticut, Indiana, Maryland, Michigan, New York, Ohio and Wisconsin. The Indiana law is limited to Indianapolis and that in Maryland to the city of Baltimore.

²⁸Delaware, Kentucky, Missouri and West Virginia. Illinois, Massachusetts and New Jersey each have separate statutes authorizing the use of housing authorities in one and creating new redevelopment agencies in the other.

²⁹That such projects may be economically desirable is specifically contemplated in section 101 (b) of the federal statute.

agency. Where the local community itself is being authorized to undertake redevelopment projects, the statutes rely upon the existence of normal municipal powers and make specific mention only of those additional powers necessary to carry out such activities. Similarly, local housing authorities already possess many of the general powers necessary to the undertaking of redevelopment projects, and in such cases, the laws make specific reference only to those additional powers required for redevelopment purposes.

The most recently enacted statutes, however, describe in considerable detail the legal authority vested in public redevelopment agencies to enable them to achieve their objective. In addition to the broad power to prepare redevelopment plans and undertake redevelopment projects subject to the approval of the governing body of the local community,³⁰ such agencies are authorized: to sue and be sued; to make and execute necessary contracts and rules and regulations; to acquire property by eminent domain, purchase, gift or grant; to hold, improve, clear or prepare such property for redevelopment; to sell, lease, exchange or transfer property; to borrow money and to apply for and accept loans, grants and contributions from the federal government, the state or any other public body or from any sources public or private; to agree in any contract for financial assistance with the federal government to such conditions imposed pursuant to federal law as the agency may deem reasonable and appropriate; to make necessary surveys, investigations and plans; to administer and take testimony under oath; to arrange or contract for the furnishing of services, streets, public utilities and other facilities in connection with a redevelopment project; to provide reasonable assistance for the relocation of displaced families to the extent essential for acquiring possession of land in a redevelopment project; and to make such expenditures as may be necessary to carry out its functions.³¹

In addition, some of the statutes specifically authorize the local public agency to sell, lease or transfer real property in a redevelopment project to any public or private redeveloper for such residential, recreational, commercial, industrial or other uses as are specified in the redevelopment plan approved under the bill. Such disposal must be made at the fair value of the land for uses in accordance with the redevelopment plan notwithstanding that such value may be less than

³⁰See e. g., Section 6 of the West Virginia Slum Clearance and Redevelopment Authority Law, W. Va. Code Ann. (Michie, 1951 Supp.) section 1409 (101).

³¹See e. g., section 5 of the West Virginia statute, W. Va. Code Ann. (Michie, 1951 Supp.) section 1409 (100).

the cost of acquiring and preparing such property for redevelopment. In disposing of property, the local public agency may impose such conditions and restrictions as it may deem necessary to effectuate the statutory purposes.³² The disposal of such land to redevelopers must be preceded by a public notice inviting proposals from prospective redevelopers. Prior to the acceptance of any redevelopment proposal, the redevelopment agency must notify the governing body of the proposal which it intends to accept. The agency is also authorized, in its discretion, to adopt reasonable competitive bidding procedures as an alternative method of disposal.³³

To finance its undertakings, the local public agency is empowered to issue revenue bonds or other obligations which may be additionally secured by a pledge of federal financial assistance. Such bonds or other obligations, it is provided, shall in no event, constitute a debt or other obligation of the state, city or county. Detailed provisions relating to the issuance, maturity, interest, and sale of revenue bonds and the powers of the agency in connection with the issuance of such bonds, follow the usual bond provisions in comparable legislation.³⁴ Such bonds are made legal investments for banks, insurance companies, executors and other fiduciaries.³⁵ The redevelopment agency is further authorized to agree to convey possession of a redevelopment project to the federal government upon any substantial default provided that the property be reconveyed to the agency after the default has been cured.³⁶

Since many of the statutes were enacted before the federal program was fully under way, their provisions describing the procedure for carrying out slum clearance and urban redevelopment projects vary considerably. The most recent laws make express provision for meeting the specific requirements of the federal statute. In others, compliance with the federal requirements is achieved through the utilization of the general corporate powers to the extent permitted by the particular statute.³⁷ Generally, the redevelopment agency is authorized to prepare redevelopment plans for slum or blighted areas. In some states this function is vested in local planning commissions and in still others

³²W. Va. Code Ann. (Michie, 1951 Supp.) section 1409 (100).

³³W. Va. Code Ann. (Michie, 1951 Supp.) section 1409 (102).

³⁴W. Va. Code Ann. (Michie, 1951 Supp.) section 1409 (105) and (106).

³⁵W. Va. Code Ann. (Michie, 1951 Supp.) section 1409 (108).

³⁶W. Va. Code Ann. (Michie, 1951 Supp.) section 1409 (109).

³⁷See A Guide To Slum Clearance and Urban Redevelopment under Title I of The Housing Act of 1949, Revised July, 1950, Division of Slum Clearance and Urban Redevelopment, Office of the Administrator, Housing and Home Finance Agency.

the local governing body is required first to designate slum areas which are in need of redevelopment. Many of the statutes describe in some detail the mandatory contents of a redevelopment plan such as the boundaries of the project area, the proposed new land uses, the standards of population densities and land coverage, the additional public facilities or utilities which would be required and the proposed changes, if any, in zoning ordinances and building codes. Other statutes are silent on the scope of a redevelopment plan, but in all communities which are operating under the federal program there must exist sufficient general authority to meet the federal requirements.

Two of the fundamental requirements of the federal statute are that no land be acquired except after a public hearing and that no project can proceed beyond its preliminary stages until the local governing body has approved the redevelopment plan.³⁸ Although many of the earlier statutes do not specifically contain similar requirements, the more recent ones expressly require the local governing body to hold a public hearing on the redevelopment plan and prohibit the acquisition of land until after such public hearing and approval by the local governing body. Whether specifically required to or not by their enabling legislation, however, local public agencies participating in the federal program are required by the Housing and Home Finance Agency to conform to this procedure.³⁹ In some states, the local agency must also submit to the local governing body information concerning the estimated cost of the project, the proposed method of financing it, and a feasible method which is proposed for the relocation of families displaced from the slum area to be cleared.

After land in the slum area has been acquired by the local public agency, the statutes generally exempt it from taxation until it has been sold, leased or otherwise disposed of for redevelopment. Of course, if the redeveloper of the property is a public body otherwise exempt from taxation, the land would remain tax exempt. To permit communities to make grants-in-aid required by the federal statute, some statutes authorize not only the furnishing of normal municipal services such as the installation of streets, parks and other facilities, but also the payment of cash grants and the levying of taxes and issuance of bonds to raise funds for this purpose. Generally, the statutes authorize

³⁸See sections 105 (a) and (d).

³⁹See *A Guide to Slum Clearance and Urban Redevelopment under Title I of The Housing Act of 1949*, Revised July, 1950, Division of Slum Clearance and Urban Redevelopment, Office of the Administrator, Housing and Home Finance Agency.

other public bodies to assist in the carrying out of redevelopment projects through the utilization of their already existing powers.

Most of the slum clearance and urban redevelopment enabling statutes contain affirmative findings as to the existence and adverse effect upon the community of slum and blighted areas and include a determination that the elimination of such conditions, the acquisition of land in slum or blighted areas and its disposal for redevelopment in accordance with general community plans are public uses and purposes for which public money may be expended and the power of eminent domain exercised. These provisions constitute a legislative declaration of the constitutional character of slum clearance and urban redevelopment projects necessary to sustain the positive powers granted in these laws as distinct from the negative approach followed by the earlier statutes enacted under the police power.⁴⁰ Although not conclusive of these questions, they have been accorded great weight by the courts in the constitutional cases which have been determined.⁴¹

The general similarity of approach between the slum clearance and low-rent housing program and the slum clearance and urban redevelopment program offers many constitutional tests which are common to both. The United States Housing Act of 1937 has been sustained as an appropriate expenditure of federal funds under the General Welfare Clause of the Constitution.⁴² Although the program described in Title I of the Housing Act of 1949 has not yet been similarly tested under the Federal Constitution, there appears to be no distinction in principle, purpose or approach as to warrant a different result. However, while similarly founded upon a broad advancement of the general welfare, the grant of detailed powers which is made in state enabling

⁴⁰As the Tennessee court said in upholding the statute granting redevelopment powers to local housing authorities: "... by the police power the sovereign takes property and destroys it, while by eminent domain, private property is taken by a public agency for later application to a different use." *Nashville Housing Authority v. City of Nashville*, 237 S. W. (2d) 946, 948 (Tenn. 1951).

⁴¹*Zurn v. City of Chicago*, 389 Ill. 114, 59 N. E. (2d) 18 (1945); *Belvosky v. Redevelopment Authority of City of Philadelphia*, 357 Pa. 329, 54 A. (2d) 277 (1947); *Opinion to the Governor*, 69 A. (2d) 531 (R. I. 1949). See also *Hague v. Housing Authority of North Little Rock*, 201 Ark. 263, 144 S. W. (2d) 49 (1940); *Cremer et al. v. Peoria Housing Authority*, 399 Ill. 579, 78 N. E. (2d) 276 (1948); *Allydonn Realty Corp. v. Holyoke Housing Authority*, 304 Mass. 288, 23 N. E. (2d) 665 (1939); *Lennox v. Housing Authority of City of Omaha*, 137 Neb. 582, 290 N. W. 451 (1940); 137 Neb. 582, 291 N. W. 100 (1940); *McLaughlin v. Housing Authority of City of Las Vegas*, 227 P. (2d) 206 (Nev. 1951); *L. G. Benjamin v. The Housing Authority of Darlington County*, 198 S. C. 79, 15 S. E. (2d) 737 (1941); *Chapman v. Huntington, W. Va. Housing Authority*, 121 W. Va. 319, 3 S. E. (2d) 502 (1939).

⁴²*Cleveland v. United States*, 323 U. S. 329, 65 S. Ct. 280, 89 L. ed. 274 (1945).

legislation has given rise to specific attacks in the light of the constitutional provisions in a particular state.

The results have been almost uniformly favorable to both programs.⁴³ To date the highest courts in thirty-one states have upheld the constitutionality of the slum clearance and low-rent housing statutes,⁴⁴ and in the states of Alabama, Arkansas, Illinois, Pennsylvania, Rhode Island and Tennessee, similar legislation authorizing the undertaking of slum clearance and urban redevelopment projects by local public agencies has been favorably reviewed by the courts.⁴⁵ Urban

⁴³Recent amendments to the Kansas Urban Redevelopment Corporation Law which authorized local public agencies to undertake slum clearance and urban redevelopment projects but which limited the operation of the statute to cities having a population of not less than 125,000 not more than 150,000, were invalidated by the State Supreme Court on the ground that such limitation constituted an unreasonable classification. However, the Court did not review the general content of the statute. See Kan. Laws (1951) c. 206, approved March 31, 1951; *Redevelopment Authority of the City of Kansas City v. State Corporation Commission*, 236 P. (2d) 782 (Kan. 1951).

⁴⁴In *Re Opinion of the Justices*, 235 Ala. 485, 179 So. 535 (1938); *Humphrey v. Phoenix*, 55 Ariz. 374, 102 P. (2d) 82 (1940); *Hague v. Housing Authority of North Little Rock*, 201 Ark. 263, 144 S. W. (2d) 49 (1940); *Housing Authority v. Dockweiler*, 14 Cal. (2d) 437, 94 P. (2d) 794 (1939); *People ex rel. Stokes v. Newton*, 106 Colo. 61, 101 P. (2d) 21 (1940); *Marvin v. Housing Authority*, 133 Fla. 590, 183 So. 145 (1938); *Williamson v. Housing Authority*, 186 Ga. 673, 199 S. E. 53 (1938); *T. J. Lloyd v. Twin Falls Housing Authority*, 62 Idaho 592, 113 P. (2d) 1102 (1941); *Krause v. Peoria Housing Authority*, 370 Ill. 356, 19 N. E. (2d) 193 (1939); *Edwards v. Housing Authority*, 215 Ind. 330, 19 N. E. (2d) 741 (1939); *Spahn v. Steward*, 268 Ky. 97, 103 S. W. (2d) 651 (1937); *State ex rel. Porterie v. Housing Authority*, 190 La. 710, 182 So. 725 (1938); *Mattaui v. Housing Authority*, 177 Md. 506, 9 A. (2d) 835 (1939); *Allydonn Realty Corp. v. Holyoke Housing Authority*, 304 Mass. 507, 24 N. E. (2d) 333 (1939); *Re Brewster Street Housing Site*, 291 Mich. 313, 289 N. W. 493 (1939); *Thomas v. Housing and Redevelopment Authority of Duluth*, 49 N. W. (2d) 175 (Minn. 1951); *Laret Invest. Co. v. Dickmann*, 345 Mo. 449, 134 S. W. (2d) 65 (1939); *Rutherford v. Great Falls*, 107 Mont. 512, 86 P. (2d) 656 (1939); *Lennox v. Housing Authority*, 137 Neb. 582, 290 N. W. 451; 291 N. W. 100 (1940); *McLaughlin v. Housing Authority of City of Las Vegas*, 227 P. (2d) 206 (Nev. 1951); *Re Opinion of Justices*, 94 N. H. 515, 53 A. (2d) 194 (1947); *Romano v. Housing Authority*, 123 N. J. L. 428, 10 A. (2d) 181, *aff'd* 124 N. J. L. 452, 12 A. (2d) 384 (1940); *New York City Housing Authority v. Muller*, 270 N. Y. 333, 1 N. E. (2d) 153 (1936); *Wells v. Housing Authority*, 213 N. C. 744, 197 S. E. 693 (1938); *State ex rel. Ellis v. Sherrill*, 136 Ohio St. 328, 25 N. E. (2d) 844 (1940); *Dornam v. Philadelphia Housing Authority*, 331 Pa. 209, 200 Atl. 834 (1938); *Mc Nulty v. Owens*, 188 S. C. 377, 199 S. E. 425 (1938); *Knoxville Housing Authority v. Knoxville*, 174 Tenn. 76, 123 S. W. (2d) 1085 (1939); *Housing Authority v. Higgenbotham*, 135 Tex. 158, 143 S. W. (2d) 79 (1940); *Mumpower v. Housing Authority of City of Bristol*, 176 Va. 426, 11 S. E. (2d) 732 (1940); *Chapman v. Huntington, W. Va. Housing Authority*, 121 W. Va. 319, 3 S. E. (2d) 502 (1939).

⁴⁵In *Re Opinion of the Justices*, 45 S. (2d) 757 (Ala. 1950); *Rowe v. Housing Authority of City of Little Rock*, Supreme Court of Arkansas, decided June 9, 1952; *People ex rel. Tuohy v. City of Chicago*, 399 Ill. 551, 78 N. E. (2d) 285 (1948); *Belovsky v. Redevelopment Authority of City of Philadelphia*, 357 Pa. 329, 54 A.

redevelopment corporation laws, which involve many of the same constitutional questions, have also been upheld in Illinois, New Jersey and New York.⁴⁶ Of primary interest to these programs is the distinction between the slum clearance and low-rent housing statutes and the slum clearance and urban redevelopment laws which has been noted by the Texas courts. In *McCord v. Housing Authority of City of Dallas*, the court recently held that the provisions of the housing authorities law, in and of themselves, did not vest in the Dallas Housing Authority the power to acquire slum areas for the purpose of selling them to public and private groups for redevelopment.⁴⁷ However, where, as in Alabama and Tennessee, housing authorities have been granted specific redevelopment powers in supplemental statutes, their authority to undertake such projects has been sustained.⁴⁸

The primary attacks against this legislation have been directed to the "public purpose" of the undertakings which are authorized. Adverse arguments in this regard have been made in connection with the expenditure of public funds and the exercise of the power of eminent domain under the statute. A further attack has been made upon urban redevelopment legislation on the ground that, in contrast to the low-rent housing laws where construction of such housing may be undertaken only by public bodies, the authority to dispose of land for redevelopment by private interests reflects the lack of public purpose in such undertakings. The unanimity of judicial decisions on these questions clearly establishes the validity of this approach to the slum clearance problem. The exercise of the power of eminent domain and the expenditure of public funds to acquire and clear slum areas is

(2d) 277 (1947); *Ajootian v. Providence Redevelopment Agency*, Supreme Court of Rhode Island, decided Aug. 11, 1952; *Nashville Housing Authority v. City of Nashville*, 237 S. W. (2d) 946 (Tenn. 1951). See also Opinion to the Governor, 69 A. (2d) 531 (1949) upholding the former Rhode Island redevelopment law which was repealed by the current statute.

⁴⁶*Zurn v. City of Chicago*, 389 Ill. 114, 59 N. E. (2d) 18 (1945); *Redfern v. Board of Commissioners of Jersey City*, 137 N. J. 356, 59 A. (2d) 641 (1948); *Murray v. LaGuardia*, 291 N. Y. 320, 52 N. E. (2d) 884 (1943) cert. denied, 321 U. S. 771, 64 S. Ct. 320, 88 L. ed. 1066 (1944).

⁴⁷234 S. W. (2d) 108 (Tex. Civ. App. 1950) review denied, 236 S. W. (2d) 115 (Tex. 1951). But cf. In the Matter of Slum Clearance in the City of Detroit, 331 Mich. 714, 50 N. W. (2d) 340 (1951) where under a broad statute authorizing cities to acquire or reconstruct housing facilities and to eliminate slum conditions, the court assumed that the power to resell slum areas after clearance was granted under the statute. The court's major holding was that resale to private persons for reconstruction was merely incidental to the primary purpose of slum clearance and did not alter the public purpose of the basic undertaking.

⁴⁸See note 45, supra.

proper as being for a public purpose and use.⁴⁹ "Public purpose" also encompasses the commercial redevelopment of a substandard area in accordance with an approved community plan,⁵⁰ and the fact that the redevelopment of a substandard area may be accomplished by private interests and incidentally result in private gain does not nullify the otherwise legitimate character of slum clearance activities.⁵¹ As the Court of Appeals of New York said in *Murray v. LaGuardia*, urban redevelopment statutes are not arbitrary or capricious or unrelated to the public objective simply because they constitute "an effort by the legislature to promote cooperation between municipal government and private capital to the end that substandard and insanitary areas in our urban communities may be rehabilitated."⁵² Similarly, the statutes do not run afoul of constitutional provisions against conferring special benefits upon a limited class even though authority is granted to dispose of land for redevelopment at its value for the specified use, which may well be less than the cost of acquisition. The Supreme Court of Alabama dismissed this problem with the following language:

"No special privilege is granted in violation of Section 22, Constitution. The land is not to be sold or let to private persons except upon the basis of the value of the right granted. Although the authority may lease or sell the land to individuals, such transaction shall require the purposes of the Act to be accomplished. Even if some individual does receive more benefit than others, that is only incidental and does not affect the public nature of the transaction as a whole."⁵³

It may be assumed that slum clearance and urban redevelopment enabling legislation will be the subject of continuing judicial analysis in other jurisdictions as local community programs get further under way. As with the low-rent housing statutes, each legislative enactment must be examined in the light of the individual constitutional provisions in the particular state. However, in view of the judicial history of slum clearance legislation, the outcome of these future constitutional tests may be expected to lend overwhelming support to the legal validity of this latest approach to our nation-wide slum problem.

⁴⁹See cases cited in notes 44, 45 and 46, supra.

⁵⁰See *Schenck v. City of Pittsburgh*, 364 Pa. 31, 70 A. (2d) 612 (1950); *In Re Opinion of the Justices*, 48 S. (2d) 757 (Ala. 1950).

⁵¹See cases cited in notes 45 and 46, supra. Also see *In the Matter of Slum Clearance in the City of Detroit*, 331 Mich. 714, 50 N. W. (2d) 340 (1951) and *Chicago Land Clearance Commission v. White*, 104 N. E. (2d) 236 (Ill. 1951).

⁵²291 N. Y. 320, 52 N. E. (2d) 884, 889 (1943).

⁵³48 S. (2d) 757, 759 (Ala. 1950); see also cases cited in notes 45 and 46, supra.

APPENDIX

Citations to State and Territorial Legislation Authorizing Local Public Agencies to Undertake Slum Clearance and Urban Redevelopment Projects, and to Specific Constitutional Provisions Authorizing Such Legislation

- Alabama*—Code Ann. tit. 25, § 96-104 (Supp. 1950); Acts 1949, No. 491, p. 713.
- Alaska*—Laws 1951, c. 105.
- Arkansas*—Stat. Ann. tit. 19, § 3056-3063 (Supp. 1951); Acts 1945, No. 212, p. 491.
- California*—Health and Safety Code § 33000-33936 (1951); Stats. 1951, c. 619, 710, 1057, 1411, 1624 and 1686.
- Colorado*—Stat. Ann. c. 82, § 62-75 (Supp. 1951); Laws 1945, c. 228, p. 617.
- Connecticut*—Rev. Gen. Stat. § 979-988 (Supp. 1951); Acts 1945, No. 397, as amended by Acts 1946, No. 3, Acts 1949, No. 320 and Acts 1951, No. 283.
- Delaware*—Laws 1951, c. 345.
- District of Columbia*—Code §§ 5-701 to 5-719 (Supp. 1949); 60 Stat. 790 (1946), as amended by 63 Stat. 413 (1949).
- Florida*—Stat. Ann. c. 421 (Supp. 1951); Laws 1945, c. 23077, as amended by Laws 1945, c. 26362 and c. 26477, and Laws 1951, c. 27091.
- Georgia*—Code Ann. § 99-12012 to § 99-1214a (Supp. 1951); Acts 1946, No. 616, p. 157, as amended by Acts 1951, No. 443, p. 683.
- Hawaii*—Rev. Laws § 6195.01 to § 6195.24; Laws 1949, No. 379, as amended by Laws 1951, No. 244.
- Illinois*—Ann. Stat. c. 67½ § 63-91 (Supp. 1951); Laws 1947, p. 1072, as amended by Laws 1949, p. 997, and Laws 1951, p.— (S. B. 215).
Ann. Stat. c. 67½ § 91.1-91.7 (Supp. 1951); Laws 1949, p. 994.
- Indiana*—Ann. Stat. § 48-8501 to 48-8511b (Burns Supp. 1951); Laws 1945, c. 276, as supplemented by Laws 1951, c. 52.
- Kansas*—Gen. Stat. Ann. § 17-4701 to 17-4723 (Supp. 1945); Laws 1943, c. 118 as amended by Laws 1951, c. 206. [held unconstitutional in Redevelopment Authority v. State Corporation Commission, 171 Kan. 581, 236 P. (2d) 782 (1951)].
- Kentucky*—Rev. Stat. § 99-330-99-510 (Supp. 1950); Acts 1950, c. 119.
- Louisiana*—Rev. Stat. tit. 40 § 381-572 (1950); Acts 1948, No. 500 as amended by Acts 1950, No. 401.
- Maine*—Laws 1951, c. 217.
- Maryland*—Const. Art. XIX; Laws 1945, c. 1012, as amended by Laws 1947, c. 504, and Laws 1949, c. 217.
- Massachusetts*—Ann. Laws c. 121, § 26JJ-26PP (Supp. 1950); Acts 1946, c. 574, as amended by Acts 1947, c. 486, and Acts 1952, c. 617.
- Michigan*—State. Ann. § 5-3501-5-3513 (Supp. 1951); Acts 1945, No. 344, as amended by Acts 1947, No. 237, and Acts 1952, No. 222.
Stat. Ann. § 5-3521-5-3532 (Supp. 1951); Acts 1949, No. 208.
- Minnesota*—Stat. Ann. § 462.411 to 462.711 (Supp. 1951); Laws 1947, c. 487, as amended by Laws 1949, c. 505, and Laws 1951, c. 32 and c. 568.
- Missouri*—Const. Art. VI § 21; V. A. M. S. § 99-300-§99.660 (Supp. 1951); Laws 1951, p.— (S. B. 129).
- Nebraska*—Laws 1951, p. 796.
- New Hampshire*—Rev. Laws. c. 169, Laws 1947, c. 210.
- New Jersey*—Const. Art. VIII § 3, Par. 3.
Stat. Ann. § 40:55C 1-29 (Supp. 1951); Laws 1949, c. 306, as amended by Laws 1951, c. 87 and c. 301.
Stat. Ann. § 40:55-21.1 to § 40:55-21.14 (Supp. 1951); Laws 1949, c. 187, as amended by Laws 1951, c. 248.
Stat. Ann. § 55:14A-31 to § 55:14A-48 (Supp. 1951); Laws 1949, c. 300, as amended by Laws 1950, c. 105 and c. 262 and Laws 1951, c. 86 and c. 300.

New York—Const. Art. XVIII § 1.

General Municipal Law § 72 k; Laws 1945, c. 887, as amended by Laws 1949, c. 784, and Laws 1950, c. 779.

North Carolina—Laws 1951, c. 1095, p. 111.

Ohio—Code Ann. § 3941-3951 (Supp. 1951); (H. B. 195, Reg. Sess., app. 6/27/49).

Oregon—Comp. Laws Ann. § 99.2001 to § 99.2023; Laws 1951, c. 373.

Pennsylvania—Stat. Ann. tit 35, § 1701-1719 (Supp. 1951); Laws 1945, P. L. 991, as amended by Laws 1949, P. L. 1621 and Laws 1951, P. L. 1650.

Puerto Rico—Acts 1947, No. 97.

Rhode Island—Laws 1950, c. 2574.

South Carolina—Code Ann. § 5271.90A to § 5271.90N (Supp. 1946); Acts 1946, No. 531, as amended by Acts 1951, No. 462.

South Dakota—Laws 1950, c. 13.

Tennessee—Code Ann. § 3647.52 to § 3647.63 (Williams 1942); Acts 1945, c. 114.

Virgin Islands—Bill No. 13, app. Sept. 19, 1950.

Virginia—Code Ann. § 36-48 to § 36-55 (1950); 1946, c. 185, p. 278.

West Virginia—Code Ann. § 18-1409(96) to § 18-1409(116) (Supp. 1951); Acts 1951, c. 186.

Wisconsin—Stat. § 66.43(1)-§ 66.43(14) (1949); Laws 1945, c. 519, as amended by Laws 1949, c. 379 and c. 592.

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