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FORMAL)	
OPINION)	No. 12-05
)	
OF)	AG Alpha No. LO HO AGBDN
)	
JOHN W. SUTHERS)	June 25, 2012
Attorney General)	

Bruce Eisenhauer, Deputy Executive Director of the Colorado Department of Local Affairs, requested an opinion from this office concerning the impact of Senate Bill 12-158 (“S.B. 12-158”), which will take effect on July 1, 2012, on the Colorado Division of Housing and the Division of Supportive Housing and Homeless Programs (“SHHP”) within the Department of Local Affairs.

QUESTIONS PRESENTED AND CONCLUSIONS

Question 1: Does S.B. 12-158 transfer all of SHHP’s authority, functions, responsibilities, and contractual obligations to the Colorado Division of Housing?

Answer 1: Yes.

Question 2: Does the Colorado Division of Housing have statewide jurisdiction to act as a public housing agency?

Answer 2: Yes.

BACKGROUND

I. Section 8 Housing Choice Voucher Program

The United States Department of Housing and Urban Development (“HUD”) oversees the award of rental subsidies through the Housing Choice Voucher Program to assist eligible families in affording decent, safe and sanitary housing.¹

¹ 24 C.F.R. § 982.1(a).

The Housing Choice Voucher Program is generally administered by state or local government entities referred to as public housing agencies, which receive federal housing assistance funds pursuant to Annual Contributions Contracts with HUD and distribute the funds in the form of rental subsidy vouchers to families that apply and are selected for admission to the program.² A public housing agency must have authority to administer the Housing Choice Voucher Program, an established jurisdiction for its authority, and must comply with HUD regulations and requirements for the program.³ Changes to a public housing agency's organizational structure may affect its status as a public housing agency, its authority to administer the Housing Choice Voucher Program, and its jurisdiction.⁴

Prior to July 1, 2011, the Housing Choice Voucher Program in Colorado was administered by two public housing agencies that were housed within different state departments – SHHP within the Department of Human Services and the Division of Housing within the Department of Local Affairs. Each public housing agency received federal housing assistance funds pursuant to an Annual Contribution Contract with HUD and, in turn, distributed the funds to local housing agencies and other eligible nonprofit entities across the state according to local preferences established by each agency.⁵ The local housing agencies and other eligible nonprofit entities then issued rental subsidy vouchers to families that applied and were selected for admission to the Housing Choice Voucher Program. On July 1, 2011, House Bill 11-1230 took effect and caused SHHP to be transferred, in its entirety, from the Department of Human Services to the Department of Local Affairs.⁶ The legislation consolidated the administration of any financial housing assistance programs exclusively within the Department of Local Affairs, while still maintaining the Division of Housing and SHHP as two separate public housing agencies.⁷ Since then, the Housing Choice Voucher Program in Colorado has been administered by the same two public housing agencies housed within one state department.⁸

A. The Division of Supportive Housing and Homeless Programs

In 1977, legislation was enacted that created the Colorado Department of Institutions as a public housing agency to “improve, develop and carry forward programs of therapy, counseling, and aftercare to the end that persons dependent upon tax-supported programs may be afforded opportunities and encouragement to overcome the disability causing their partial or total dependence on the state.”⁹ In

² 24 C.F.R. § 982, *et seq.*

³ 24 C.F.R. §§ 982.51 and 982.52.

⁴ 24 C.F.R. § 982.52.

⁵ § 24-32-722(1)(a), C.R.S.; 24 C.F.R. § 982.207.

⁶ Op. Att’y Gen. No. 12-03, AG Alpha No. LO HO AGBDN (2012).

⁷ § 24-32-722(2)(b), C.R.S.

⁸ *Id.*

⁹ § 27-1-103(1)(a), C.R.S. (1977).

that same year, HUD accepted the Department of Institutions' application for housing assistance funds for persons with disabilities and recognized the department as a public housing agency for purposes of administering the Housing Choice Voucher Program. In 1994, legislation was passed to merge several state departments, including the Department of Institutions, into the newly created Department of Human Services.¹⁰ After the merger, the new public housing agency within the Department of Human Services was named the Division of Supportive Housing and Homeless Programs, or SHHP. The stated purpose of SHHP was, and is, to provide supportive housing for people with disabilities and other special needs. SHHP has jurisdiction to serve all sixty-four counties in the state of Colorado.

Currently, SHHP has authority to administer over 3,000 rental subsidy vouchers as part of the Housing Choice Voucher Program. One hundred vouchers are designated for non-elderly disabled families served by local housing agencies with demonstrated experience and resources for supportive services. Another fifty vouchers are designated as Mainstream Program vouchers that enable families having a member with disabilities to lease affordable private housing of their choice. The remaining vouchers are administered in accordance with the local preferences adopted by SHHP in its public housing agency administrative plan. SHHP selects families in accordance with the following local preferences: (1) chronically homeless; and (2) disabled. HUD's definition of "chronically homeless" requires that an individual be disabled. Therefore, SHHP provides priority consideration for acceptance to the Housing Choice Voucher Program to disabled families in the order of chronically homeless first, then disabled families.

In addition to administering over 3,000 Housing Choice Vouchers, SHHP has authority to administer over 300 Veterans Affairs Supportive Housing Program vouchers. The Veterans Affairs Supportive Housing Program combines rental assistance for homeless veterans with case management and clinical services provided by the United States Department of Veterans Affairs. SHHP also has authority to administer five Shelter Plus Care grants from HUD, which provide financial housing assistance to homeless persons with targeted disabilities.

B. The Colorado Division of Housing

The Colorado Housing Act of 1970 created the Division of Housing within the Department of Local Affairs and, in 1980, the Division of Housing requested that HUD recognize it as a public housing agency for purposes of administering the Housing Choice Voucher Program.¹¹ In 1981, HUD recognized the Division of Housing as a qualified public housing agency for purposes of administering the Housing Choice Voucher Program. However, in addition to functioning as one of

¹⁰ § 26-1-201, C.R.S. (1994).

¹¹ § 24-32-701, *et seq.*, C.R.S. (1970).

Colorado's two public housing agencies, the Division of Housing also fulfills numerous other statutory powers, duties, and functions.¹²

With respect to its public housing powers, duties, and functions, the Division of Housing has jurisdiction to serve the entire state of Colorado as a public housing agency¹³ and currently administers over 2,500 rental subsidy vouchers as part of the Housing Choice Voucher Program. Fifty vouchers are designated as Mainstream Program vouchers, and one hundred vouchers are designated as Family Unification Program vouchers. The Family Unification Program vouchers are distributed to families for whom the lack of adequate housing is a primary factor in the separation, or threat of imminent separation, of children from their families. The Division of Housing's remaining vouchers are administered in accordance with numerous local preferences adopted in its public housing agency administrative plan. Some of the local preferences include: families that include victims of homelessness, domestic violence, or natural disaster; families currently enrolled in education, training, or upward mobility programs; families currently working; and families that include a person with a disability. The Division of Housing also has authority to administer approximately fifty Veterans Affairs Supportive Housing Program vouchers.

II. Provisions of Senate Bill 12-158

S.B. 12-158 recognizes that two state public housing agencies that distribute federal moneys to assist individuals in obtaining housing currently are housed within the Department of Local Affairs.¹⁴ The Division of Housing is a state public housing agency that distributes such moneys to persons in low and moderate income households, and SHHP is a state public housing agency that distributes such moneys to persons with disabilities.¹⁵ The express purpose of S.B. 12-158 is to consolidate the two public housing agencies administered by the Department of Local Affairs into only the Division of Housing.¹⁶ Consolidation is intended to promote economic efficiencies, allow for statewide strategic planning and administration of financial housing assistance programs, and maximize the amount of federal housing assistance funding made available to local housing authorities and other local eligible nonprofit agencies.¹⁷ With respect to the last purpose of the consolidation, S.B. 12-158 expressly prohibits any reduction in the number of Housing Choice Vouchers that Colorado makes available to persons with disabilities during any fiscal year beginning July 1, 2012 and after, except as may otherwise be required by law and subject to available funding from the federal government.¹⁸

¹² See § 24-32-705, C.R.S.

¹³ Op. Att'y Gen., AG Alpha No. LO HO AGACY, at 4 (September 16, 1980).

¹⁴ § 24-32-722(1)(a) (effective July 1, 2012).

¹⁵ *Id.*

¹⁶ § 24-32-722(1)(b) (effective July 1, 2012).

¹⁷ *Id.*

¹⁸ § 24-32-722(3)(c) (effective July 1, 2012).

To achieve consolidation, S.B. 12-158 expressly transfers all authority over the two public housing agencies that provide financial housing assistance to persons in low and moderate income households and persons with disabilities – namely, the Division of Housing and SHHP – to the Division of Housing.¹⁹ S.B. 12-158 also mandates that the two public housing agencies be merged into the Division of Housing.²⁰ S.B. 12-158 further requires that the consolidation of the state public housing agency functions of the Division of Housing and SHHP be organized in such a manner that the Division of Housing is the sole state agency for the purpose of administering and distributing financial housing assistance to persons in low and moderate income households and to persons with disabilities to assist such persons in obtaining housing, including but not limited to rental assistance.²¹

Finally, S.B. 12-158 provides that the consolidation of the state public housing agency functions of the Division of Housing and SHHP must take place in accordance with the provisions of Section 24-32-705(1)(t).²² That section, in turn, provides that the Division of Housing will serve as the sole state agency for the purpose of administering and distributing financial housing assistance to persons in low and moderate income households and to persons with disabilities to assist such persons in obtaining housing, including but not limited to rental assistance.²³

DISCUSSION

Question 1: Does S.B. 12-158 transfer all authority, functions, responsibilities and contractual obligations of SHHP to the Colorado Division of Housing within the Department of Local Affairs?

Answer 1: The plain language of S.B. 12-158 acknowledges the existence of two public housing agencies within the Department of Local Affairs, the Division of Housing and SHHP, and mandates that the Division of Housing will be the only remaining public housing agency of the two once consolidation occurs. On July 1, 2012, SHHP will be divested of any existing legal authority to act as a public housing agency, including but not limited to any related functions, responsibilities, and contractual or grant obligations, and the same will be transferred to the Division of Housing. As a result of the transfer, SHHP will be merged into the Division of Housing and will cease to exist as a separate public housing agency. The Division of Housing will automatically assume any contract between SHHP and any other party in existence as of July 1, 2012, as well as SHHP's theretofore independent and exclusive authority to execute and administer such contracts. The

¹⁹ § 24-32-722(2)(b) (effective July 1, 2012).

²⁰ § 24-32-722(3)(a)(I) (effective July 1, 2012).

²¹ § 24-32-722(3)(b) (effective July 1, 2012).

²² § 24-32-722(3)(a)(I) (effective July 1, 2012).

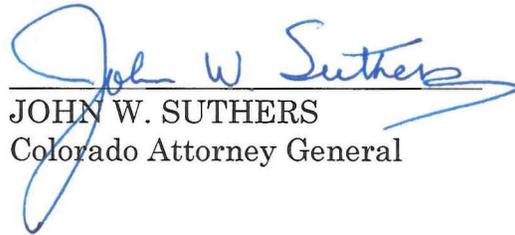
²³ § 24-32-705(1)(t) (effective July 1, 2012).

Division of Housing also will automatically assume any grant awarded to SHHP by any other party in existence as of July 1, 2012, as well as SHHP's theretofore independent and exclusive authority to execute and administer such grants. Accordingly, consolidation of SHHP into the Division of Housing does not require contract or grant assignments.

Question 2: Does the Colorado Division of Housing have statewide jurisdiction to act as a public housing agency?

Answer 2: The Division of Housing is one division of the Department of Local Affairs, a principal department of Colorado state government.²⁴ The Colorado Constitution provides that principal departments are part of the executive branch of state government.²⁵ Each principal department has statewide authority as a part of the executive branch of state government. The Division of Housing is a type 1 agency within the Department of Local Affairs.²⁶ As a type 1 agency, the Division of Housing exercises any prescribed statutory powers, duties, and functions independently of the principal department.²⁷ Accordingly, the Division of Housing has statewide jurisdiction and acts in the stead of the Department of Local Affairs for purposes of fulfilling its public housing agency functions. The Division of Housing's jurisdiction to serve the entire state of Colorado as a public housing agency was first recognized in 1980.²⁸ Since then, the Division of Housing's statewide jurisdiction has remained unchanged.

Issued this 25th day of June, 2012.


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²⁴ § 24-1-125(2)(f), C.R.S. (2011); COLO. CONST. ART. IV, SEC. 22; § 24-1-110(1)(o), C.R.S. (2011).

²⁵ COLO. CONST. ART. IV, SEC. 22.

²⁶ §§ 24-1-125(1)(f) and 24-32-704(2), C.R.S. (2011).

²⁷ § 24-1-105(2), C.R.S. (2011).

²⁸ Op. Att'y Gen., AG Alpha No. LO HO AGACY, at 4 (September 16, 1980).