

NY CONST, ART VII, § 7, ART XVIII; NY UNCONSOLIDATED LAWS §§ 6253(6)(a) and (6)(c), 6254(1), 6255(25) and (28); 24 CFR §§ 570.1, et seq., 570.3, 570.208, 570.420(a), (b), et seq., 570.480(c), 570.481(a); 42 USC §§ 5301(c), 5302(a)(2), (a)(4), (a)(6)(A) and (a)(7), 5306(d)(3)(A).

Without legislative authorization, the Governor may designate the Urban Development Corporation, doing business as the Empire State Development Corporation, to administer the Small Cities component of the federal Community Development Block Grant Program.

November 7, 1997

James G. Natoli  
Director of State Operations  
Executive Chamber  
State Capitol  
Albany, NY 12224

Formal Opinion  
No. 97-F12

Dear Mr. Natoli:

You have informed us that the Governor has designated the New York State Urban Development Corporation (UDC), doing business as the Empire State Development Corporation (ESDC), to administer the federal Small Cities Community Development Block Grant Program on behalf of New York State beginning in 1998. You indicate that the United States Department of Housing and Urban Development (HUD) has questioned the Governor's authority under State law to designate ESDC without State legislative approval. You have requested an opinion on this question.

As stated in the Governor's letter to the Secretary of HUD, ESDC will administer the Small Cities community revitalization program and consult on housing programs with the New York State Housing Trust Fund Corporation. August 21, 1997 letter to Secretary Cuomo from Governor Pataki. The cooperation of the two agencies is designed to assure equal program access for all eligible communities and increase participation by those communities. Id. ESDC has a network of regional offices to participate in administration of the program and facilitate community participation. November 4, 1996 letter to Secretary Cisneros from Governor Pataki. The Division of Housing and Community Renewal (DHCR), the State's designated lead agency for preparation of the consolidated plan required under federal law, collaborated with ESDC in preparing required amendments to the plan, which was submitted to HUD. July 2, 1997 letter from

Joseph B. Lynch, Acting Commissioner of DHCR, and Joseph M. Del Sindaco, Chief Operating Officer of ESDC, to HUD's Office of General Counsel.

Generally, Title I of the Housing and Community Development Act of 1974 gave states the option to administer the Small Cities component of the Community Development Block Grant Program beginning in 1982. New York and Hawaii are the only states that are not currently administering the program. 24 CFR §§ 570.420(a), et seq. In these states, HUD administers the Small Cities program. Id.

The primary objective of the Community Development Block Grant Program, including the Small Cities component, is to develop viable urban communities by providing decent housing, a suitable living environment and expanding economic opportunities principally for persons of low and moderate income. 42 USC § 5301(c). This objective is to be accomplished, for example, through the elimination of slums and blight and preservation of property and neighborhood and community facilities important to the welfare of the community; the elimination of conditions detrimental to health, safety and public welfare; and conservation and expansion of housing to provide decent homes and suitable living environments for all persons but principally those with low or moderate incomes. Id.; 24 CFR § 570.208 (criteria applied by HUD to determine whether a federally funded activity complies with one of the national objectives).

Specifically, "Title I of the Housing and Community Development Act of 1974 permits each State to elect to administer all aspects of the Community Development Block Grant Program (CDBG) annual fund allocation for the nonentitlement areas [Small Cities component]<sup>1</sup> within its jurisdiction." 24 CFR § 570.420(a). Federal law authorizes the allocation of funds to states electing to administer the Small Cities program. 42 USC § 5306(d). Funds "shall be allocated among the States for use in nonentitlement areas". Id.

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<sup>1</sup> A "nonentitlement area" is an area which is not a "metropolitan city" (42 USC § 5302(a)(4)), part of an "urban county" (42 USC § 5302(a)(6)(A)) or an "Indian tribe" (42 USC § 5302(a)(17)). "Nonentitlement area" is the federal reference to the Small Cities program under which, generally, most counties and towns, and cities and villages with populations under 50,000, are eligible for grants.

Subpart A of Part 570 (24 CFR §§ 570.1, et seq.) describes policies and procedures applicable to . . . "State-administered CDBG nonentitlement funds". Under these regulations, the term State "shall have the meaning provided in section 102(a)(2) of the Act". 24 CFR § 570.3. Under section 102(a)(2) of the Act, "[t]he term 'State' means any State of the United States, or any instrumentality thereof approved by the Governor" (emphasis supplied). See also, 42 USC § 5302(a)(2).

In our view, UDC, doing business as ESDC, is an instrumentality of the State within the meaning of the federal definition. We are not aware of any definition of "instrumentality" in federal law and, therefore, believe that the term should be given an ordinary and reasonable meaning taking into consideration the goals of the federal program and existing State law. Significantly, in establishing policies and procedures applicable to states that elect to administer the Small Cities program, federal regulations provide:

In exercising the Secretary's obligation and responsibility to review a state's performance, the Secretary will give maximum feasible deference to the state's interpretation of the statutory requirements and the requirements of this regulation, provided that these interpretations are not plainly inconsistent with the Act and the Secretary's obligation to enforce compliance with the intent of the Congress as declared in the Act. 24 CFR § 570.480(c).

Further, regarding the meaning of "instrumentality of the state", the regulations provide:

Except for terms defined in applicable statutes or this subpart, the Secretary will defer to a state's definitions, provided that these definitions are explicit, reasonable and not plainly inconsistent with the Act. 24 CFR § 570.481(a).

The New York State Urban Development Corporation was established by the State Legislature and is defined as "a corporate governmental agency of the state, constituting a political subdivision and public benefit corporation". NY Unconsolidated Laws § 6254(1). In our view, UDC is an instrumentality of the State under the federal definition. Federal law, in defining "state" to mean any state or

instrumentality of a state, reasonably was intended to include state agencies and instrumentalities such as the Urban Development Corporation.

UDC's powers and duties, as established by the State Legislature, are uniquely suited to carry out the objectives of the Small Cities program under federal law. For example, UDC is authorized to engage in "projects" for the purpose of providing housing accommodations and incidental and appurtenant facilities for persons or families of low income. NY Unconsolidated Laws §§ 6252, 6253(6)(a). Also, "projects" include plans or undertakings for the clearance, replanning, reconstruction and rehabilitation of substandard and insanitary areas and for other incidental or appurtenant recreational or other facilities in accordance with Article XVIII of the State Constitution (which provides for development of low cost housing for persons of low income and for clearance and rehabilitation of substandard and insanitary areas). Id., §§ 6252, 6253(6)(c). These projects encompass the arrest, prevention and elimination of slums and blight. Id.

UDC also is authorized to engage in multi-purpose industrial projects, civil projects, small and medium-size business assistance projects and economic development projects. Id., §§ 6252, 6253(6)(b), (d), (f), (g). The corporation has developed moderate income housing in the context of these broad based community development programs. Further, UDC has been authorized to accept gifts, grants, loans and other aid from the federal government and may do all things necessary or convenient to carry out its purposes and exercise its powers. NY Unconsolidated Laws §§ 6252, 6255(25), (28).

UDC also has the power to provide funding and resources for the administration of various programs. Id. In this regard, we have been informed by representatives of UDC that the corporation would provide funds and other resources for administration of the Small Cities program. Payment of administrative costs is a state responsibility. 42 USC § 5306(d)(3)(A).

Based on the foregoing, we believe that the Governor's designation of UDC, doing business as ESDC, to administer the Small Cities program, is consistent with federal law. Also, this designation by the Governor is consistent with federal regulations defining "state" and allows an agency that is uniquely empowered to meet program purposes and objectives to administer the Small Cities program.

We conclude that, without legislative authorization, the Governor may designate the Urban Development Corporation, doing business as the Empire State Development Corporation, to administer the Small Cities component of the federal Community Development Block Grant Program.

Very truly yours,

DENNIS C. VACCO  
Attorney General