

Legal Opinion: GCH-0034

Index: 2.6000

Subject: Drug Elimination Program--Allowable Cost

January 9, 1992

Mrs. Mary F. Maccagnan
Executive Director
Housing Authority of the
Borough of Hightstown
131 Rogers Avenue
Hightstown, New Jersey 08520

Dear Mrs. Maccagnan:

This is in response to your October 8, 1991, letter requesting clarification of the 1990 Public Housing Drug Elimination Program (PHDEP) Final Rule (24 CFR Part 961). Specifically, you request an opinion as to whether the administrative cost of screening and evicting tenants is an allowable cost under the Drug Elimination Program.

You propose to enter into an agreement with the Center for Individual Rights, Neighborhood Assistance Project (CIR) whereby the CIR would assist the Authority with pro bono legal representation in drug-related eviction matters. The issue has arisen regarding the reimbursement from PHDEP funds of expenses incurred (e.g., travel, court costs) for the CIR and those attorneys associated with the CIR. You raised the issue with Ms. Meg Schroeder, Resident Initiatives Coordinator, of the HUD Newark Office, requesting of her an opinion as to whether the Authority could use PHDEP funds for expenses incurred by the CIR, and attorneys associated with it, in the course of evicting residents for drug-related criminal activity. Ms. Schroeder informed you that the Final Rule prohibits administrative costs related to screening and evicting residents for drug-related crime.

We concur in and support Ms. Schroeder's opinion that the Final Rule prohibits administrative costs related to the screening or eviction of residents for drug-related crime. Public housing agencies (PHAs) are subject to OMB Circular A-87 (Cost Principles for State and Local Governments). Section C(1) (Attachment A) provides that:

to be allowable under a grant program, costs must . . . not be a general expense required to carry out the overall responsibilities of . . . local . . . governments. (Emphasis Added.)

Evictions are a part of the normal and regular functions of a PHA. The costs of screening or evicting tenants (including court costs and other legal expenses related thereto) are a general

expense required to carry out the overall responsibilities of a PHA as a provider of low-income housing and as such are covered by operating subsidies. Thus, we will not allow the court costs, fees, and other routine legal expenses related to the eviction of tenants to be covered by grant funds.

We will, however, allow the travel expenses of CIR attorneys to be paid from grant funds. It is our understanding that the services of CIR attorneys are required because of their expertise in handling drug-related cases. We also understand that they will be working closely with investigators in developing cases. As such, we consider CIR travel costs related to the investigation of drug-related cases and will for the purpose of this particular grant allow the use of grant funds for CIR travel costs. However, any routine and general expenses associated with the eviction cases (e.g., court costs, attorney fees) cannot be paid with PHDEP grant funds.

I hope the information provided has been of assistance.

Very sincerely yours,

C. H. Albright, Jr.
Deputy General Counsel