

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DOROTHY GAUTREAUX, et al.,	)	
	)	
Plaintiffs,	)	No. 66 C 1459
	)	
vs.	)	No. 66 C 1460
	)	
CHICAGO HOUSING AUTHORITY, et al.,	)	(Consolidated)
	)	
Defendants.	)	

REPLY TO PLAINTIFFS'
MEMORANDUM IN OPPOSITION

The Memorandum in support of various motions to dismiss the Supplemental complaint, first filed by Aldermen Sperling and Bilandic, pointed out that it would be improper for this Court to require positive action of the aldermen in the performance of their legislative duties. While the quotation from Connett v. City of Jerseyville, 125 F.2d 121 (7 Cir., 1941), set out at page 6 of plaintiffs' memorandum, gives a rhetorical flourish to plaintiffs' argument, it is plainly unresponsive to the issue. In Connett the petitioner sought to enforce the terms of a mortgage executed by the city in accordance with a state statute. It had earlier been determined, in a proceeding to which the city was a party, that under the mortgage and statute the city "was under a legal duty to charge such rates for water as should be required to pay the cost of operation, maintenance, provide an

adequate depreciation fund and pay the principal of and interest upon the certificates of indebtedness...." (125 F.2d at 123.)

The act of the city council there was a ministerial act, one to which it was by statute and by contract committed. Most assuredly, the case does not concern a situation relevant to the one now before this Court, in which the legislative power to condemn is involved. That the judicial power over legislators extends only to ministerial acts is made clear by the cases relied upon by the Court of Appeals in Connett. In East St. Louis v. U. S., 120 U.S. 321, the Supreme Court allowed an order against a city council only after finding that the city charter required that "the city council shall levy and collect a tax...for the purpose of paying the interest on...bonds, and to provide a sinking fund to liquidate the same". 120 U.S. at 323. However, the Court went on to observe that "the question, what expenditures are proper and necessary for the municipal administration, is not judicial; it is confided by law to the discretion of the municipal authorities." (110 U.S. at 324.) When the issue arose again in East St. Louis v. Amy, 120 U.S. 600, the Court permitted the use of Mandamus to enforce collection of the bonded debt found due in the prior case.

Similarly, the Illinois Supreme Court has allowed mandamus to compel the levy and collection of a tax for the payment of judgments against a municipality upon the latter's refusal to

appropriate funds for payment, City of Cairo v. Campbell, 116 Ill. 305. In People v. Massieon, 279 Ill. 312, the Court noted that the city council had the authority to make sure that subdivision plats met statutory requirements, but that "Where the provisions of the statutes and the ordinances of the city have been complied with in the making of a plat for an addition to the city, the duty of the council to approve the plat is ministerial and may be enforced by mandamus." 279 Ill. at 315.

It is clear, therefore, that neither the Connett case, cited by plaintiffs, nor the cases relied upon by the Connett court, provide authority for the proposition that this Court may affirmatively order any member of the city council to take any specific legislative action where the action is not ministerial. And without question, the placement of public housing, involving the exercise of the harsh power of eminent domain, is hardly to be considered ministerial.

Indeed, the many considerations that may properly and constitutionally be considered with respect to the construction of public housing are suggested in James v. Valtierra, 402 U.S. 137. In James, as here, an approval procedure was provided ensuring "that all the people of a community will have a voice in a decision which may lead to large expenditures of local governmental funds for increased public services and to lower tax

revenues" (402 U.S. at 143). There appears to be no sound reason why approval may be constitutionally required by referendum but not delegated to elected representatives. As a result, it is clear that the legal theory upon which the various decrees entered or sought in this cause have been based is invalid.

CONCLUSION

For the reasons stated above and in the memorandum previously filed in support of the motions to dismiss, the motion to dismiss should be granted.

Respectfully submitted,

RICHARD L. CURRY,
Corporation Counsel of the City of Chicago,
511 City Hall, Chicago, Illinois 60602,
Attorney for Certain Defendants.

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Defendants.	)	

NOTICE OF FILING

TO: James R. Thompson
United States Attorney
Attn.: James Murray
219 South Dearborn Street
15th Floor
Chicago, Illinois 60604

Patrick W. O'Brien
231 South LaSalle Street
19th Floor
Chicago, Illinois 60604

Alexander Polikoff
109 North Dearborn Street
Chicago, Illinois 60602

PLEASE TAKE NOTICE that on March 23, 1972, the undersigned caused to be filed a Reply to Plaintiff's Memorandum in Opposition on behalf of certain defendants who filed Motions to Dismiss the Supplemental Complaint in this cause, a copy of which is attached hereto and served upon you.

RICHARD L. CURRY
Corporation Counsel of the City of Chicago
511 City Hall, Chicago, Illinois 60602
Attorney for Certain Defendants.

CERTIFICATE OF SERVICE

I, Gayle F. Haglund, certify that on March 23, 1972, I served copies of the attached Reply to Plaintiff's Memorandum to the persons named above by placing copies with proper prepaid postage in the United States Postal Service Mail Chute at City Hall, Chicago, Illinois.
