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OFFICE OF THE GENERAL COUNSEL

January 4, 1990

Mr. James H. Reilly, Esq.
Kelly, Kelleher, Reilly, & Simpson
735 Hospital Trust Building
Providence, Rhode Island 02903

Re: Ann Smith v. United States Department of Housing and Urban
Development and Town of Narragansett Housing Authority, No.
CA 89-0612 (D.R.I., filed November 9, 1989)

Dear Mr. Reilly:

The purpose of this letter is to clarify HUD's position regarding the Town of Narragansett Housing Authority's (NHA) obligation to allow Ann Smith to use her Section 8 certificate in the Town of North Kingstown.

It is my understanding that when the issue was presented to the HUD Area Office in Providence, Rhode Island, NHA's inquiry was limited to the question of NHA's obligation under Section 145 of the Housing and Community Development Act of 1987, to implement "portability" of Section 8 certificates with another public housing authority (PHA). In response, you were informed that the 1987 Act was not "self-executing." Please be advised that the Department does not interpret Section 145 in this manner. Section 145 is self-executing and was immediately effective on enactment. Therefore, families assisted under the Section 8 Certificate and Voucher Program have a statutory right to move within the same or contiguous metropolitan area. The existence of this statutory right does not require the issuance of any regulation by HUD.

When the present action was commenced, however, it became clear that, regardless of the interpretation of the "self-executing" nature of Section 145, "portability" was not the relevant question. Had NHA, when it initially contacted HUD, elaborated on the specific factual circumstances, HUD would have recognized that Ms. Smith merely wanted NHA to administer her certificate in North Kingstown. She was entitled to use her certificate in that town, irrespective of any consideration of the "portability" provision of Section 145 of the 1987 Act. As you noted in a telephone conversation on Monday, November 27, 1989 with Richard S. Gordon of this office, NHA recognizes that it is not legally barred under state law from operating in North Kingstown. That being the case, NHA was required to allow Ms. Smith to use her certificate in North Kingstown by virtue of 24 C.F.R. § 882.103 (a), which states that a certificate holder is permitted to find a unit "in any area in which the PHA has determined that it is not legally barred" from entering into HAP contracts. Id. (emphasis added). Under the regulation, the PHA may not limit the ability of the family to select a unit located in this area. 24 C.F.R. § 882.103 (b). The regulatory scheme is intended to permit the

broadest possible jurisdiction for use of the certificate and squarely applies in this instance.

We trust that as a result of this clarification, NHA will allow Ms. Smith to contract for housing in North Kingstown, providing, of course, that other rules, such as housing quality standards, are followed.

Sincerely Yours,

Howard M. Schmeltzer
Assistant General Counsel
Assisted and Fair Housing Litigation