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THE TEXAS URBAN RENEWAL LAW—AN IMPORTANT BUT PRIMITIVE TOOL FOR COMMUNITY DEVELOPMENT

ARTHUR TROILO*

Since 1957, 24 cities in Texas¹ have undertaken re-development of their communities through the use of the Texas Urban Renewal Law.² This act was passed in fulfillment of the requirement of the federal government that necessitated enabling state legislation before cities in Texas could take part in the distribution of large sums of money through federal assistance programs for urban renewal efforts.³ Accordingly, federal assistance programs became an integral and important economic supplement to municipalities in implementing their re-development programs. The federal government, however, is now restricting its involvement in urban renewal assistance programs, forcing cities to review the thrust and effectiveness of their community development programs.⁴ As a result of this federal withdrawal, the shortcomings and outmoded provisions of the Texas Urban Renewal Law and the Texas Constitution have come into painful focus. The need for substantial reform has become more and more apparent as the cities attempt to continue community development with increasing amounts of self-generated municipal funds.

HISTORY AND BACKGROUND OF THE URBAN RENEWAL LAW

After a difficult and tumultuous legislative battle, the Texas Urban Renewal Law (the Act) was passed in 1957.⁵ The Act provides

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1. Alice, Aransas Pass, Austin, Brenham, Cameron, Crockett, Edinburg, Georgetown, Grand Prairie, Hearne, Lancaster, Marshall, Mercedes, Mission, Olney, Port Arthur, Poteet, San Antonio, San Marcos, Schertz, Sinton, Waco, Whitesboro, and Wink.

2. TEX. REV. CIV. STAT. ANN. art. 1269l—3 (1963 & Supp. 1974).

3. Housing Act of 1949, 42 U.S.C. § 1451 (1970); Housing Act of 1954, 42 U.S.C. § 1452 (1970).

4. See 42 U.S.C. § 4501 (1970); Message from President Richard M. Nixon to Congress, "Special Revenue Sharing for Urban Community Development," 117 CONG. REC. S2503 (1971); HUD, GEORGE ROMNEY'S STATEMENT BEFORE THE HOUSE BANKING AND CURRENCY COMMITTEE OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1970 (Feb. 24, 1970).

5. TEX. REV. CIV. STAT. ANN. art. 1269l—3 (1963 & Supp. 1974). Texas was one of the last states to adopt enabling legislation pursuant to 42 U.S.C. §§ 1451, 1452 (1970).

for either the rehabilitation of slums⁶ and blighted⁷ areas or the clearance of such areas within a city and their subsequent re-development by private enterprise.⁸ This re-development, however, is restricted, in that it must further the urban renewal plan⁹ and be designed to prevent the recurrence of slum conditions.¹⁰

Pursuant to the Act, a city government can exercise "urban renewal powers"¹¹ to accomplish the various purposes set out in the Act, or the city government can establish an urban renewal agency¹² to accomplish

6. TEX. REV. CIV. STAT. ANN. art. 1269l-3, § 4(h) (1963) defines the term "slum area" as follows:

"Slum Area" shall mean an area within a city in which there is a predominance of either residential or nonresidential buildings or improvements which are in a state of dilapidation, deterioration, or obsolescence due to their age, or for other reasons; or an area in which inadequate provisions have been made for open spaces and which is thus conducive to high population densities and overcrowding of population; or an area in which conditions exist, due to any of the hereinabove named causes, or any combination thereof, which endanger life or property by fire or by other causes, or which is conducive to the ill-health of the inhabitants of the area or to the transmission of disease, and to the incidence of abnormally high rates of infant mortality, or which is conducive to abnormally high rates of crime and juvenile delinquency, and is thus an area which is detrimental to the public health, safety, morals or welfare of the city.

7. *Id.* § 4(i) which defines the term "blighted area" as follows:

"Blighted Area" shall mean an area (other than a slum area) which, by reason of the presence therein of slum or deteriorated or deteriorating residential or non-residential buildings, structures, or improvements, or by reason of the predominance therein of defective or inadequate streets or defective or inadequate street layout or accessibility, or by reason of the existence therein of insanitary, unhealthful or other hazardous conditions which endanger the public health, safety, morals or welfare of the inhabitants thereof and of the city, or by reason of the predominance therein of the deterioration of site or other improvements, or by reason of the existence therein of conditions which endanger life, or property by fire or from other causes, or by reason of the existence therein of any combination of the hereinabove stated causes, factors, or conditions, results in a condition in that area which substantially retards or arrests the provisions of a sound and healthful housing environment, or which thereby results in and constitutes an economic or social liability to the city, and is thus a menace, in its present condition and use, to the public health, safety, morals or public welfare of the city, provided, that any disaster area referred to in Section 7(h) of this Act shall constitute a blighted area.

8. *Id.* §§ 2, 8.

9. *Id.* § 4(m) defines the term "urban renewal plan" as follows:

"Urban Renewal Plan" shall mean a plan for an urban renewal project, which plan (1) shall conform to the general plan of the city as a whole, except as provided in Section 7(h) of this Act and (2) shall be sufficiently complete to indicate zoning and planning changes, if any; building requirements; land uses; maximum densities; such land acquisition, redevelopment, rehabilitation, and demolition and removal of structures as may be proposed for the urban renewal area; and the plan's relationship to local objectives respecting public transportation, traffic conditions, public utilities, recreational and community facilities, and other improvements.

10. *Id.* §§ 2, 6.

11. Many of the specific urban renewal powers are granted in section 9 of the Act as well as discussed generally in section 15(b).

12. Urban renewal agencies are created by section 16 of the Act.

(a) There is hereby created in each city a public body corporate and politic to be known as the "urban renewal agency" of the city; provided, that such agency

these purposes.¹³ Before a city can exercise any of the powers granted, however, the city government must conduct a referendum to determine whether a majority of the city's voters feel that a slum or blighted area does in fact exist in the city and whether slum clearance and re-development of this area is "necessary in the interest of public health, safety, morals or welfare of the residents of such city."¹⁴ Following the passage of the Act, several cities enthusiastically held elections and prepared to utilize the opportunities afforded by the Act.

In the city of Lubbock, however, the Act's constitutionality was promptly questioned by a private property owner who sought to enjoin the City and its urban renewal agency from instituting eminent domain proceedings against his property lying within the urban renewal area.¹⁵ Among other contentions, the property owner contended the Act's interpretation of the terms "public use" and "public purpose" was unconstitutional because it allowed the sovereign to take a private citizen's property and then convey that property to another private citizen.¹⁶ The Texas Supreme Court, however, held that property taken for the purposes expressed in the Act was taken for a public use and that state funds were expended for a public purpose when spent for a project under the Act.¹⁷

shall not transact any business or exercise its powers hereunder until or unless the City Council has made the findings prescribed in Section 5 and has elected to have the urban renewal project powers exercised by an urban renewal agency . . . and has submitted such proposition to a vote of the people of said city, and received a favorable vote thereon

13. *Id.* § 15. Subsection (c) of this section goes on to state:

In the event the city elects to create an urban renewal agency under the terms of this Act, no renewal or rehabilitation project shall be undertaken by the agency unless the area proposed to be a renewal or rehabilitation area and the plan of improvement of the project area is approved by the governing body of such city.

14. *Id.* § 5.

15. *Davis v. Lubbock*, 160 Tex. 38, 41, 326 S.W.2d 699, 701-02 (1959). *Amicus curiae* briefs were filed on behalf of the cities of Austin, Grand Prairie, Port Arthur, San Antonio, and Waco. *Id.* at 41 n.3, 326 S.W.2d at 701 n.3.

16. *Id.* at 43-44, 326 S.W.2d at 702-03. TEX. REV. CIV. STAT. ANN. art. 1269l-3, § 2 (1963) declares the activities and purposes of urban renewal to be "public uses and purposes for which public money may be expended and the power of eminent domain exercised" TEX. CONST. art. I, § 17 prohibits the taking or destruction of a citizen's property unless it be for a *public use*. Similarly, TEX. CONST. art. VIII, § 3 prohibits taxes from being levied and collected for other than *public purposes*.

17. *Davis v. Lubbock*, 160 Tex. 38, 52, 326 S.W.2d 699, 709 (1959). Whether a taking of property is for a public use and whether the spending of public money is for a public purpose are questions for the judiciary, not the legislature, to decide. *Id.* at 44-45, 52, 326 S.W.2d at 704, 709. In making these determinations, however, the courts ascribe great weight to the legislature's opinion. *Id.* at 44-45, 326 S.W.2d at 704. Thus the Texas Supreme Court, not the Texas Legislature, determined the goals and activities, prescribed by the Act, to be public purposes and public uses.

In *Davis*, the court did strike down one provision of the Act. Section 17 of the

Due to Justice Greenhill's comprehensive opinion, *Davis v. Lubbock*¹⁸ warded off much of the future litigation which would surely have been forthcoming on several issues arising under the Act. After a thorough review of the history of urban renewal laws throughout the nation, the court in *Davis* specifically held:¹⁹

1. The legislature has the authority to create, within the cities, a public body corporate and politic known as the urban renewal agency.²⁰

2. The elimination of blight and slums is a valid public use of property.²¹ Therefore, money spent by municipalities, in pursuance of the objectives of the Urban Renewal Law, constitutes an expenditure of money for public purposes within the meaning of the Texas constitutional provisions requiring that taxes be levied and collected for public purposes only.²²

3. Property purchased by a city under the Urban Renewal Law, providing for re-development by private individuals, can be sold at its fair market value. Even though such a selling price may be less than the cost of acquisition and clearance of such land, this does not constitute a gratuitous and unconstitutional granting of public money to individuals.²³

4. The fact that certain property within a slum area meets minimum requirements of the city building code does not preclude the city from taking such property under the Urban Renewal Law (thus the court accepted the "whole area" concept adopted by other jurisdictions).²⁴

Thus the opinion settled most of the constitutional questions relating to the future exercise of urban renewal powers by cities or agencies and accordingly, since *Davis*, there have been few reported cases contesting the exercise of urban renewal powers of cities or agencies.

With the constitutionality of the Act ascertained and large sums of federal money offered to those cities or agencies wishing to participate in federally assisted community development programs, several cities began to engage in urban renewal projects. The flexibility of the Act permitted cities, depending on their capacity and the amount of fed-

Act, prescribing a trial de novo for any appeal from an act or order of the city or agency was found to be unconstitutional. *Id.* at 55-57, 326 S.W.2d at 711-13.

18. 160 Tex. 38, 326 S.W.2d 699 (1959).

19. Justice Greenhill wrote as complete an opinion on the subject as can be found and the enumerated holdings are by no means complete, but are only those pertinent to this article.

20. *Davis v. Lubbock*, 160 Tex. 38, 53, 326 S.W.2d 699, 710 (1959).

21. *Id.* at 51-52, 326 S.W.2d at 709.

22. *Id.* at 52, 326 S.W.2d at 709.

23. *Id.* at 52-53, 326 S.W.2d at 709-10.

24. *Id.* at 54-55, 326 S.W.2d at 710-11.

eral assistance available to them, to engage in the myriad of activities designed to accomplish the purposes of the Act.²⁵ Thus a city's urban renewal program could consist of any combination of activities such as rehabilitation, clearance, re-development, or conservation. As might be expected, the activities undertaken by cities pursuant to the Act have been quite extensive, an example being the city of San Antonio which alone has received federal grants of \$69.4 million since the program's inception.²⁶ Although the Act authorizes cities and agencies to undertake many activities which previously had not been allowed, the implementation of the Act and the accomplishment of its purposes are beset with obstacles.

PRACTICAL PROBLEMS IN IMPLEMENTING THE URBAN RENEWAL LAW

Attempts to implement the Act in a manner commensurate with its purpose have met with several restrictions, inconsistencies and other shortcomings that arise from the Act itself—some which were apparently intended by the draftsmen and others which were probably not intended. An example of a provision in the Act which has proved to be restrictive is the proscription of any public housing within the urban renewal area. The intent behind this provision, while being arguably laudable in that it was probably designed to prevent a recurrence of slum or blighted conditions, has often curtailed the efficient fulfillment of the purposes of urban renewal. Another difficulty is presented in the bidding requirements facing prospective purchasers of urban renewal land. When re-development of the area is to be accomplished through private enterprise, a pragmatic obstacle arises through the Act's mandate that the sales must be by competitive sealed bids, ef-

25. To mention a few, article 1269I—3 permits cities to engage in the following activities: (1) clear slum and blighted areas; (2) rehabilitate the urban renewal area; (3) relocate the inhabitants of the area and extend relocation benefits; (4) enter into agreements of cooperation with public bodies and programs carrying out urban renewal purposes; (5) practice conservation; (6) acquire predominantly open land which, because of its location or situation, is necessary for sound community growth; (7) participate in demonstration projects; (8) dispose of property acquired within urban renewal areas or retain such property at fair value for uses in accordance with an urban renewal plan; (9) acquire real estate in the area for needed public facilities; (10) contract or arrange for professional services necessary to carry out urban renewal projects; (11) acquire by purchase, lease, option, gift, grant or bequest, devise, eminent domain or otherwise any real estate necessary or incident to an urban renewal project; (12) hold, improve, clear, or prepare for development any property acquired; (13) prepare plans necessary to carry out the purposes of the Act; (14), apply for, accept, and utilize grants from the federal government for urban renewal purposes.

26. 1973 Financial Report of the Urban Renewal Agency of San Antonio (on file at the Executive Director's office).

fectively precluding any negotiation with potential purchasers. When one considers the amount of expenses, such as re-development plans and feasibility studies, which must be incurred by the bidder, it becomes apparent why many private concerns balk at taking the gamble that their bid may not prevail. Another shortcoming is the lack of clarity within the Act as to whether long term leases can be granted for re-development purposes. It is also unclear, from a practical standpoint, whether the original owner has any repurchase rights, even though the Act seemingly gives him some. Probably the most desired method of urban renewal is rehabilitation of the property by the original owner, however, due to constitutional restrictions against the use of state or local funds, this desired method is becoming less and less accessible as the supply of federal money dwindles.

Prohibition Against Public Housing

Until 1973, Section 3 of the Urban Renewal Law had a blanket prohibition against public housing within urban renewal areas, which stated: "No real property acquired under the provisions of this Act shall be sold, leased, granted, conveyed or otherwise made available for any public housing"²⁷ But the legislature amended the Act in 1973 to permit public housing if such is approved by a majority of the qualified voters.²⁸ Even this amendment, however, is unrealistic because it is very unlikely that a city of any size will go to the trouble of having an election to determine whether the prohibition against public housing should be excepted from a particular project. Even assuming that cities will go to the trouble and expense of having an election, is there any justification for imposing this burden?

The original prohibition was reluctantly included in the Urban Renewal Law in 1957 to satisfy groups who were then opposed to any public housing being located on urban renewal land. The opposition to public housing within an urban renewal area apparently arises from a fear that the presence of public housing will cause the area to lapse back into a slum or blighted condition. Also, some opponents simply feel that a proliferation of public housing units is undesirable. Such a prohibition, or even the present election provision, however, constitutes a serious impediment to the production of a type of housing which the community usually finds necessary to adequately carry out urban

27. TEX. REV. CIV. STAT. ANN. art. 1269I-3, § 3 (1963), *as amended*, TEX. REV. CIV. STAT. ANN. art. 1269I-3, § 3 (Supp. 1974).

28. TEX. REV. CIV. STAT. ANN. art. 1269I-3, § 3 (Supp. 1974).

renewal programs. This impediment arises due to the Act's mandate that the city must provide for the relocation of those individuals displaced by the urban renewal program²⁹ and that such relocation resources must be provided at prices the displacees can afford.

Before undertaking any activities within an area, the city is required to formulate a complete urban renewal plan for that area.³⁰ The Act then restricts the city council from approving the city's urban renewal plan, unless the city council finds

a feasible method exists for the location of families or individuals who will be displaced from the urban renewal area in decent, safe and sanitary dwelling accommodations within their means and without undue hardship to such families or individuals³¹

In many instances, requiring the cities to provide for relocation, while thwarting the construction of public housing within the urban renewal areas, generates inefficiencies within the total urban renewal program.

Since many elderly and low income citizens usually live in these deteriorated areas, urban renewal programs result in the displacement of many individuals and families who are eligible for public housing and who do not have the means to rent other types of standard housing. The construction of public housing within the convenient inner-city areas, usually encompassed by urban renewal programs, is a very efficient means of relocating these displaced individuals. On the other hand, if the city does not wish to hold an election or if the city holds the election and fails to carry this issue, the city must devise other less efficient methods of relocating these people. Thus a very valuable means of relocating elderly and low income individuals is either thwarted or proscribed by the election requirement.

Many opponents of public housing will argue that its presence within an area is a factor which is likely to cause deteriorated conditions to recur. The possibility of this happening is conceded, however, the city has readily available methods of preventing it. First, if the city sold

29. TEX. REV. CIV. STAT. ANN. art. 1269I—3, § 7(d) (1963).

30. *Id.* § 7(a), which requires:

A city shall not prepare an urban renewal plan for an urban renewal area unless the City Council has, by resolution, determined such an area to be a slum area or a blighted area or a combination thereof, and designated such area as appropriate for an urban renewal project. The City Council shall not approve an urban renewal plan until a general plan for the city has been prepared. A city shall not acquire real property for an urban renewal project unless the City Council has approved the urban renewal plan in accordance with subsection (d) hereof.

31. *Id.* § 7(d).

the property to the Housing Authority,³² adequate control of the property's use and development could be maintained through covenants and restrictions within the instrument of conveyance.³³ Second, if the city allowed private enterprise to develop the public housing, recurrence of slum or blight could again be prevented through the necessary covenants and restrictions.

The city's sale of the property does not necessarily result in any loss of continuity or control in accomplishing the purposes of the Act because, as stated therein:

A city may sell, lease, or otherwise transfer real property or any interest therein acquired by [the city] . . . in accordance with the urban renewal plan, subject to such covenants, conditions, and restrictions, including covenants running with the land, as [the city] may deem to be in the public interest or necessary to carry out the purposes of this Act, all of which shall be written into the instrument transferring or conveying titles The purchasers or lessees and their successors and assigns shall be obligated to devote such real property only to the uses specified in the urban renewal plan, and may be obligated to comply with conditions enumerated in the deed of conveyance, including the obligation to begin within a reasonable time any improvements on such real property required by the urban renewal plan.³⁴

In view of the adequate control the government is afforded, over the urban renewal area, there is no apparent reason why the presence of public housing within an urban renewal area cannot be consistent with the overall plan. This control, coupled with the economic advantages gained by allowing the city's urban renewal plan to incorporate public housing for those displaced, surely justifies removing any restriction against public housing. Also, it is perhaps noteworthy that Texas is the only state which restricts the use of urban renewal land for public housing. Another restriction within the Act, also causing inefficiencies, is the restrictive method by which cities or agencies may sell the property which has been acquired through the urban renewal process.

Restricted Method of Selling Urban Renewal Land for Re-development

The Act specifically prescribes the method by which agencies and

32. TEX. REV. CIV. STAT. ANN. art. 1269k, § 4 (1963) creates a Housing Authority within each city for the purpose of providing low income public housing.

33. TEX. REV. CIV. STAT. ANN. art. 1269l-3, § 11(a) (1963).

34. *Id.* § 11(a).

cities may dispose of property acquired through the urban renewal process. Basically, all sales of real property in the urban renewal area are required to be made to *private* persons through "competitive sealed bids" and the purchase price must be paid in cash.³⁵ The bidding period must be advertised for at least 15 days prior to the opening of bids and the price and conditions of the sale of the property must be approved by the governing body of the city.³⁶ The requirement that land be sold only by the competitive bidding method must be put in the context of the market place to fully understand its restrictive nature. Throughout the ensuing discussion of marketing the property, it should be remembered that the property to be sold is within a slum or blighted area. The city or agency, therefore, is engaged in an uphill battle in its attempt to reverse a period of psychological and actual economic disinvestment which has enveloped the area under consideration. Further, the marketing and re-development of urban renewal project land combines the usual hazards of development with the additional problems and complications of compliance with the requirements of local and federal agencies. The Act, however, has several provisions entitling and encouraging cities to bear certain expenses and burdens in hopes of making re-development of these areas more attractive to private developers.

In addition to requiring the city to devise a detailed plan for the city's growth and requiring further detailed plans for the development of the urban renewal areas, the Act authorizes the cities to conduct land use and marketability studies along with any other surveys or analyses needed to forecast factors affecting the future use of the property.³⁷ Idealistically, the Act proposes to relieve private concerns of all anxieties and expenses concerning the growth and development of the city in general and the re-development of the urban renewal area in particular, by having the city bear the expense of making all plans and studies thought necessary. Thus, the Act contemplates soliciting bids by attempting to mitigate any expense preliminary to a developer's bid.

Some bids are attracted by these efforts, but the city's efforts are usually insufficient to attract most potential developers. Developers must rely upon extensive plans, studies, surveys, etc. in determining

35. *Id.* § 11(b).

36. *Id.* § 11(b).

37. *Id.* §§ 6, 7(a), 8, 9(a)(h).

the amount of purchase money they can invest in property. Through their individual experiences, developers will have devised their own varying methods of determining the allowable amount of initial investment. As a result of this variance, even though a city may attempt to save developers the expenses preliminary to making a bid, many of the developers will still feel compelled to undergo the trouble and expense of satisfying their own individual inquiries.

In addition to these expenses, there are additional inquiries to be made and problems to be worked out concerning financing arrangements, deed restrictions and covenants, and compliance with the urban renewal plan in general. Considering all of these efforts and expenses which are preliminary to submitting a bid, it is understandable that many developers are unwilling to incur them and then run the risk of losing the bid. Many more developers would seek to engage in re-developing urban renewal areas were it not for the Act's restriction against negotiation in the sale of the property.

Not only does this proscription against negotiation deter many responsible developers, but also it seriously hampers the city's or agency's ability to obtain the best total package of good design, sound planning and flexible financing. Certainly, there should be safeguards against favoritism and political influence in the disposal of urban renewal property, but the highest dollar bid does not necessarily represent the most desirable development. Negotiated disposition of the property under open competitive conditions, having a fixed price and bids evaluated on other criteria, would be the ideal situation. In any disposition of urban renewal property, emphasis should be placed upon the fundamental goal of urban renewal—proper re-development and use of the property.

Many other jurisdictions have recognized this need for flexibility. Federal regulations, as well as the laws in most other states, are far less restrictive than the Texas Act and provide for several methods of disposition. One example of this is the variety of methods by which federal regulations permit cities or agencies, where authorized by state law, to dispose of land:

1. negotiated disposal under open competitive conditions;
2. sealed bids;
3. public auction;
4. public auction with a guaranteed bid;
5. fixed price with bidding on other than price basis; and

6. predetermined price offering.³⁸

Other states also utilize a variety of methods for disposing of urban renewal property, ranging from restrictive procedures, as found in Texas, to procedures which more readily effect the goals of urban renewal.³⁹

The fact that many cities still have an inventory of unsold urban renewal land, long after the project was to be closed, is proof of the critics' proposition that the disposition process is the "Achilles heel" of the Texas Act.⁴⁰ A disposition procedure based predominantly upon price is ineffective in achieving the long term goals of the urban renewal program. A city or its agency should be permitted a variety of disposition methods and should be given discretion commensurate with their ultimate responsibility for accomplishing the purposes of the Act. A combination of (1) this discretion coupled with (2) a definite land price, set by the city council or the agency's board of commissioners, and (3) the requirement for open negotiations, base on evaluation criteria which include all relevant factors for the re-develop-

38. DEPARTMENT OF HOUSING & URBAN DEVELOPMENT, URBAN RENEWAL MANUAL—POLICIES & REQUIREMENTS FOR LOCAL PUBLIC AGENCIES ch. 4, § 1, at 1 (1969).

39. Twenty-one states have statutes expressly authorizing disposition by negotiation: ALAS. STAT. § 18.55.540 (1969); ARIZ. REV. STAT. ANN. § 36-1480 (1956); COLO. REV. STAT. ANN. § 139-62-6 (1963); CONN. GEN. STAT. REV. § 8-137 (1971); DEL. CODE ANN. tit. 31, § 4527 (1953); D.C. CODE ENCYCL. ANN. § 5-706 (1966); FLA. STAT. ANN. § 163.380 (1972); GA. CODE ANN. § 69-1109 (1967); IDAHO CODE ANN. § 50-2011 (1967); ILL. ANN. STAT. ch. 67½, § 91.13 (Smith-Hurd 1959); IOWA CODE ANN. § 403.8 (Supp. 1973); KAN. STAT. ANN. § 17-4750 (1964); MISS. CODE ANN. § 43-35-19 (1972); MONT. REV. CODES ANN. § 11-3909 (Supp. 1973); NEB. REV. STAT. art. 21, § 18 (1970); N.M. STAT. ANN. § 14-47-10 (1953); N.D. CENT. CODE § 40-58-09 (1968); VT. STAT. ANN. tit. 24, § 3210 (1967); WASH. REV. CODE § 35.81.090 (1965); W. VA. CODE ANN. § 16-18-7 (1972); WYO. STAT. ANN. § 15.1-508 (1965).

Sixteen states have statutes which do not expressly define or limit the procedure for disposition: ALA. CODE tit. 25, § 100 (Supp. 1971); ARK. STAT. ANN. § 19-3066 (1968); CAL. HEALTH & SAFETY CODE § 33431 (Deering Supp. 1973); HAWAII REV. LAWS § 53-12 (1968); KY. REV. STAT. ANN. § 99.450 (1971); ME. REV. STAT. ANN. tit. 30, § 4814 (1965); MD. CONST. art. III, § 61 (1972); MINN. STAT. ANN. § 462.525 (1963); NEV. REV. STAT. § 279.300 (1973); N.H. REV. STAT. ANN. § 205:5 (1964); OKLA. STAT. ANN. tit. 11, ch. 39, § 1664 (1959); ORE. REV. STAT. § 457.230 (1971); R.I. GEN. LAWS ANN. § 45-32-5(j) (1970); S.C. CODE ANN. § 36-408 (1962); TENN. CODE ANN. § 13-816 (1973); VA. CODE ANN. § 36-53 (1950).

Six states require competitive bidding: IND. ANN. STAT. § 48-8519 and § 48-8559 (Supp. 1973); N.Y. GEN. MUNIC. § 507(1) (McKinney 1965); N.C. GEN. STAT. § 160A-514 (Supp. 1973); S.D. CODE § 11-8-58 (1969); TEX. REV. CIV. STAT. ANN. art. 1269l-3, § 11(b) (1963); UTAH CODE ANN. § 11-15-101 (1973).

Seven states utilize urban development corporations which acquire land directly: MASS. GEN. LAWS ANN. ch. 121A (1972); MICH. COMP. LAWS ANN. § 8.62 (1958); MO. ANN. STAT. § 353 (1966); N.J. REV. STAT. § 40:55C-44 (Supp. 1974); N.Y. GEN. MUNIC. § 507 (McKinney 1965); OHIO REV. CODE ANN. § 1728.03 (1971); WIS. STAT. ANN. § 1-66-405 (1965).

40. See generally M. ANDERSON, A CRITICAL ANALYSIS OF URBAN RENEWAL (1964).

ment of the property, should suffice to protect the public interest and prevent favoritism.

Until this restriction is remedied, cities and agencies will continue to face hardships in disposing of property to best accomplish the purposes of urban renewal programs. In addition to restricting the method of selling, there are inconsistencies within the Act which cause cities and agencies further problems in disposing of urban renewal property.

Other Disposition Problems

There are incongruities within the Act which were surely not intended by the draftsmen but which, nevertheless, hinder the orderly disposition of urban renewal property by the city or its agency. For example, one reading of the Act will indicate that long term leasing is a proper method of disposition, while another will conclude that long term leasing is not proper. Any examination of the Act, however, will concede that the status of long term leasing is certainly unclear. Another inconsistency within the Act lies in its expression of the original owner's repurchase rights. A literal interpretation of the language conflicts with the express purposes of the Act, leaving cities and agencies in an understandable state of uncertainty as to the extent of the original owner's repurchase rights.

1. *Long Term Leases.* It is unclear whether long term leasing of urban renewal property is an available mode of disposition under the Act. The various methods by which cities and agencies can dispose of urban renewal property are discussed in section 11 of the Act, with some language within that section seeming to condone long term leasing. There is, however, no method prescribed by which a long term lease can be conveyed. Under section 11(a):

A city may sell, *lease*, or otherwise transfer real property or any interest therein . . . and may enter into contracts with respect thereto . . . or may retain such property or interest for public use . . .⁴¹

The remainder of section 11(a) discusses various aspects of disposing of urban renewal property and intermittently uses the terms "sale or lease" and "purchaser or lessee." This intermittent use of leasing terminology is puzzling because section 11 seemingly purports to describe all available methods of disposition, yet no method for long term lease-

41. TEX. REV. CIV. STAT. ANN. art. 1269I-3, § 11(a) (1963) (emphasis added).

ing is prescribed. To illustrate this apparent purpose of section 11, section 11(b) describes all aspects of conducting a sale. And in doing so, section 11(b) makes no mention of any leasing terminology. Section 11(c), however, does provide for a type of temporary lease:

Any real estate . . . acquired in an urban renewal area may be temporarily leased by the city, provided that any such temporary lease shall provide for the right of cancellation so that the city may sell or dispose of the property for the purposes intended by this Act.⁴²

This is the only language within the Act describing the method by which a lease can be conveyed, and it speaks only to temporary leasing.

In many instances, long term leasing would be a desirable method for re-development and there is no apparent reason why long term leasing would not be consistent with the purposes of the Act. To the contrary, leasing makes it easier to exercise control over the uses and development of the property. But the lack of clarity concerning the propriety of long term leasing has caused it to be a seldom used method of re-development.

2. *Right of Original Owner to Repurchase.* In attempting the orderly disposition of urban renewal property, cities or agencies are faced with still another inconsistency within the Act— its unclear expression of the extent of the original owner's repurchase rights. Two sections within the Act, sections 11(d) and 22, address the original owner's right to repurchase his property which has been acquired by cities and agencies in the urban renewal process. Section 11(d) clearly provides for repurchase rights when the city or agency fails to dispose of the property within a reasonable time.

Any real property acquired under the terms of this Act which is not, within a reasonable length of time, devoted to a purpose or purposes applicable to the urban renewal project for which it was acquired, may, after notice, be repurchased by the former owner as a matter of right . . . unless the land be devoted to such purpose or purposes within sixty (60) days after such former owner shall have given the record owner and the city notice in writing of his intention to exercise his right of repurchase; provided, that after such repurchase by such former owner, any . . . such property shall be made to conform to the pattern and intent of the urban renewal project if and when it be carried out.⁴³

42. *Id.* § 11(c).

43. *Id.* § 11(d).

Although there is no quarrel with the provisions or intent of section 11(d), such is not the case with section 22, which states enigmatically:

Provided, however, the original owner from which property was acquired [under this Act] by condemnation or through the threat of condemnation, shall have the first right to repurchase at the price at which same shall be offered.⁴⁴

This provision has intrigued urban renewal lawyers across the state since 1957. Obviously, if the provision were interpreted literally, a property owner from whom property is purchased, under condemnation or the threat of condemnation (which includes all private property purchases in an urban renewal project), could demand that his same property be available for repurchase. This result, however, would often subvert the purposes of urban renewal plans, which usually involve assembling small or substandard properties into larger tracts for usable business and industrial sites or for standard residential sites. If urban renewal projects are to develop reasonably according to their purposes and goals, this right-of-repurchase provision should only be applicable in situations where the property in its very same configuration is placed for sale by a city or agency. Under these limited circumstances, section 22 should be invoked to give the original owner first choice to repurchase at the price at which it is offered. In most situations, however, where the property is swallowed into a larger tract or becomes part of a right-of-way or other assemblage tract, section 22 should not be interpreted as enabling the owner to assert any repurchase rights or otherwise cloud the title to the property.

Hopefully, the preceding discussions have sufficiently illustrated the need for remedying the various restrictions and uncertainties within the Act concerning the disposition of urban renewal land. When taken individually, the restrictions, concerning public housing and negotiated sales, and the uncertainties, concerning long term leasing and repurchase rights, may not warrant any cause for alarm. But when they are all combined, optimum disposition of the property is seriously impeded. Once the property has been acquired through the urban renewal process, it is imperative that the city or agency have the needed flexibility in disposing of the property. Re-development through the acquisition of urban renewal property, however, is not always the most desirable method of accomplishing the goals of urban

44. *Id.* § 22.

renewal. Often urban renewal property is not acquired by the city or agency but is designated to be rehabilitated by the owner.

Rehabilitation

One of the most important methods used in urban renewal programs is to encourage the original owner to voluntarily rehabilitate the deteriorated property.⁴⁵ In the past, this has been accomplished by the city or agency administering federal grants and loans to the property owners. Because the federal government has decreased its rehabilitation loan and grant programs, Texas cities and agencies are now seeking other means of funding rehabilitation. The most logical solution would be through the use of state and local money.

There are restrictions within the Texas Constitution, however, which specifically prevent cities and agencies from using state or local funds in any rehabilitation loan or grant program.⁴⁶ Although the general purpose of this restricted use of public funds is commendable, application of these restrictions to the urban renewal programs often causes inappropriate expenditures of public funds. This waste of public funds occurs when a city or agency is forced to acquire property which the original owner could easily have rehabilitated. In many urban renewal areas, there will be property which is consistent with the urban renewal plan, but which merely needs rehabilitating. In this situation, it is senseless to force the city or agency to acquire the property and rehabilitate it or acquire and dispose of the property, which will then be rehabilitated by the purchaser. It would be much more

45. *Id.* §§ 2, 6, 8.

46. Section 50 of Article III of the Texas Constitution prohibits the lending of state funds to private concerns:

The Legislature shall have no power to give or to lend, or to authorize the giving or lending, of the credit of the State in aid of, or to any person, association or corporation, whether municipal or other, or to pledge the credit of the State in any manner whatsoever, for the payment of the liabilities, present or prospective, of any individual, association of individuals, municipal or other corporation whatsoever.

Similarly, section 51 of article III prohibits the granting of state funds to private concerns:

The Legislature shall have no power to make any grant or authorize the making of any grant of public moneys to any individual, association of individuals, municipal or other corporations whatsoever

Completing the restrictions, section 52(a) of article III prohibits the use of a city's or agency's funds for loans or grants to private concerns:

[T]he Legislature shall have no power to authorize any county, city, town or other political corporation or subdivision of the State to lend its credit or to grant public money or thing of value in aid of, or to any individual, association or corporation whatsoever

reasonable and economical, as well as expedient, to rehabilitate the property by lending or granting the required funds to the original property owner.

Since *Davis v. Lubbock*,⁴⁷ there has been no question that the use of public funds for urban renewal purposes constitutes a public use or public purpose.⁴⁸ Further, there is no question that rehabilitation of properties within an urban renewal area constitutes a legitimate urban renewal activity.⁴⁹ Thus, the new Texas Constitution should clearly address the present restrictions concerning loans and grants of state and local funds to private individuals as they relate to the ability of cities and agencies to engage in vigorous rehabilitation activities. In view of the drastic decrease in federal assistance, remedial legislation must be forthcoming if meaningful rehabilitation activities are to continue.

INCREASED NEED FOR NEW METHODS OF FINANCING URBAN RENEWAL ACTIVITIES

The urban renewal programs have been successful in Texas because of the availability of federal financial assistance. In the past, simply by making a funding application, cities or agencies could acquire grants from the federal government adequate to conduct the needed urban renewal programs. Federal assistance through this type of grant, however, has been phased out.

Federal grants, which would have funded these urban renewal programs, are being impounded as resources for transition to what is called the "Community Development Revenue Sharing Program."⁵⁰ Under this new program of federal funding, all cities will receive a certain amount of money from the federal government to be used for a variety of community development activities, according to the priorities set by the city. These grants will be based on demonstrated need, poverty level statistics, and housing conditions in the area. It will be up to the governing body in each city to determine how these revenue sharing funds will be spent. The major problem presented by this program of funding is the inadequacy of funds available to cope with the accelerating decay prevalent in the central cores of many Texas cities. Another weakness of this program results from the funds being given to a city,

47. 160 Tex. 38, 326 S.W.2d 699 (1959).

48. *Id.* at 52, 326 S.W.2d at 709.

49. TEX. REV. CIV. STAT. ANN. art. 1269l-3, §§ 2, 6, 8 (1963).

50. 42 U.S.C. § 4501 (1970).

without requiring the city to spend the money on any specific activity. Since the city can set its own spending priorities, the demands of the community for health, parks and many other social concerns will generate battles between various factions for use of the funds. Considering the inadequate amount of federal funds offered and the method of disbursing those funds, it is apparent that new methods must be found for financing urban renewal programs.

If meaningful urban renewal programs are to continue, new legislation must be passed which will enable Texas cities to devise schemes of financing which are either self-supporting or much less reliant upon federal assistance. California and Minnesota have passed legislation allowing their cities to develop a very successful method of financing. Both of these states have statutes which permit cities and agencies to use a device called "tax increment financing" for urban renewal programs.⁵¹

Under tax increment financing, a city designates a decaying and deteriorating area, declares it available for urban renewal assistance, and then issues the necessary bonds or other financing instruments to conduct the desired urban renewal activities. The security for the issuance of the financing instruments is the income differential to be derived by the city and other taxing agencies from the increased tax base, generated by the higher property valuation which results from the re-development of the area. Local taxing agencies continue to receive the taxes which were being collected prior to the project, but the additional tax increment is pledged to the holders of the financing instruments for their repayment. This tax increment is paid into a special fund until the financing instruments are amortized. When the financing instruments are finally amortized, the ordinary tax situation comes back into effect, with the increased property taxes then going to the city, county, school district or other political subdivision designated to receive the increment. Alternatively, instead of giving the tax increment to the various political subdivisions after amortization, the city or agency may wish to keep the tax increment for urban renewal activities. If this is done, this tax increment income, which increases as amortization occurs in more projects, provides an immediate source of funding smaller project areas. Tax increment financing has worked well for cities in California and Minnesota, allowing them to conduct urban renewal programs free from vacillating federal government assistance.

51. CAL. HEALTH & SAFETY CODE § 33640 (Deering Supp. 1973); MINN. STAT. ANN. § 462.585 (Supp. 1973).

Texas cities and agencies have not been afforded the use of tax increment financing, making it difficult to reduce their dependence upon federal funds. This course of action can be traced to three sections within our present constitution which raise questions concerning the authority of cities and agencies to use tax increment financing. Section 3 of article XI prohibits the city from lending its credit:

No county, city or other municipal corporation shall hereafter become a subscriber to the capital of any private corporation or association, or make any appropriation or donation to the same, *or in anywise loan its credit . . .*⁵²

The words "or in anywise loan its credit" certainly cast a shadow over the pledging of future property tax receipts to amortize urban renewal financing instruments. The lending of public credit is further prohibited in section 52(a) of article III,⁵³ which precludes the legislature from granting cities or agencies any authority to issue financing instruments, or lend its credit, for any purpose other than those listed in section 52(b): urban renewal activities not being among those listed purposes.

In order to amortize the financing instruments, one political subdivision, the taxing authority, must donate the tax increment to another political subdivision, the city or agency exercising the urban renewal powers. Section 51 of article III, however, questions the ability of one political subdivision to donate its funds to another:

The Legislature shall have no power to make any grant or authorize the making of any grant of public moneys to any individual, association of individuals, municipal or other corporations whatsoever . . .⁵⁴

These provisions within the Texas Constitution, which restrict credit extension and inter-governmental transactions, have caused cities and agencies to refrain from using a scheme of financing that would go far in establishing a self supporting method of financing urban renewal activities. The constitutional revision, however, may provide the impetus needed for implementing tax increment financing in Texas. The Constitutional Revision Commission has proposed a constitution which

52. TEX. CONST. art. XI, § 3 (emphasis added).

53. TEX. CONST. art. III, § 52(a) provides:

Except as otherwise provided by this section, the Legislature shall have no power to authorize any county, city, town or other political corporation or subdivision of the State to lend its credit or to grant public money or thing of value in aid of, or to any individual, association or corporation whatsoever, or to become a stockholder in such corporation, association or company.

54. TEX. CONST. art. III, § 51.

neither specifically authorizes tax increment financing nor specifically prohibits it, but which does eliminate the restrictions contained in the current constitution. Article VIII, Section 7 of the Proposed Texas Constitution merely requires "public money and public credit shall be used for public purposes only." Thus, according to *Davis*, urban renewal activities would be a public purpose eligible for the extension of public credit.

In addition, Article IX, Section 12 of the Proposed Texas Constitution authorizes all political subdivisions to "cooperate or contract with one or more other political subdivisions, the State, or the United States with respect to the exercise of any function, power, or responsibility, or the use of public funds and credit in the public interest." Thus transactions between political subdivisions would be allowed, thereby making it possible for a taxing authority to donate a tax increment to the city or agency for urban renewal activities. By authorizing the extension of public credit for any public purpose and allowing political subdivisions to contract with each other for the use of their funds in the public interest, the Proposed Texas Constitution would allow tax increment financing to become an effective tool for city planning in Texas.

CONCLUSION

As long as federal assistance continued, the Texas Urban Renewal Law served Texas cities well. Fleeting federal assistance, however, has caused the limitations of the statute to surface and has created the need for up-dating this important legislation concomitantly with the drafting of the new Texas Constitution. Providing more flexibility in disposition of the property, removing the ambiguities and needless restrictions within the Act and the constitution, and permitting new methods of "pay as you go" financing are necessary measures, if meaningful urban renewal programs are to continue in Texas.