

June 1934 FSTC Correspondence

June 1, 1934

Senator Hugo Black,
Washington, D.C.

Dear Senator Black:-

Thank you indeed, for yours of May 29th, carrying news of your proposed amendments to the Home Loan Bank Act and of the same tenor and purpose to the Housing bill; both for conceiving the idea of presenting these amendments at what must be, according to the daily press near the end of the session--and for communicating news of the same to me. This is the simplest possible amendment which would meet our situation and yet amply secure loans by the government.

Our idea would be to give each applicant for a loan which was granted a new lease for ninety-nine years from the time the loan became effective.

I was just reading last night ~~xxx~~ an article in regard to the Housing Bill and wondered if it might not be amended to fit our needs.

Certainly appreciate your efforts in our behalf.

Please keep me advised.

Yours most sincerely,

June 2, 1934

Hon. Lister Hill,
Washington, D.C.

Dear Sir and Friend:-

We are in receipt of a letter from Senator Black, dated the 29th, advising of the introduction by him of an amendment to both the Home Loan Bank Act and to a Housing Bill, now pending before the senate.

It proposed the strike out the word "renewable" wherever it appeared in sections 3 (c) and 4 (d) wherever it appeared. This is the amendment which I approve as the simplest possible way to meet our situation and yet amply secure the government; the idea being to give each applicant for a loan which was granted a new lease for 99 years from the date the loan became effective.

I hope you are in touch with Senator Black in this final effort.

Certainly appreciate your efforts in our behalf.

Yours most sincerely,

Secretary.

F. L. BROWN, PRESIDENT

E. B. GASTON, SECRETARY

E. C. WOLCOTT, TREASURER

FAIRHOPE SINGLE TAX CORPORATION

ADMINISTERING

Fairhope Single Tax Colony

ESTABLISHED 1895

FAIRHOPE, ALABAMA

June 2, 1934

Wire to Senator Black: Your amendment striking word "renew-
able" best possible solution. Success hoped .

(Signed) E.B.Gaston, Sec.

...ing word "renew-
...on, Success hoped."
As I have duplicates of his bills I am enclosing
copies to you.

Possibly we may win a victory yet.

Sincerely

June 3, 1934

Jas. H. Webb,
Mobile, Ala.

Dear Mr. Webb:-

To advise you of the latest development on the
Home Loan matter.

Letter from Senator Black, dated 5/31:

"Your letter of 28th has just been received. This
letter was evidently written before my communication of May
29th.

"I suppose you have now received the amendment I
sent you. There is an excellent chance of having this amend-
ment passed. It is my understanding that if the word 're-
newable' is eliminated from the bill, the people of Fair-
hope will be eligible.

"If this is not the case, I hope you will wire me,
because I am making every effort to get the amendment pas-
sed. The chances seem to be good now."

I wired him: "Your amendment striking word 'renew-
able' best possible solution. Success hoped."

As I have duplicates of his bills I am enclosing
copies to you.

Possibly we may win a victory yet.

Sincerely

July 3, 1934.

Mr. J. H. Webb,
Mobile, Alabama.

Dear Mr. Webb:-

I have your letter of the 30th, enclosing letters from Mr. J. Chandler Burton of the 29th and from Mr. Wallace H. Walker of the 27th, all relative to Fairhope Single Tax Corporation. The Walker letter dated June 27th asks certain questions. Before answering them, I have thought it well to give a general discussion of the Fairhope Single Tax Corporation, its organization, powers and limitations.

The Fairhope Single Tax Corporation was organized under an Act of the Legislature of Alabama passed in 1903, now appearing as Article 9 of Chapter 274 of the Code of 1923. The validity of the Act authorizing the incorporation and of the Charter issued thereunder was upheld in the case of Melville vs. The Single Tax Corporation, 193 Ala., 289, 69 So., page 466.

It will be noted that the corporation is authorized "to buy, sell, lease and mortgage real estate, to build and operate railroads and boats and other means of transportation and communication; build, erect and operate water works, electric lighting and power companies, libraries, schools, parks, and do any other lawful thing incident to its purpose for the mutual benefit of its members; and may admit such other person to participate in its benefits as it may see fit, and upon such conditions as it may impose.

You will also note that the corporation is empowered to elect such officers as it may deem necessary in such manner and for such term as it may provide, and remove the same at any time, and adopt such Constitution and By-Laws as it may see fit not in conflict with the Constitution and laws of the State.

The corporation adopted a Constitution. Article V provides for a president, vice president, secretary and Treasurer, who shall be superintendent of Finance and Insurance, three trustees and a superintendent of each of the departments of Lands and Highways, Public Service, Industries, and Public Health, and an Executive Council composed of the superintendents of the several departments. Section 10 of this Article provides that:

"The Executive Council shall have general charge of the administration of the affairs of the Corporation, and to that end may make such rules and regulations not inconsistent with its laws as they may deem necessary; may select and employ such

agents and assistants not otherwise provided for as they may deem necessary to conduct the Corporation's business; shall fix the compensation of all officers and employees of the Corporation, which compensation shall not however, exceed the earnings of like ability and energy in productive industry within its limits; shall make an annual appraisal of the rental value of all land held for lease by the corporation; and shall perform all other duties necessary to the carrying out of the principles and purposes herein set forth.

Article VI provides for the referendum and reads as follows:

Sec. 1. Upon petition of ten per cent of the qualified membership any act of the Executive Council, legislative or administrative, or any measure proposed by the petitioners, shall be submitted to a vote of that membership at the time set in said petition; provided that where amendments to this constitution are proposed, thirty days' notice must be given, and on other matters at least twenty-four hours' notice.

Sec. 2. No measure of general legislation passed by the Executive Council shall be in force until thirty days have elapsed after its passage without the filing of a petition for its submission to the membership; provided, that nothing in this section shall be construed to prevent the immediate taking effect of any order of the Executive Council necessary to the execution of measures already in force.

Sec. 3. Upon petition of twenty per cent of the membership entitled to vote upon election of officers, the question of the dismissal of any officer, however elected, or appointed, must be submitted to a popular vote.

Article VIII deals with the lands and reads as follows:

Sec. 1. There shall be no individual ownership of land within the jurisdiction of the Corporation, but the Corporation shall hold as trustee for its entire membership, the title to all lands upon which its community shall be maintained.

Sec. 2. Its lands shall be equitably divided and leased to members at an annually appraised rental which shall equalize the varying advantages of location and natural qualities of different tracts and convert into the treasury of the Corporation for the common benefit of its members, all values attaching to such lands, not arising from the efforts and expenditures of the lessees.

Sec. 3. Land leases shall convey full and absolute right to the use and control of lands so leased and to the ownership and disposition of all improvements made or products produced thereon so long as the lessee shall pay the annually appraised rentals provided in the foregoing section, and may be

terminated by the lessee after six months notice in writing to the Corporation and the payment of all rent due thereon.

Sec. 4. Leaseholds shall be assignable, but only to members of the Corporation. Such assignments must be filed for record in the office of the Secretary, and the person to whom the same is assigned thereby becomes the tenant of the Corporation.

Sec. 5. The Corporation shall have a prior lien on all property held by any lessee upon lands of the Corporation, for all arrearages of rent.

Sec. 6. If any lessee shall exact or attempt to exact from another a greater value for the use of land, exclusive of improvements, than the rent paid by him to the Corporation, the Executive Council shall immediately, upon proof of such fact, increase the rental charge against such land to the amount so charged or sought to be charged.

Sec. 7. Nothing shall be construed to invalidate the Corporation's right of eminent domain. In all leases of land the Corporation shall reserve the right to resume the possession of the same for public purposes, on payment of all damage sustained by the lessee thereby, to be determined by three appraisers, one to be chosen by the board of trustees, one by the lessee and the third by these two.

Article XV authorizes the corporation to deal with non-members and is as follows:

Lands not desired for use by members may be leased to non-members, and any services which the Corporation may undertake to perform for its members may be performed also for non-members, at the discretion of the Executive Council, on such terms as it may provide.

We have quoted the pertinent part of the statute and of the Constitution. The powers enumerated in the Charter being identical with the language of the statute. It will be noted that under the statute, the Articles of Incorporation and under the Constitution the corporation is authorized to lease lands to non-members on such terms as the Executive Council may direct. See Article XV and Section 10 of Article V, and Article VIII. It will be noted under Article VIII that the leases convey the full and absolute right to the use and control of land so leased and to the ownership and disposition of all improvements made or products produced thereon so long as the lessee shall pay the annual appraised rental, subject only to the corporation's right to repossess the property for public use.

The corporation, under authority of the statutes, Constitution and Charter, has outstanding several hundred leases, more than 85% of which are to non-members. The lease itself to non-members and members alike reads in part as follows:

"The said Fairhope Single Tax Corporation, for and in consideration of the annual rentals and covenants hereinafter mentioned, has this day leased to and said lessee taken possession of the following described portion of land, to-wit: for the term of ninety-nine years from date." Paragraphs 1, 2, 3, 4, 5, 6, 7 and 8 of the lease provide for the rentals, the manner of paying the same, for the payment of taxes and the reimbursement therefor, for the use by the corporation, of the rentals, for public purposes, and further provides for benefits to the lessee in the event of distribution of the assets of the corporation, and provides for the manner of enforcement of collecting of the rentals.

Paragraph 10 provides for the ascertainment of the value of the improvements in the event of distribution of the assets, or repossession for public purposes. Paragraph 12 limits the lease to surface rights, reserving mineral rights to the lessor. Paragraph 9 provides as follows:

"The right is reserved by the Fairhope Single Tax Corporation to resume possession of all or any portion of the land herein described, for public purposes only, on payment of the appraised value of the improvements thereon."

Paragraph 11 provides:

"This lease is assignable only to members of the Fairhope Single Tax Corporation, or to persons acceptable to it. The original lease must be returned to the Corporation with any proposed transfer endorsed thereon and, if approved, a new lease will be issued to the transferee."

It will be noted from the lease and from Article VIII of the Constitution, that the corporation for a valuable consideration, completely parts with the use of the surface rights for a period of 99 years, reserving in the lease and in Article VIII the right to repossess the property only, first, in the event of non-payment of rentals, and, second, under Section 9 for public purposes only, and in the event of repossession for public purposes the corporation contracts to pay the appraised value of the improvements on the property.

The right to repossess for public purposes only and the machinery provided for repossession is in final analysis only the same right that this corporation would have under the general statutes with reference to eminent domain. The method of taking the property for public purposes is but a short method of eminent domain. In the event an attempt should be made to take the property for the purpose other than public purposes, the owner of the property would be amply protected in his right to enjoin the acts of the corporation. This right is no greater under the Articles of Incorporation and By-Laws than the same corporation would have

under our present statutes.

In the event of the death of the lessee, his heirs and devisees would be entitled, regardless of the wishes of the corporation, to continue to occupy and use the property under the terms of the lease, paying therefor the annual rental until such time as the corporation might wish to repossess the property for public use, paying therefor the appraised value of the improvements.

This would be true without any stipulation in the lease. See 35 Corp. Juris, page 103, Section 213, but in the leases under consideration, Section 1 expressly provides that the lessee "his heirs or successors shall pay" the rent.

The leases are all made within the last thirty years and a greater part of them within the last four or five years, so that they have from 70 to 99 years to run, and cannot be repossessed by the corporation even after the death of the lessee.

Paragraph 11 provides that the lease shall be assignable only to members of the corporation or to persons acceptable to it. This provision, while perhaps binding as against an attempted assignment to a person not acceptable to the corporation, it could not and would not operate to prevent a sub-letting of the premises for any period short of the remaining part of the 99 years. See 35 Corp. Juris, Landlord and Tenant, page 982, Section 68 and Section 83; page 991, in 64 So., page 554; also 16 R.C.L., Landlord and Tenant, Section 329, which provides:

"A sub-letting is entirely distinct from an assignment and is not within a restriction against assigning, but it has been held that though the transaction is in the form of a sub-lease, if it operates in law as an assignment by reason of its transferring the whole interest of the lessee in the term, without any reversion being retained by the lessee, it will constitute a breach of the restriction against assigning, the retention of a reversion by the lessee being the criterion for distinguishing in law as regards the rights of the lessor between an assignment and a sub-lease."

Article VI of the Constitution, providing for a referendum so-called, is nothing more nor less than the machinery through which the stockholders or members of the corporation act. They would have the same powers as members or stockholders of any other corporation and be bound by the same rule of law as stockholders or members of other corporations. Having clothed the officers with the power to lease lands to non-members, they could not by a so-called referendum repudiate the act of the officers lawfully done under authority already granted.

It is, therefore, our opinion, first, that the officers of the corporation are authorized to deal with non-members; second, that leases to non-members when made are binding upon the corporation based upon the valid consideration previously authorized by the Constitution, could not be repudiated by the members of the corporation either in meeting or by mail, as provided in Article VI; third, that the lease when once made cannot be terminated by the death of the lessee, but would pass to his heirs or devisees; that in the event the corporation should refuse to approve an assignment of a lease, that the owner of the lease could sub-let for a period anything short of the remainder of the life of the lease.

It will be recalled that for more than thirty years the Fairhope Single Tax Corporation has made leases to hundreds of non-members. These leases have from time to time been transferred, together with the improvements thereon, and in every instance, with one exception only, the corporation has approved the transfer. That the improvements constructed on the premises are buildings that could not in a single instance last as long as the shortest lease now outstanding would run under its terms.

You will note that the lease itself expressly provides that the lessee and its successors shall pay the rent. So long, then, as the lessee, or his heirs or assigns, which might be the Home Owners' Loan Corporation, should pay the rents on the leases, it would hold title and possession of the premises for the full term of the lease, subject only to the right of the corporation to repossess the property for public use, after paying for the improvements thereon. In ascertaining the improvements, the lease provides that shrubbery, trees, fences, state of development, as well as the actual improvements on it, are elements of value.

In the event the Home Owners' Loan Corporation, or its successors, should find a purchaser for the property in view of the history of the corporation over a period of more than thirty years, it is hardly conceivable that the corporation would raise any question as to the acceptability of the purchaser, but in the event it did raise an objection to him and refuse to transfer the property, a valid sub-lease could be made to him for any period less than the remaining term, which term would be more than ample to warrant his purchasing the property.

I may add that I have discussed with the officials of the corporation the right of sub-letting and they concede that the lessee has this right.

Answering the questions in the Walker letter:

1. The booklet containing 12 pages, bearing date 1932,

is not the Charter of the Corporation. We enclose herewith a copy of the so-called Declaration of the Fairhope Single Tax Corporation, together with what purports to be the Charter issued on this Declaration. The two combined constitute the Charter of the Fairhope Single Tax Corporation. This corporation is organized under Article IX of Chapter 274 of the Code 1923, Section 7046. Legislative action is not necessary to amend the Articles of Incorporation. The booklet before you is the Constitution and is what is referred to in the Articles of Incorporation and Charter as the Constitution and By-Laws. These may be amended in the manner provided in the Constitution. This could be done at a regular meeting of the membership or at a special meeting called for that purpose, or under the initiative and referendum provisions.

2. The corporate Charter may be amended under the General Corporation Laws. (See Article II of Chapter 274, Section 6982). We do not believe, however, that any possible amendment to the Charter could be desired since the Charter is necessarily limited to the statute authorizing the incorporation, and the Charter embraces the statute authorizing its incorporation in its toto.

3. The effect of the expulsion of a member under Sections 3 and 4 of Article III of the Constitution would have no effect upon the ownership of the leasehold and of the improvements thereon. The only effect would be to place the former member in a position of being a non-member, and as to his leasehold interest he would have the same powers, rights and privileges as non-members. (See Article VIII of the Constitution.)

4. The treasury of the Fairhope Single Tax Corporation would have no claim on the proceeds of the Home Owners' Loan Corporation loan under Article VIII of Section 2 of the Constitution, except for rents in arrears. (See said Articles and see said Lease.)

5. The borrower from the Home Owners' Loan Corporation could not terminate his lease under Article VIII, Section 3, of the Constitution.

6. Article VIII, Section 4, of the Constitution restricting assignments would not apply to a mortgage to the Home Owners' Loan Corporation under the procedure now followed. The Home Owners' Loan Corporation would not make a loan, except where the lease was already assigned to it and approval of the assignment previously given by the Fairhope corporation. Under the corporation procedure in force since 1927 and under which the Home Owners' Loan Corporation will make loans, the borrower transfers his lease to the Home Owners' Loan Corporation and the corporation approves the transfer and agrees to execute a new lease to the Home Owners' Loan

Corporation upon request. This amply protects the Home Owners' Loan Corporation. The members of the corporation and other lessees would have no property rights which would restrict the Home Owners' Loan Corporation from assigning, with the Fairhope corporation's assent, or from sub-letting without the corporation's consent. We have discussed Paragraph 11 of their lease previously in this letter.

7. The purpose of the corporation is the mutual benefit of its members and leaseholders. We do not believe that the corporation could arbitrarily or capriciously increase the rentals so as to make the leasehold valueless. The purposes of the rentals are the general expenses of the corporation which are comparatively small. The Fairhope corporation does not operate public improvements. The town is incorporated and the improvements are being operated by the town itself. The purposes of the rentals are, first, the payment of taxes assessed by State, County and municipal governments and the operation of the corporation. Under the plan of operation the Fairhope Single Tax Corporation itself assesses the lands and the individual owner assesses the improvements. The corporation repays the individual for the taxes paid out by him on his improvements. This amount, together with the expenses of the corporation, is distributed to the leaseholders as a whole on members and non-members alike through the rental process. The rentals are comparatively small and remain reasonably stationary.

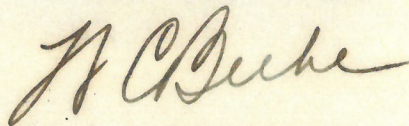
8. It is our opinion that the leaseholder and the Home Owners' Loan Corporation would be adequately protected under Article VIII, Section 7, of the Constitution and Paragraph 9 of the lease. We have discussed this question in the first part of this letter, and it is our opinion that the corporation and the leaseholder are protected not only against a taking without due compensation, because this could not be done under our Constitution, but also against an unwarranted taking for purposes other than public purposes under our State Constitution and statutes.

9. We do not believe that any danger lies in Section 2 of the lease. The properties involved lie within the Town of Fairhope. Health matters are taken over by the town itself. The Executive Council does not attempt to impose sanitary regulations and there is no superintendent of public health of the corporation. We believe that the corporation would be bound by our laws with reference to what would constitute physical or moral uses offensive to a majority of the residents. We believe that this paragraph gives to the corporation no greater power than a municipal corporation might have, and believe that it would be subject to the same restrictions and limitations in the exercise of this power than the municipal corporation would be subject to.

We do not believe that they could cancel or abridge the rights under the lease capriciously without a showing in court that the uses to which the property was put were physically and morally offensive and should an attempt be made to exercise any power under this section, the leaseholder would only retain possession and force the Colony to an action in court in which proceeding the Fairhope Single Tax Corporation would necessarily have to follow the same procedure and make the same proofs that a municipal corporation would follow in restraining a public nuisance.

10. We believe that our general discussion has fully answered No. 10.

Yours very truly,

A handwritten signature in dark ink, appearing to read "J. C. Burke". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

WCB/T

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United States Senate

COMMITTEE ON FOREIGN RELATIONS

June 5, 1934.

Mr. E. B. Gaston,
Fairhope, Alabama.

Dear Mr. Gaston:

Your letter of June 1st has been received.

The Sub-Committee on the Housing Bill, has our amendment under consideration. I presented it to them last week and sincerely hope it may become a part of the any measure that is passed. I fear that if we cannot get it passed on that bill that it will not be possible to secure favorable action at this session of Congress.

With all good wishes, I am

Sincerely yours,


HUGO L. BLACK.

June 9, 1934.

Senator Hugo Black,
Washington, D.C.

Dear Senator Black:-

Yours of 5th received yesterday. I see by morning paper that Housing Bill is being pushed hard for passage. I sincerely hope that our amendment may be included with it as passed, but am fully conscious of the pressure and the many questions which will be up.

Our Mr. McConnel gave me a very interesting report of his conferences with you and Congressman Hill and was very appreciative, as we all are, for the attention to our matter, with all the other things pressing upon you.

With very best wishes,
