

COUNTY PLANNING AND ZONING:

Authority of Missouri State Department of Resources and Development relative to master plans adopted by counties of the first class.

July 1, 1946



Mr. Hugh Denney, Director
Missouri State Department of
Resources and Development
Jefferson City, Missouri

Dear Sir:

Reference is made to your request of recent date for an official opinion of this office, reading as follows:

"On June 8, 1946, the Department of Resources and Development received from the St. Louis County Planning Commission a brochure including three master plans as follows:

"1) Comprehensive Parks and Parkways Plan, 2) Comprehensive Airport Plan, and 3) Setback Zoning Plan.

"With this material came a request for immediate action by our Department in approving such plans.

"According to the statutes of 1941, Section 15351b, the State Planning Board (whose duties are now a part of the State Department of Resources and Development), the Commissioner of Health, and Chief Engineer of the State Highway Department must approve the master plans of the County Planning Commission. Therefore, in conformity of the request of the St. Louis County Planning Commission, we began an investigation of our own to determine the adequacy of the county plans in relationship to state aviation, parks and parkways, and industrial development plans. During the course of our investigation, we were told by the St. Louis County Planning Commission that by virtue of H. B. 885, present session of the legislature, that they no longer needed our approval for

their plans. However, H. B. 885, according to the title of the act, applies only to pages 481 to 489 of the Laws of Missouri 1941, whereas Section 15351b is found on page 470 of the Laws of Missouri, 1941.

"I have not been able to determine whether or not Section 15351b has been repealed or modified by any other act, either in 1943 session or the present session. Information from the Legislative Research office indicates that no changes have been made in 15315b by the present legislature.

"In order that we may not be derelict in our duties by failing to act within the 45 days time period granted in Section 15351b and also to prevent our being presumptuous in making objections to any part of the St. Louis County Planning Commission's report, if our legal authority has been repealed, we solicit your prompt attention to this matter and ask that a copy of your opinion be sent to Mr. G. R. Imboden, Secretary, St. Louis County Planning Commission, Court House, Clayton, Missouri."

Section 15351b, referred to in your letter, is found in Laws of Missouri, 1941, at page 470. It forms a part of twenty sections relating to county planning and zoning, appearing in Laws of 1941, pages 465 to 480, inclusive. The pertinent part of Section 15351b reads as follows:

"No official master plan or zoning plan or portion thereof, or temporary or emergency master or zoning plan or portion thereof, no final, temporary or emergency sets of regulations and restrictions governing subdivisions of land or regarding building or setback lines on major highways or relating to lots, lands, and buildings, or structures, or no other final, temporary or emergency planning or zoning regulations or restrictions provided for in this article shall be adopted, ordered, amended or extended by the county planning commission or the county court, as the case may be, without the prior approval of the state planning board, the commissioner of health and the chief engineer of the state highway commission; * * * "

It will be noted that under the above quoted provisions of this section, approval is to be granted by the State Planning Board. Under the provisions of an act found in Laws of 1943, pages 978 to 984, inclusive, particularly Section 8b thereof, the duties previously discharged by the State Planning Board were transferred to the State Commission of Resources and Development. Said Section 8b reads, in part, as follows:

"All of the powers and duties heretofore vested in and exercised by the State Planning Board are hereby vested in and shall be exercised by the State Commission of Resources and Development. * * * "

House Bill No. 885, adopted by the 63rd General Assembly, and effective on June 10, 1946, relates to the adoption of a master county plan in all counties of the first class. The provisions of the bill at no place require the approval of the State Department of Resources and Development prior to the adoption of a master county plan. It thereupon becomes pertinent to determine whether or not the provisions of Section 15351b, quoted supra, which do require such approval, are yet in effect.

It is provided by Section 2 of the Schedule appended to the Constitution of 1945, as follows:

"All laws in force at the time of the adoption of this Constitution and consistent therewith shall remain in full force and effect until amended or repealed by the general assembly. All laws inconsistent with this Constitution, unless sooner repealed or amended to conform with this Constitution, shall remain in full force and effect until July 1, 1946."

Reference to the Constitution of 1945, particularly article VI, Section 8, discloses the following provision relating to certain requirements applicable to laws affecting the internal organization and powers of counties:

"Provision shall be made by general laws for the organization and classification of counties except as provided in this Constitution. The number of classes shall not exceed four, and the organization and powers of each class

shall be defined by general laws so that all counties within the same class shall possess the same powers and be subject to the same restrictions. A law applicable to any county shall apply to all counties in the class to which such county belongs."

The term "power" has acquired, in legal phraseology, a well defined meaning. As used with reference to officials or organizations, it has been defined in the following language:

"'Power' means the right, ability or faculty of doing something. It is an ability to act regarded as latent or inherent; the faculty of doing or performing something; capacity for action or performance." 33 Words and Phrases, Perm. Ed., p. 141.

"'Power' is synonymous with authority or right." 33 Words and Phrases, Perm. Ed., p. 140.

The constitutional provision quoted supra, in the light of the definition of the term "power" set forth, clearly indicates that with respect to the authority of counties falling within the same class, such authority must be uniform.

Adverting to Section 15348 of the act found in Laws of 1941, pages 465 to 480, inclusive, of which section 15351b forms a part, we find that such act is by its terms made applicable to "any county in which, or in a county immediately adjoining which, there is now or may hereafter be located and constructed any permanent camp, cantonment, post, fort or training area of the United States Army, or any ordnance or ammunition plant or factory owned and operated by the United States or owned by the United States and operated under contract with the United States, except any county which now contains or may hereafter contain a population of not less than four hundred thousand (400,000) nor more than six hundred thousand (600,000) inhabitants."

The classification of counties in accordance with the provisions of Article VI, Section 8, quoted supra, has been made by the 63rd General Assembly under the provisions of House Bill No. 476, which reads, in part, as follows:

"Class 1. All counties now having, or which may hereafter have an assessed valuation of

three hundred million dollars (\$300,000,000) and over shall be in the first class."

It is further provided by Section 2 of the same bill that "assessed valuation," as used in the act, shall mean the valuation of all real and personal property as determined and finally established by the state agency charged with the duty of equalizing assessments.

It is further provided by Section 3 of the act that, for the purpose of determining the initial class of the various counties, the assessed valuations of such counties as found in the "Journal of the Board of Equalization of the State of Missouri for the year ending December 31, 1944" shall be used.

Reference to the "Journal" discloses that two counties fall within the first class, namely, Jackson, with an assessed valuation of \$646,496,280, and St. Louis, with an assessed valuation of \$357,704,350. Therefore, if the act found in Laws of Missouri, 1941, pages 465 to 480, inclusive, is by its terms applicable to both of the counties constituting the first class, it is consistent with the Constitution of 1945 and, in accordance with Section 2 of the Schedule appended thereto, yet remains in full force and effect.

However, we have reached the conclusion that the act is not uniform in its application to all counties of the first class. The reason therefor is the incorporation in Section 1534B, quoted supra, of a clause excepting from the provisions of the act any county which contains a population of not less than 400,000 nor more than 600,000 inhabitants. Reference to the census of 1940 discloses that in that year Jackson County contained 477,828 inhabitants, and that St. Louis County contained 274,250 inhabitants. It is therefrom apparent that the act is not uniform in its application to all counties constituting the first class, and is, therefore, inconsistent with the provisions of the Constitution of 1945. Under the provisions of Section 2 of the Schedule appended to the Constitution of 1945, said act, which includes Section 15351b, is no longer effective.

CONCLUSION

In the premises, we are of the opinion that a master plan may be adopted by a county of the first class without requiring

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the approval of the Missouri State Department of Resources
and Development.

Respectfully submitted,

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APPROVED:

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