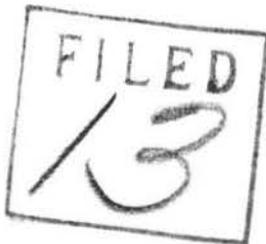


COUNTY COURTS:
PLANNING COMMISSION:
JACKSON COUNTY:

The Planning Commission of Jackson County is not authorized to appoint attorneys to represent it; the Planning Commission of Jackson County, the Board of Zoning Adjustment of Jackson County, and the County Court of Jackson County, are to be represented by the county counselor of Jackson County.



November 17, 1953

Honorable Hilary A. Bush
County Counselor
Suite 202 Courthouse
Kansas City, Missouri

Dear Sir:

I am in receipt of your recent request for an official opinion. You thus state your request:

"At the request of the Jackson County Court, I am writing you in regard to a legal question which has arisen as to the authority of the Planning Commission to appoint attorneys to represent it, as well as the Board of Zoning Adjustment and the County Court in zoning matters which may arise from time to time.

"The Planning Commission has taken the position that under Section 64.030, RSMo. '49, it is authorized to appoint such employees as may be deemed necessary. The Commission has construed the word 'employees' as being all inclusive, thus authorizing it to appoint attorneys. The County Court has taken the position that under Section 56.640 RSMo. '49, the County Counselor is the proper legal officer to represent the Planning Commission, the Board of Zoning Adjustment and the County Court, in all zoning matters.

"In view of the above conflict, I would appreciate an opinion from your office as to whether or not the Planning Commission is authorized to employ attorneys by reason of Section 64.030. The Planning Commission has, since the adoption of the Zoning Order in 1943, appointed its own attorneys to represent it as well as the Board of Zoning Adjustment and the County Court in all zoning matters, and as a result

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these attorneys have now in litigation eighteen cases which are being presented for trial and disposition. Since this office is not acquainted with any of these cases it becomes necessary that an opinion from your office issue without delay, so that the litigants will not be jeopardized by the aforesaid conflict of opinion."

Section 56.640, RSMo 1949, reads as follows:

"The county counselor and his assistants under his direction shall represent the county and all departments, officers, institutions and agencies thereof, except as otherwise provided by law, and shall commence, prosecute or defend, as the case may require, and exercise exclusive authority in all civil suits or actions in which the county or any county officer, commission or agency is a party, in his or its official capacity, draw all contracts relating to the business of the county and shall represent the county generally in all matters of civil law, and shall upon request furnish written opinions to any county officer or department."

It will be noted that the above section states that the county counselor shall represent "the county" and "all departments of the county," "offices," "institutions and agencies."

Section 64.010 RSMo 1949, creates a county planning commission, one of whose members shall be one of the judges of the county court. That section reads:

"In all counties of the first class the county court is authorized and empowered to provide for the preparation, adoption, amendment, extension or carrying out of a county plan and to create by order a county planning commission with the powers and duties as set forth in sections 64.010 to 64.160."

Section 64.120 RSMo. 1949, creates a county board of zoning adjustment, which is composed entirely of the three judges of the county court.

It would seem to be clear that the county planning commission

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and the county board of zoning adjustment are departments of the county, institutions of the county, and agencies of the county, since they are brought into existence by the county to perform county functions. If this is true, then by Section 56.640, supra, the county counselor is their proper legal adviser, since by that section he is charged with representing "the county and all its departments, officers, institutions and agencies."

Likewise, it would seem clear that the county counselor should represent the county court, since it is composed of "officers" of the county.

You state that the planning commission takes the position that under Section 64.030 RSMo 1949, it has the authority to appoint attorneys to represent it. That section reads:

"The county planning commission may create and adopt rules for the transaction of its business and shall keep a public record of its resolutions, transactions, findings, and recommendations. The commission may appoint such employees as it may deem necessary for its work, and may contract with planners and other consultants for such services as it may require and may incur other necessary expenses, all subject to the approval of the county court; provided, however, the expenditures of county funds, by the commission shall not be in excess of the amounts appropriated for that purpose by the county court. The commission shall have such other powers as may be appropriated to enable it to perform its duties."

No doubt the words relied on by the planning commission for its authority are "the commission may appoint such employees as it may deem necessary * * *."

It would appear that the issue here is whether or not attorneys would be classified as "employees" within the meaning of the section.

In regard to this we direct attention to the case of American Trucking Associations v. United States, 31 Fed. Supp. 35. At l.c. 38 of that opinion the court stated:

"* * *The commission's fear that it may be called upon to establish qualifications

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for executive officials, solicitors, and lawyers, is overstrained. None of these classes is within the category of 'employees' as that word is used in public service or labor legislation. * * *

We believe that the above is determinative of the issue in this case, since the "employees" provided for in Section 64.030, supra, is used "in public service." We believe, therefore, that when the above section uses the word "employees" it does not include lawyers.

CONCLUSION

It is the opinion of this department that the Planning Commission of Jackson County is not authorized to appoint attorneys to represent it, but that the Planning Commission of Jackson County, the Board of Zoning Adjustment of Jackson County, and the County Court of Jackson County are to be represented by the county counselor of Jackson County.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Mr. Hugh P. Williamson.

Very truly yours,

JOHN M. DALTON
Attorney General

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