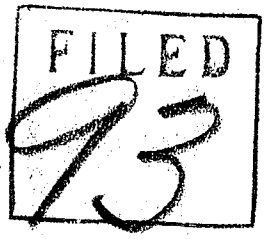
COUNTY BOARD OF ZONING ADJUSTMENT: In deciding contested cases the board of zoning adjustment in first class counties must make findings of fact and conclusions of law.

FIRST CLASS COUNTY:



January 27, 1955

Mr. Louis Wagner
Assistant County Counselor
Suite 202 Courthouse
Kansas City, Missouri

Dear Sir:

This will acknowledge receipt of your request for an opinion which reads:

> "Kindly advise whether the County Court or the Board of Zoning Adjustment, in determining zoning matters under Chapter 64 R.S. Mo. 1949, are subject to the Administrative Procedure Act, in that Findings of Fact and Conclusions of Law must be made in any contested case..
>
> "Your prompt attention to this matter will be greatly appreciated."

Section 64.120, Missouri Revised Statutes of 1949, provides that any county court in class one counties which has appointed a planning commission, shall also create a county board of zoning adjustment.

This board functions in case of appeal taken from the decision of the administrative officer in administering a county order. Said board is vested with almost unlimited authority to hear such appeal, modify or affirm such orders. Such board is definitely a fact-finding body and said statute further provides that an appeal may be granted from its decision to the circuit court.

You inquire if said board in determining such matters under its jurisdiction, under Chapter 64, is subject to the Administrative

Procedure Act in that findings of fact and conclusions of law must be made in contested cases.

Section 536.100, Vernon's Annotated Missouri Statutes, excepts from the provisions of said Administrative Procedure and Review Act any final decision in a contested case wherein there is some other provision for judicial review provided by law.

Under Section 22, Article V, Constitution of Missouri, 1945, it specifically provides that all final decisions, findings, rules and orders of any administrative official or body existing under the Constitution or law of this state which are judicial or quasi-judicial and affect private rights shall be subject to review by the courts as provided by law.

In Re City of Kinloch, 242 S.W.(2d) 59, l.c. 63, a decision relative to power of county courts, the court held that while such actions by administrative quasi-judicial bodies, in hearing and determining facts imposed upon them by statute, does not necessarily confer judicial power in a constitutional sense, they are actions judicial in nature.

Chapter 536, Vernon's Annotated Missouri Statutes, is an attempt by the legislature to implement said constitutional provision and is referred to as the Administrative Procedure and Review Act. Section 536.010 of said Act defines agency and contested cases for the purpose of said chapter and reads:

> "For the purpose of this chapter
>
> "(1) 'Agency' means any administrative officer or body existing under the constitution or by law and authorized by law to make rules or to adjudicate contested cases;
>
> "(2) 'Rule' includes every regulation, standard, or statement of policy or interpretation of general application and future effect, including the amendment or repeal thereof, adopted by an agency, whether with or without prior hearing, to implement or make specific the law enforced or administered by it or to govern its organization or procedure, but does not include regulations concerning only the internal management of the agency and not directly affecting the legal rights or privileges of, or procedures available to the public;

> "(3) 'Contested case' means a proceeding before an agency in which legal rights, duties or privileges of specific parties are required by statute to be determined after hearing."

There are numerous agencies of the state that the courts have held to be subject to said Act. Such was held in State ex rel. Dail v. Public Service Commission, 203 S.W.(2d) 491, 240 Mo. App. 250.

In Scott v. Wheelock Bros. 209 S.W.(2d) 149, 357 Mo. 480, the opinion therein tends to hold that the Administrative Procedure and Review Act was not applicable to appeals from the circuit court judgment, affirming the award in compensation proceedings, as there are applicable proceedings under the Workmen's Compensation Act. However, the concurring opinion by Judge Hyde very clearly makes what he designates a necessary clarifying statement, as to the applicability of the Administrative Procedure Act and held that clearly the first nine sections of said Act apply to all agencies.

If this be the law then definitely such board must make findings of fact and conclusions of law as is provided in Section 536.090, Vernon's Annotated Missouri Statutes, which reads:

> "1. Every decision and order in a contested case shall be in writing, and, except in default cases or cases disposed of by stipulation, consent order or agreed settlement, the decision, including orders refusing licenses, shall include or be accompanied by findings of fact and conclusions of law. The findings of fact shall be stated separately from the conclusions of law and shall include a concise statement of the findings on which the agency bases its order.
>
> "2. Immediately upon deciding any contested case the agency shall give written notice of its decision by delivering or mailing such notice to each party, or his attorney of record, and shall upon request furnish him with a copy of the decision, order, and findings of fact and conclusions of law."

CONCLUSION

It is the opinion of this department that the county board of

zoning adjustment of a first class county must in passing upon matters presented for its determination make findings of fact and conclusions of law.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Aubrey R. Hammett, Jr.

Yours very truly,

JOHN M. DALTON
Attorney General

ARH:vlw:mw