

COUNTIES:
MISSOURI COMMISSION
OF RESOURCES AND
DEVELOPMENT:

(1) Counties of Platte, Clay and Cass in Missouri have authority to contract, singly or jointly, with a planning agency to formulate plans for general land use. (2) Missouri Commission of Resources and Development has authority to carry out area planning in State. (3) Eligibility of Community Facilities Service Department of University of Missouri to accept local matching funds for planning in metropolitan areas to be determined by Federal agency making such funds available.



May 29, 1958

Honorable Floyd R. Gibson
Member, Missouri State Senate
701 North Union
Independence, Missouri

Dear Senator Gibson:

Your letter of January 28, 1958, requesting a formal opinion from this office has been supplemented by a letter dated March 6, 1958, from the Executive Director of the Metropolitan Area Planning Council, 701 Railway Exchange Building, Kansas City, Missouri, and a letter dated March 10, 1958, from the Director of Planning, Community Studies, Inc., 724 Railway Exchange Building, Kansas City, Missouri. The combined inquiries may be restated in the following questions to be answered in this opinion:

1. Do the counties of Platte, Clay and Cass in Missouri have authority to contract, singly or jointly, with a planning agency to formulate plans for general land use, including land use for industry, for homes, for recreation, for business, for streets and thoroughfares, and for utilities such as sewers, water, gas and electricity?
2. Can the Community Facilities Service Department of the University of Missouri, which participates with all governmental units in the planning and training of police, fire and governmental personnel, accept local matching funds for planning in metropolitan areas, such matching planning funds to be obtained from the Metropolitan Area Planning Council in an effort to qualify for and secure Federal funds to use for metropolitan planning?
3. Does the Missouri Commission of Resources and Development have authority to accept funds from either the Federal Government or a private

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agency, such as Community Studies, Inc., or from both such sources, to carry out planning services in different areas of the State?

4. Can Section 255.040, RSMo 1949, be construed as authorizing the Missouri Commission of Resources and Development to study and plan in any particular area of the State as the Commission sees fit?

The first question involves powers of counties, and particularly the counties of Platte, Clay and Cass, in Missouri,

Section 16, Article 6, Missouri's Constitution of 1945 provides:

"Any municipality or political subdivision of this state may contract and cooperate with other municipalities or political subdivisions thereof, or with other states or their municipalities or political subdivisions, or with the United States, for the planning, development, construction, acquisition or operation of any public improvement or facility, or for a common service, in the manner provided by law."

Section 21, Article 6, Missouri's Constitution of 1945 provides:

"Laws may be enacted, and any city or county operating under a constitutional charter may enact ordinances, providing for the clearance, replanning, reconstruction, redevelopment and rehabilitation of blighted, substandard or insanitary areas, and for recreational and other facilities incidental or appurtenant thereto, and for taking or permitting the taking, by eminent domain, of property for such purposes, and when so taken the fee simple title to the property shall vest in the owner, who may sell or otherwise dispose of the property subject to such restrictions as may be deemed in the public interest."

To disclose implementation of the foregoing constitutional provisions, related to the question being considered, we quote the following language from St. Louis Housing Authority vs. St. Louis, 361 Mo. 1170, l.c. 1175, 239 S.W. (2d) 289:

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"After the 1945 Constitution became effective, in an obvious implementation of Sections 16 and 21 of Article VI of the Constitution, the General Assembly enacted Laws Mo. 1947, Vol. I, pages 401 to 404 (now 70.210 to 70.320 R.S.Mo. 1949)."

Section 70.220, R.S.Mo. 1949, Cum. Supp. 1957, treats this power to contract and cooperate in the following language:

"Any municipality or political subdivision of this state, as herein defined, may contract and cooperate with any other municipality or political subdivision, or with an elective or appointive official thereof, or with a duly authorized agency of the United States, or of this state, or with other states or their municipalities or political subdivisions, or with any private person, firm, association or corporation, for the planning, development, construction, acquisition or operation of any public improvement or facility, or for a common service; provided, that the subject and purposes of any such contract or cooperative action made and entered into by such municipality or political subdivision shall be within the scope of the powers of such municipality or political subdivision. If such contract or cooperative action shall be entered into between a municipality or political subdivision and an elective or appointive official of another municipality or political subdivision, said contract or cooperative action must be approved by the governing body of the unit of government in which such elective or appointive official resides." (Underscoring supplied.)

Section 70.210, R.S. Mo. 1949, Cum. Supp. 1957, defines "political subdivision" as including counties. Attention is directed to the first underscored portion of Section 70.220, R.S. Mo. 1949, Cum. Supp. 1957, supra. The language "or with any private person, firm, association or corporation" constitutes the sole amendment made to that statute by Senate Bill 218, passed by the Sixty-Ninth General Assembly, and effective August 29, 1957. Such amendment is significant in view of the question posed in the request for this opinion. Section 70.220, supra, as it now stands, obviously confers authority on a county or counties to contract with any private person, firm, association or corporation for the purposes and subject to the limitations set forth in the statute.

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The rule with respect to "limitations" is found in the following language from Section 70.220, supra:

" * *; provided, that the subject and purposes of any such contract or cooperative action made and entered into by such municipality or political subdivision shall be within the scope of the powers of such municipality or political subdivision."

In *Everett v. County of Clinton, Mo.*, 282 S.W.(2d) 30, l.c. 35, the Supreme Court of Missouri dealt with powers of counties in the following language:

" * * the general rule in Missouri with regard to powers of counties is well stated in *King v. Maries County*, 279 Mo. 488, 249 S.W. 418, 420, as follows: 'It has been held uniformly that county courts are not the general agents of the counties or of the state. Their powers are limited and defined by law. They have only such authority as is expressly granted them by statute. * * * This is qualified by the rule that the express grant of power carries with it such implied powers as are necessary to carry out or make effectual the purposes of the authority expressly granted. * * * ' And see *Blades v. Hawkins*, 240 Mo. 187, 195, 112 S.W. 979."

From the foregoing review, it may be reasonably concluded that any county in Missouri may contract singly or jointly with any public or private corporation, association or person for planning services, provided that the subject and objectives of such planning services involve a project within the scope of powers granted to such counties by statute. We now consider the objectives of the planning services as outlined in the question to be planning for general land use, including land use for industry, for homes, for recreation, for business, for streets and thoroughfares, and for utilities such as sewers, water gas and electricity.

Statistical information from the office of Secretary of State of Missouri discloses that Clay County is a county of the Second Class, and that Platte and Cass Counties are counties of the Third Class. Statutory powers of Second and Third Class counties pertaining to

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county planning and zoning are outlined in Sections 64.510 to 64.590, RSMo. Cum. Supp. 1957. Section 64.510, RSMo. Cum. Supp. 1957, provides:

"The county court of any county of the second or third class may, after approval by vote of the people of the county, provide for the preparation, adoption, amendment, extension and carrying out of a county plan for all areas of the county outside the corporate limits of any city, town or village which has adopted a city plan in accordance with the laws of the state which are not more than forty miles from the corporate limits of any city which now has or may hereafter have more than thirty-five thousand inhabitants, or all areas of any county which is adjacent to a county containing a city of more than four hundred and fifty thousand inhabitants. Upon the adoption of the county plan there is created in the county a county planning commission as hereinafter provided."

(Underscoring supplied.)

Viewing the underscored language appearing in Section 64.510, supra, it may be concluded that the counties of Platte, Clay and Cass, lying adjacent to Jackson County, are among the counties to which the statute is directed. It is within the framework of Sections 64.510 to 64.690, RSMo. Cum. Supp. 1957, that we must find any authority vested in the counties of Platte, Clay and Cass to engage in county planning or zoning. As a prerequisite to carrying out any of the authority granted in the statutes just mentioned, we find Section 64.530, RSMo. Cum. Supp. 1957, providing, in part, as follows:

"1. Before the county court of any such county shall adopt any plan or create any commission provided for in sections 64.510 to 64.690 it shall order the question as to whether or not the court shall adopt county planning or zoning submitted to the voters of the county at the next election to be called for that purpose.

* * * "

Once county planning or zoning has been sanctioned by a vote of the people, Section 64.540, RSMo. Cum. Supp. 1957, authorizes the county planning commission in the following language:

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"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. The expenditures of county funds by the county planning 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 necessary and proper to enable it to perform the duties imposed upon it by law."

The authority of the county planning commission to contract with planners and consultants for required services is clearly spelled out in the preceding quotation from Section 64.540, supra, and the only limitation placed upon the county planning commission with reference to obligation of funds is that the expenditures of county funds shall not be in excess of the amounts appropriated for that purpose by the county court.

In Section 64.550, RSMo. Cum. Supp. 1957, we find authority given to the county planning commission relative to a "master plan of the county", and we quote the pertinent language of such statute as follows:

"The county planning commission shall have power to make, adopt and publish an official master plan of the county for the purpose of bringing about coordinated physical development in accordance with the present and future needs. The official master plan shall be developed so as to conserve the natural resources of the county, to insure efficient expenditure of public funds and to promote the health, safety, convenience, prosperity and general welfare of the inhabitants. Such official master plan may include, among other things, studies and recommendations relative to the location, character and extent of highways, railroads, bus, streetcar and other transportation routes, bridges, public buildings, schools, parks, parkways, forests, wild-life refuges, dams, and projects affecting conservation

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of natural resources. The county planning commission may adopt the official master plan in whole or in part and may subsequently amend or extend the adopted plan or portion thereof. * * * "

The power vested in the county planning commission by language quoted from Section 64.540, supra, "to make, adopt and publish an official master plan of the county", keyed as it is to the "health, safety, convenience, prosperity and general welfare of the inhabitants", is not a power to be curtailed without cogent reason, save and except in those instances where a statute has specifically treated a named prohibition. While publication and enforcement of a master official plan for the county under authority found in Section 64.550, RSMo. Cum. Supp. 1957, must of necessity be circumscribed by all statutory prohibitions found throughout Sections 64.510 to 64.690, RSMo. Cum. Supp. 1957, it cannot reasonably be said that the scope of planning services to be contracted for by the county planning commission may not encompass more than the official master plan to be adopted and published, so long as the planning aids in effectuating the plan ultimately adopted and published. The scope of planning services is well guarded by the power to contract for such services vested in the county planning commission.

From what has heretofore been said concerning the powers of counties to contract singly or jointly, and concerning the powers of a county planning commission operating within the confines of Sections 64.510 to 64.690, RSMo. Cum. Supp. 1957, it may be concluded that the counties of Platte, Clay and Cass in Missouri, upon the approval by the voters of each said county of the proposal to adopt county planning and zoning under Section 64.510, have authority to contract, singly or jointly, with a planning agency to formulate plans for general land use, including land use for industry, for homes, for recreation, for business, for streets and thoroughfares, and for utilities such as sewers, water, gas and electricity.

Questions three and four stated in the forepart of this opinion will be treated together since they involve statutory powers of the Missouri Commission of Resources and Development found outlined in Chapter 255, RSMo. 1949, as amended. The general purpose of the Division of Resources and Development is stated in the following language from Section 255.010, RSMo. 1949:

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"The division of resources and development of the department of business and administration is hereby created for the general purpose of advancing the economic welfare of the people through programs and activities to develop in a proper manner the state's natural resources and industrial opportunities pertaining to commerce, agriculture, mining, forestry, transportation, recreation, aviation and other matters intended to foster and develop gainful employment and the pursuit of happiness of all who now are or who may hereafter be residents of this state."

Section 255.040, RSMo. 1949, outlines the duties of the Commission of Resources and Development in the following language:

"It shall be the duty of the commission to:
(1) Investigate, assemble, develop and study, or cause to have investigated, assembled, developed and studied, all pertinent information available regarding the economic resources and industrial opportunities and possibilities of the state of Missouri, and the particular sections thereof, including raw materials, and products that may be produced therefrom; power and water resources; transportation facilities; the available markets, and the marketing limitations of the state; the availability of labor; the banking and financing facilities; the availability of industrial sites; the advantages of the state as a whole, and the particular sections thereof, as industrial locations, and such other fields of research and study as the commission may deem necessary;

(2) Formulate and adopt a plan or plans for the coordinated development, conservation and use of these resources in ways that will promote and advance the economic welfare of the people of the state; such plan or plans, as far as may be desirable and practicable, to be coordinated with the planning programs of cities, counties and areas in Missouri, with national planning, and with the planning of other states;

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(3) Encourage the location of new industrial enterprises in the state, the expansion of industries now existing within the state, and developments in new fields allied to such industries, and acquaint the people of Missouri with the industries located within the state, and the industrial opportunities existing in the state, and encourage closer cooperation between the various industries of the state themselves and with the people, by the use of legitimate educational and advertising mediums, and by solicitations of industrial and commercial enterprises;

(4) Investigate, study and undertake ways and means to promote and develop markets for Missouri products, and to promote the industrial use of agricultural, mineral and forest products;

(5) Encourage the development of recreational areas in the state, and encourage the traveling public to visit Missouri, by the dissemination of information within and without the state as to the recreational resources and advantages of the state, and its attractions and facilities for vacation and transient travel;

(6) Encourage the formation of local and sectional development committees throughout the state; make available to such committees and to municipalities, communities, the various political subdivisions of the state, private groups, bodies, organizations, associations and agencies such facts, data and information as may be useful and desirable in their efforts, to encourage the location of industries and commercial enterprises within this state, and in other ways to cooperate with the commission in carrying out the purposes of the chapter.

(7) Encourage the development of the aeronautical resources of the state and aid in an educational program related to aviation;

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(8) Do such other and further related acts as shall, in the judgment of the commission, be necessary and proper to carry out the purposes for which the commission is created."

The Missouri Commission of Resources and Development is given the power to make contracts in the following language found in Section 255.060, RSMo. 1949:

"In the performance of its duties, the commission is hereby empowered and authorized to make and enter into contracts, and to assume such other functions as are necessary to carry out the provisions of this chapter that are not inconsistent with this or other acts. The commission may make and enter into contracts with other boards, commissions, agencies and institutions of this state or other states, upon such terms as may be mutually agreed upon, to have such studies and research activities conducted as may be necessary and proper, the cost thereof to be paid out of funds which may be appropriated to the commission."

Sections 255.010, 255.040 and 255.060, RSMo. 1949, quoted above, disclose ample authority vested in the Missouri Commission of Resources and Development to carry out planning services in different areas of the state, or to have those planning services carried out by others through contractual agreements. However, Section 255.060, RSMo. 1949, supra, does provide that the costs attending such contractual agreements are to be paid out of funds which may be appropriated to the Commission. No prohibition has been discovered which would bar the Missouri Commission of Resources and Development from accepting funds from either the Federal Government or a private agency, or from both sources, in order to carry out or have carried out planning services heretofore referred to, but receipt of such funds would be subject to the provisions of Sections 33.080 and 136.010, RSMo. 1949, making mandatory the deposit of such funds in the state treasury, subject to later appropriation by the Legislature for the purposes for which the funds were received. Such restrictions on the acceptance of the funds by the Missouri Commission of Resources and Development might result in the funds not being contributed under Federal rules or policy of the private agency involved.

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An answer to the second question posed in the forepart of this opinion has been reserved until a ruling concerning questions three and four was given, and an opportunity had to refer to Sections 33.080 and 136.010, RSMo. 1949. In those cited statutes, we do find an exception to the rule requiring that the funds of which we are speaking be deposited in the state treasury and be subject to appropriation by the Legislature. In Section 33.080, RSMo. 1949, the exception reads as follows:

" * * *; provided, that in the case of state educational institutions there is excepted herefrom, gifts or trust funds from whatever source: Appropriations, gifts or grants from the federal government, private organizations and individuals; funds for or from student activities, farm or housing activities, and other funds from which the whole or some part thereof may be liable to be repaid to the person contributing the same, and hospital fees; all of which excepted funds shall be reported in detail quarterly to the governor and biennially to the general assembly."

The exception found in Section 136.010, RSMo. 1949, is identical with that found in Section 33.080, RSMo. 1949, quoted above. It is within the framework of the exceptions found in the statutes just referred to that we may find a feasible power in the Community Facilities Service Department of the University of Missouri to accept local matching funds for planning in metropolitan areas, such matching planning funds to be obtained from the Metropolitan Area Planning Council in an effort to qualify for and secure Federal funds to use for metropolitan planning.

It is not the purpose of this opinion to rule the powers of the Community Facilities Service Department of the University of Missouri in regard to eligibility to receive the funds in question or to function in relation to any plan involving such funds. Until the University of Missouri, through its governing body, evinces doubt as to the authority to be exercised by one of its single administrative units which is seeking to qualify to receive private or Federal funds, this office feels that the Federal governmental agency furnishing funds and making the over-all plan workable should determine the qualifications of the recipient of the funds.

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CONCLUSION

It is the opinion of this office (1) that the counties of Platte, Clay and Cass in Missouri have authority to contract, singly or jointly, with a planning agency to formulate plans for general land use, including land use for industry, for homes, for recreation, for business, for streets and thoroughfares, and for utilities such as sewers, water, gas and electricity; (2) that the Missouri Commission of Resources and Development has authority to carry out area planning services in different areas of the State, or to contract for such planning services to be carried out by others, so long as the costs of such planning services are paid out of funds which may be appropriated by the Legislature, and such appropriated monies may include funds from either the Federal Government or a private agency, or from both sources; and (3) that the Community Facilities Service Department of the University of Missouri appears to be eligible to accept local matching funds for planning in metropolitan areas, such matching funds to be obtained from the Metropolitan Area Planning Council, in an effort to qualify for and secure Federal funds to use for metropolitan planning, with the Federal agency making such funds available being the sole judge of the qualifications of the recipient of the funds.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Julian L. O'Malley.

Yours very truly,

John M. Dalton
Attorney General

J.L.O.M.:om