

COUNTY PLANNING COMMISSION:

Areas within a municipality that has not enacted a city plan should be included in the county master plan.

COUNTIES OF THIRD AND FOURTH CLASS:

January 26, 1962



Honorable Robert P. C. Wilson, III
Prosecuting Attorney
Platte County
Platte City, Missouri

Dear Mr. Wilson:

In your letter of October 12, 1961, you request an opinion from this office regarding the following questions:

"I would like to have the opinion of your office concerning two problems which occasionally arise with the Platte County Planning Commission. The Platte County Planning Commission was set up by the County Court of Platte County, Missouri under the provisions of House Bill 465, Laws of Missouri, 1951.

"Some of our incorporated areas are municipalities legally incorporated as such and regularly functioning as such at this time. If these areas have no zoning and planning ordinances of their own, does the Platte County Planning Commission have authority to set up and enforce zoning and planning regulations within these areas?

"Some of our incorporated areas are municipalities legally incorporated as such, but which have ceased to function as such, although they have not been dissolved in accordance with the applicable statutory proceedings. Does the Platte County Planning Commission have authority to set up and enforce zoning and planning regulations within these areas?"

Honorable Robert P. C. Wilson, III

Platte County, Missouri, is a third class county with 23,350 inhabitants and provisions of Section 64.510 through 64.690, RSMo 1959 as amended, govern the county planning and zoning in said county.

Section 64.510, RSMo Cum. Supp. 1961, provides:

"The county court of any county of the second or of any county of the third class having more than twenty-three thousand inhabitants 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. Upon the adoption of the county plan there is created in the county a county planning commission as hereinafter provided." (Emphasis supplied)

Attention is called to the fact that this section expressly states that after approval by the vote of the people in the county the county court may provide for the preparation and carrying out of a county plan for all areas of a county outside the corporate limits of any city, town or village which has adopted a city plan.

Section 64.570, RSMo 1959, which provides for the county planning commission to pass upon all improvements of the type embraced within the master plan, provides:

"From and after the adoption of the official master plan or portion thereof and its proper certification and recording, thereafter no improvement of a type embraced within the recommendations of such official master plan or part thereof shall be constructed or authorized without first submitting the proposed plans thereof to the county planning commission and receiving the written

Honorable Robert P. C. Wilson, III

approval or recommendations of said commission. This requirement shall be deemed to be waived if the county planning commission fails to make its report and recommendations within forty-five days after receipt of the proposed plans. In the case of any public improvement sponsored or proposed to be made by any municipality or other political or civil subdivision of the state, or public board, commission or other public officials, the disapproval or recommendations of the county planning commission may be overruled by a two-thirds vote, properly entered of record and certified to the county planning commission, of the governing body of such municipality, or other political or civil subdivision, or public board, commission or officials, after the reasons for such overruling are spread upon its minutes, which reasons shall also be certified to the county planning commission."

It is evident from this statutory provision providing for a municipality to overrule the county plan that it was intended for the county-wide master plan to include municipalities that do not have a city plan, otherwise this provision would be meaningless.

Sections 64.510 to 64.690 deal with county-wide planning and zoning in second and third class counties, and all sections should be read and considered together in construing them in order that they may be harmonized if possible. When all the sections are considered as a whole so that the overall scheme is visualized, we believe it clearly appears that municipalities that have not enacted city zoning plans are to be included within the county master plan. As stated in Section 64.570, the county plan may be rejected by the governing body of the municipality insofar as it may apply to such city.

Regarding the second question you submit, dealing with incorporated cities that are not now functioning as a municipality, certainly such cities would not have a city zoning plan and a county zoning commission should include the territory within such cities in the county master plan.

Honorable Robert P. C. Wilson, III

CONCLUSION

It is the opinion of this office that the incorporated areas within a municipality that has not enacted a city plan should be included in the county master plan adopted by second and third class counties under provisions of Section 64.510 through Section 64.690, RSMo 1959 as amended. This would include areas within municipalities that are not functioning as municipalities.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Moody Mansur.

Yours very truly,

THOMAS F. EAGLETON
Attorney General

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