

COUNTY ZONING:
COUNTY PLANNING COMMISSION:
COUNTIES OF THIRD AND FOURTH CLASS:

The County Zoning Commission
has no authority over areas
within an incorporated municipi-
pality.

December 27, 1962



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

Dear Mr. Wilson:

In your letter of September 24, 1962, you submit the following question:

"I enclose herewith a copy of The Zoning Order of Platte County, Missouri. You will note that this Order covers only the unincorporated portion of the county, and follows Section 64.620, Revised Statutes of Missouri, which Section, it appears to me, provides authority for such Order only as to the unincorporated portion of the county. I am having a little difficulty in reconciling this Section and fitting it in with Section 64.510, Revised Statutes of Missouri, 1959, which your opinion holds is the controlling Section. If Section 64.510 is the controlling Section, is there authority to amend our present Zoning Order so as to include incorporated areas within a municipality that has not enacted a city plan, keeping in mind the fact that Section 64.620 makes provision for Order covering only unincorporated portion of the county?"

In your letter you mention the fact that we issued an opinion on January 26, 1962, to you concerning certain provisions

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of the county planning and zoning statutes. In that opinion we stated that under the provisions of Section 64.510, Mo. Cum. Supp. 1961, incorporated areas within a municipality that has not enacted a city plan should be included in the county master plan. You now inquire whether incorporated areas within a municipality may be included in the county zoning plan.

We believe the difficulty in placing a proper construction on the statutes dealing with county planning or zoning is the result of not recognizing the distinction existing between planning and zoning as those terms are used in the statutes governing this matter.

Section 64.510, Mo. Cum. Supp. 1961, provides that the county court in certain class counties after the approval by a vote of the people may provide for the preparation and adoption 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 this state".

Section 64.550, RSMo 1959, provides for the appointment of a county planning commission, designates certain persons that shall be appointed as members of the commission, and specifies certain other matters pertaining to said commission.

Section 64.550, RSMo 1959, defines the powers and authorities of the county planning commission and provides in part:

"The county planning commission shall have the 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, wildlife refuges, dams, and projects affecting conservation of natural resources. * * *"

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Attention must be called to the statutory provisions as to what may be included in the county master plan. Generally, it consists of those things of a public nature, such as roads, bridges, and so forth, that affect the public generally. As stated in our opinion of January 26, 1962, we believe that under the statutes, the incorporated areas within a municipality that has not enacted a city plan should be included in the county master plan. This includes only those matters that are within the jurisdiction of the county planning commission.

Section 64.620, RSMo 1959, provides in part:

"For the purpose of promoting health, safety, morals, comfort or the general welfare of the unincorporated portion of counties of the second or third class to conserve and protect property and building values, to secure the most economical use of the land, and to facilitate the adequate provision of public improvements all in accordance with a comprehensive plan, the county court of any county to which sections 64.510 to 64.690 are applicable as provided in section 64.510 shall have power after approval by vote of the people as provided in section 64.530 to regulate and restrict, by order of record, in said unincorporated portions of the county, the height, number of stories, and size of buildings, the percentage of lots that may be occupied, the size of yards, courts and other open spaces, the density of population, the location and use of buildings, structures and land for trade, industry, residence or other purposes, including areas for agriculture, forestry, and recreation."

Section 64.630, RSMo 1959, provides, in part, for the division of the unincorporated areas of the county into districts and provide that within such districts the erection, construction, reconstruction, alteration, repair, relocation, or maintenance of buildings or structures and use of land and lots may be regulated and restricted. It further provides that the regulation shall be made in accordance with "a comprehensive zoning plan".

Section 64.640, RSMo 1959, provides, in part, that in counties that do not have a county planning commission, the county court may appoint a county zoning commission. In those counties that have a county planning commission, it acts also as a county zoning commission.

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Section 64.650, RSMo 1959, provides in part for the county court in any county that has adopted a zoning plan to appoint an officer to enforce the plan.

Section 64.610, RSMo 1959, provides for the creation of a Board of Adjustments to hear complaints concerning planning regulations. Section 64.660, RSMo 1959, provides for the appointment of a county board for zoning adjustment.

Attention is called to these different statutes to show that planning and zoning are treated as separate and distinct matters under the statutes. Some of the statutes govern county planning and other statutes apply only to county zoning. It must be noticed that the statutes that relate to county zoning expressly provide that they apply only to unincorporated areas.

CONCLUSION

It is our opinion that the county zoning commission or the county planning commission, acting as a zoning commission, has no authority insofar as zoning is concerned in areas within an incorporated municipality even though such municipality has not enacted a city plan.

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

Very truly yours,

THOMAS F. EAGLETON
Attorney General

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