

COUNTIES: County planning commission not
COUNTY COURTS: authorized to issue building permits.
PLANNING COMMISSIONS: Such permits must be issued by
ZONING COMMISSIONS: enforcement officer appointed by
PLANNING AND ZONING county court after county court
COMMISSIONS: adopts zoning order.

OPINION NO. 181

June 17, 1963

Honorable Earl R. Blackwell
State Senator, 22nd District
Senate Post Office
Jefferson City, Missouri



Dear Senator Blackwell:

This is in response to your recent request for an opinion of this office, which request reads in part as follows:

"I would appreciate an opinion from your office on the following question.

"Does the planning commission in a county of the second class have the power to issue building permits authorizing the erection of privately owned buildings? If the planning commission does not have this authority, is there any procedure whereby the county court in such a county make and enforce such zoning regulations?"

In a letter of this office issued to the Honorable William B. Milfelt on September 5, 1962, it was ruled that once an election is conducted as provided for in Section 64.530, RSMo 1959, the county court has a choice as to whether the zoning provisions or planning provisions, or both, of Sections 64.510 to 64.690 will be put into effect. A copy of that letter is enclosed herewith.

Upon the premise established in the Milfelt opinion, building permits authorizing the construction of privately

owned structures may be issued only after the procedures set out in Sections 64.640 and 64.650 have been followed. That is to say, if the county court is desirous of invoking the zoning powers set out in Sections 64.620 through 64.690, it is necessary that where a planning commission already exists, the commission be requested by the county court to recommend boundaries of districts and appropriate regulations. After the necessary hearings, the county court may adopt the proposed zoning order "with or without change or may refer it back to the commission . . ."

Section 64.650 provides that after such a zoning plan is adopted by the county court, an officer is appointed by the county court to enforce the zoning order and to issue building permits.

The answer to your first question must, therefore, be in the negative insofar as the planning commission itself is concerned. However, the power of such a county to avail itself of the protection of the statutes referring to zoning powers is clear.

A printing error in Section 64.650, RSMo 1959, should be pointed out so as to avoid confusion if the county concerned here adopts a zoning order. The first sentence of that section concludes with the phrase "to enforce the provisions of Section 64.510." Reference to House Bill 465, 66th General Assembly, L.1951, page 406, 412, Section 12, reveals that the initial sentence of this section correctly reads as follows:

"Any county court which has adopted a zoning plan, as provided herein, shall appoint an officer or shall designate one of the existing officials to enforce the provisions of this act."

Since that "act" brought into existence the sections set out in the Revised Statutes of Missouri of 1959 as Sections 64.510 through 64.690, it is clear that the duties of the officer appointed under Section 64.650 will encompass the enforcement of the zoning provisions of all those sections.

Conclusion

It is, therefore, the opinion of this office that a planning commission does not have power to issue building permits which authorize the erection of privately owned buildings in a county of the second class wherein planning and zoning have been adopted by vote of the people. Such permits may be issued by an enforcement officer, but only after a zoning plan has been duly adopted by the county court and the enforcement officer appointed or an existing official designated.

This opinion, which I hereby approve, was prepared by my assistant, Albert J. Stephan, Jr.

Very truly yours

THOMAS F. EAGLETON
Attorney General

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