

FOURTH CLASS CITIES:
COMPENSATION:
ZONING COMMISSION:
CITY PLANNING COMMISSION:

A Fourth Class City may legally continue to pay compensation to members of an existing zoning commission which was in existence before the effective date of House Bill 317, 72nd General Assembly, after the effective date of such bill.

Opinion No. 433

December 4, 1963



Honorable Robert O. Snyder
State Representative
11th District, St. Louis County
241 East Argonne Drive
Kirkwood 22, Missouri

Dear Mr. Snyder:

Your recent request for an opinion of this office may be restated as follows:

May a Fourth Class City, which has by ordinance established a Zoning Commission and provided a per diem compensation for such commission, continue legally to pay such compensation after the effective date of House Bill 317, 72nd General Assembly?

The pertinent portions of House Bill 317, 72nd General Assembly are Sections 2, 3, 4, and 10, which have been designated by the Revisor of Statutes as Sections 89.310, 89.320, 89.330 and 89.390 [Laws 1963, V.A.M.S., August Pamphlet 1963]. These sections provide:

89.310. "Any municipality in this state may make, adopt, amend, and carry out a city plan and appoint a planning commission with the powers and duties herein set forth.

89.320. "The planning commission of any municipality shall consist of not more than fifteen nor less than seven members, including the mayor, a member of the council selected by the council, the city engineer or similar city official and not more than twelve nor less than four citizens

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appointed by the mayor and approved by the council. All citizen members of the commission shall serve without compensation. The term of each of the citizen members shall be for four years, except that the terms of the citizen members first appointed shall be for varying periods so that succeeding terms will be staggered. Any vacancy in a membership shall be filled for the unexpired term by appointment as aforesaid. The council may remove any citizen member for cause stated in writing and after public hearing.

89.330. "1. The commission shall elect its chairman and secretary from among the citizen members. The term of chairman and secretary shall be for one year with eligibility for reelection. The commission shall hold regular meetings and special meetings as they provided by rule, and shall adopt rules for the transaction of business and keep a record of its proceedings. These records shall be public records. The commission shall appoint the employees and staff necessary for its work, and may contract with city planners and other professional persons for the services that it requires. The expenditures of the commission, exclusive of grants and gifts, shall be within the amounts appropriated for the purpose by council.

"2. Where a zoning or planning commission exists on the effective date of sections 89.300 to 89.480, it shall constitute the city planning commission for the purposes of sections 89.300 to 89.480 in lieu of the commission provided for herein with the same officers, membership procedures, powers and terms of office as theretofore existing, unless the council otherwise provides; except in a charter city where the provisions of the charter shall govern.

89.390. "The commission shall have and perform all of the functions of the zoning commission provided for in sections 89.010 to 89.250.

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The situation presented in your letter involves the City of Fenton, a Fourth Class City, which had by ordinances established a Zoning Commission and provided compensation for its members. This Zoning Commission was in existence on the effective date of House Bill 317, 72nd General Assembly and is still in existence today.

The problem involved here is whether or not the City of Fenton can legally continue to pay this compensation to the members of the commission in light of Section 89.330(2), supra, which provides that a zoning commission in existence on the effective date of House Bill 317, supra, shall constitute the city planning commission in lieu of the commission provided in House Bill 317, supra, and Section 89.320, supra, which provides that the citizen members of the city planning commission shall serve without compensation.

Section 89.330(2), supra, does not provide that the existing zoning commission shall constitute the planning commission described in Sections 89.300 to 89.480. The existing zoning commission merely constitutes the city planning commission "for the purposes" of the act "in lieu of the commission" provided for therein. In other words, the existing zoning commission is a substitute for the city planning commission described in Sections 89.300 to 89.480, and is not such commission. It merely acts as such for the purposes of the statute.

Section 89.320, supra, provides in part:

"All citizen members of the commission shall serve without compensation."

This sentence refers to the city planning commission provided for by House Bill 317, supra. As the existing zoning commission is not such city planning commission, but merely a substitute for it for the purposes of the act, the sentence does not refer to such existing zoning commission and does not prohibit a city from compensating members of such existing zoning commission.

This office can find nothing else in Sections 89.300 to 89.480, or any other statutes which would prohibit the city from compensating members of the existing zoning commission after the effective date of House Bill 317, supra.

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CONCLUSION

Therefore, it is the opinion of this office that a Fourth Class City may legally continue to pay compensation to members of an existing zoning commission which was in existence before the effective date of House Bill 317, 72nd General Assembly, after the effective date of such bill.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Jeremiah D. Finnegan.

Very truly yours,

THOMAS F. EAGLETON
Attorney General

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