

**PLANNING COMMISSION:
ATTORNEYS RIGHT TO EMPLOY:
PROSECUTING ATTORNEYS:**

Planning Commission may not employ legal counsel. The prosecuting attorney must act for Planning Commission.

OPINION NO. 131

June 26, 1964

Honorable Brunson Hollingsworth
Prosecuting Attorney
Jefferson County
Hillsboro, Missouri



Dear Mr. Hollingsworth:

We have your request of March 10, 1964, for an opinion as to whether or not a planning commission in a county of the second class may employ legal counsel or must the prosecuting attorney act for the commission.

Your letter states:

"The Jefferson County Court has requested that I secure your Opinion with respect to the interpretation of R.S.No. 56.070 and 64.540.

"Query. May a Planning Commission in a County of the Second Class, under 64.540, employ legal counsel for a fee or must the Prosecuting Attorney, under 56.070, act as legal counsel for the Commission?

"This request for an Opinion arises out of the fact that the Jefferson County Planning Commission, in legal existence for the past year, has in its employ a professional resident Planning Director who has now submitted to the Jefferson County Planning Commission, a set of proposed subdivision regulations, also one proposed interim zoning regulation. Legal counsel should, of course, at this time review these proposals.

"According to our Planning Commission, planning and zoning law is in the nature of a specialty. Professor Daniel R. Mandelker,

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Washington University Law Faculty, an authority on the law and technique of planning, has advised the Jefferson County Commission it is virtually imperative the Commission have legal counsel specializing in planning law."

Section 56.070, states that the prosecuting attorney shall represent generally the county in all matters of law and shall advise the county court in counties where there is no county counselor. Section 56.070, RSMo 1959, is as follows:

"The prosecuting attorney shall represent generally the county in all matters of law, investigate all claims against the county, and draw all contracts relating to the business of the county. He shall give his opinion, without fee, in matters of law in which the county is interested, and in writing when demanded, to the county court or any judge thereof, except in counties in which there is a county counselor. He shall, without fee, give his opinion to any magistrate court, if required, on any question of law in any criminal case, or other case in which the state or county is concerned, pending before the court."

According to your letter you are a county of the second class and have no county counselor.

Under Chapter 64 on county planning, and particularly the section that pertains to planning and zoning in class two counties, Section 64.510, RSMo 1959, provides that the county court may provide for a county plan; Section 64.520 provides for a county planning commission; and Section 64.530 provides that said planning be adopted after approval by the voters.

Section 64.540 of the Revised Statutes of Missouri, 1959, sets forth the rules, employees, expenses and general powers of the planning commission.

Section 64.540 is as follows:

"The county planning commission may create and adopt rules for the transaction of its business and shall keep a public record of

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its resolutions, transactions, findings, and recommendations. 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."

It will be seen from a reading of the above statute there is no reference whatsoever to the employment of legal counsel and in the absence of a specific statement authorizing the planning commission to employ an attorney to advise it on legal planning problems, it is incumbent on the prosecuting attorney of a county to so advise the commission.

It further appears that Section 56.070 concerning the duties of a prosecuting attorney specifically requires that the prosecuting attorney represent the county in all matters of law, and further that he should draw all contracts relative to the business of the county and shall give his opinion in matters of law in which the county is interested.

CONCLUSION

It is the opinion of this office that under Section 56.070, RSMo 1959, it is the duty of the prosecuting attorney to represent the county in all matters of law, draw up all contracts relating to the county and give his opinion without fee in matters of law in which the county is interested. That Section 64.540 pertaining to county planning and zoning does not delegate to the commission the authority to employ legal counsel but the commission must consult with and rely on the services of the prosecuting attorney whose duty it is to furnish such services.

The foregoing opinion, which I hereby approve, was prepared by my assistant, O. Hampton Stevens.

Very truly yours,


THOMAS F. EAGLETON
Attorney General