

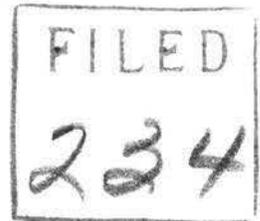
PLANNING AND ZONING:
CONTINUANCE OR DISCONTINUANCE:
CANNOT BE VOTED UPON:
THIRD CLASS COUNTIES:

A proposition as to whether
planning and zoning shall be con-
tinued or discontinued in third
class county of Phelps, cannot be
submitted to voters at next general
election.

August 19, 1964

Opinion No. 234

Honorable William W. Hoertel
Prosecuting Attorney
Phelps County
Rolla, Missouri



Dear Mr. Hoertel:

This office is in receipt of your request for a legal
opinion, which reads in part as follows:

"I would like to know whether or not
the County Planning and Zoning law can
be re-submitted to the voters in November
for reconsideration as to whether or not
the people of the County wish to continue with
this plan, and if reconsideration is
possible, the procedure to follow to
lawfully put the question to the voters in
the forthcoming general election."

We understand that Phelps County has previously adopted
planning and zoning.

The first inquiry is - can a proposition to discontinue
planning and zoning be submitted to the voters.

The second inquiry is - if the proposition can be submitted
to the voters, what is the procedure for doing so. Obviously
the second question depends upon an affirmative answer to the
first.

Planning and zoning is a purely statutory procedure, and
insofar as second or third class counties are concerned, it can
be accomplished only as provided in Sections 64.510 to 64.690,
RSMo 1959, as amended. Phelps is a third class county and has
adopted planning and zoning pursuant to Section 64.530, RSMo
1959. There is no provision either in Sections 64.510 to 64.690
or elsewhere which authorizes the county to abandon or dis-
continue planning and zoning.

In the absence of legislative authority, counties are without power the same as though the act or power was expressly forbidden.

In *Lancaster v. County of Atchison*, 180 SW2d 706, 1.c. 708, the Supreme Court en Banc, said:

"* * * counties, like other public corporations, 'can exercise the following powers and no others: (1) those granted in express words; (2) those necessarily or fairly implied in or incident to the powers expressly granted; (3) those essential to the declared objects and purposes of the corporation - not simply convenient but indispensable. Any fair, reasonable doubt concerning the existence of power is resolved by the courts against the corporation and the power is denied.' Dillon on Municipal Corporations, 3rd Ed., Section 89. We have repeatedly approved this quotation. See *State ex rel. City of Blue Springs v. McWilliams et al.*, 335 Mo. 816, 74 SW2d 363; *State ex rel. City of Hannibal v. Smith, State Auditor*, 335 Mo. 825, 74 SW2d 367, 372."

The rule is stated in C.J.S., Vol. 20, page 802, that a county "possesses only such powers as are expressly or impliedly conferred upon it by constitutional provisions or legislative enactments. Powers not conferred are just as plainly prohibited as though expressly forbidden.* * *"

In the absence of statutory authority, and procedure for holding an election for the purpose, no election can be held by any second or third class county.

Inasmuch as the answer to the first inquiry is in the negative, it is unnecessary to discuss the second.

Conclusion

Therefore, it is our opinion that a proposition to discontinue

planning and zoning in a second or third class county cannot be submitted to the voters.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Paul N. Chitwood.

Very truly yours,


THOMAS F. EAGLETON
Attorney General