

COUNTY HIGHWAY ENGINEER: In a county in which there is no
COUNTY SURVEYOR: county highway engineer the
COUNTY COURTS: county planning commission may
COUNTY PLANNING COMMISSION: nonetheless function.

OPINION NO. 155

July 6, 1967

Honorable H. Dean Whipple
Prosecuting Attorney
Laclede County Courthouse
Lebanon, Missouri



Dear Mr. Whipple:

This is in response to your request for the opinion of this office on the question of whether the County Planning Commission of Laclede County may function inasmuch as that county does not have a county highway engineer.

Laclede is a third class county. Section 64.510, RSMo Supp. 1965, provides authorization for a county planning commission as follows:

"The county court of any county of the second or third class may, after approval by a vote of the people of the county, provide for the preparation, adoption, amendment, extension and carrying out 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 the state. Upon the adoption of the county plan there is created in the county a county planning commission as hereinafter provided."

The members of the county planning commission are specified in Section 64.520 as follows:

"Such county planning commission shall consist of one of the judges of the county court selected by the county court, the county highway engineer, and one resident freeholder appointed by the county court from the unincorporated part of each township in the county, except that no such freeholder shall be appointed from a township in which there is no unincorporated area. Said township representatives are hereinafter

Honorable H. Dean Whipple

referred to as appointed members. The term of each appointed member shall be four years or until his successor takes office, except that the terms shall be overlapping and that the respective terms of the members first appointed may be less than four years. The terms of all other members shall be only for the duration of their tenure of official position. All members of the county planning commission shall serve as such without compensation, except that an attendance fee as reimbursement for expenses, for not to exceed four meetings per year, may be paid to the appointed members of the commission in an amount as set by the county court, not to exceed ten dollars per meeting. The planning commission shall elect its chairman who shall serve for one year."

Section 64.550 provides that, "The county planning commission shall have 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." This section also specifies how the official master plan shall be developed, what it may include, provides for hearings and states that, "The adoption of the plan, or part thereof, shall be by resolution carried by not less than a majority vote of the full membership of the county planning commission."

Under these statutes the county planning commission is created by a vote of the people and it is created without regard to the question as to whether the office of county highway engineer is filled or vacant. Moreover, Section 64.520, provides that a majority vote of the commission is sufficient to carry a resolution of the commission to adopt an official master plan of the county. Thus, even if the county engineer was a member of the commission but did not attend any meetings, the commission could still function without his presence. It follows, therefore, that when the county does not have a county highway engineer, such vacancy on the commission does not nullify or make inoperative the adoption of the county plan and creation of the planning commission approved by a vote of the people pursuant to Section 64.510.

We are enclosing a copy of Opinion issued June 27, 1958, to Honorable Charles E. Murrell, Jr., Prosecuting Attorney of Knox County, Missouri, wherein this office held that the county board

Honorable H. Dean Whipple

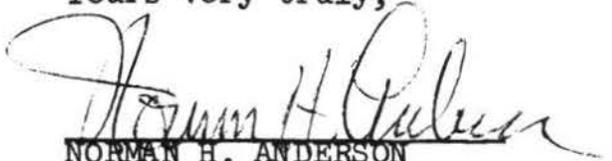
of equalization could function even though the county at that time did not have a county surveyor whom by statute is made a member of the county board of equalization. It appears that the same theories of law should be applied to the county planning commission when the county does not have a county highway engineer.

CONCLUSION

It is the opinion of this office that in a county in which there is no county highway engineer the county planning commission may nonetheless function.

The foregoing opinion, which I hereby approve, was prepared by my assistant L. J. Gardner.

Yours very truly,


NORMAN H. ANDERSON
Attorney General

Enclosure: Opinion to Murrell,
June 27, 1958.