

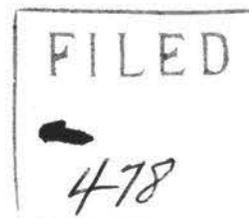
COUNTIES: 1. Section 64.900, RSMo 1967 Supp.,
COUNTY PLANNING & ZONING: does not authorize the voters of
Jefferson County to terminate county
planning and zoning adopted pursuant to the authority of Sections
64.510 through 64.690, RSMo 1959, as amended.

2. There is no constitutional or statutory authority for conducting a referendum on whether Jefferson County shall continue with planning and zoning unless the voters of Jefferson County, pursuant to Section 64.905, RSMo 1967 Supp., adopt county planning or zoning under the provisions of Sections 64.800 to 64.905, RSMo 1967 Supp., thereby bringing the county within the coverage of Section 64.900, RSMo 1967 Supp.

OPINION NO. 478

December 11, 1969

Honorable G. William Weier
Prosecuting Attorney
Jefferson County Court House
Hillsboro, Missouri 63050



Dear Mr. Weier:

This letter is in response to your request for an official opinion of this office on the following question:

"Jefferson County is a second class county and in 1962 enacted planning and zoning under the provisions of Sections 64.510 through 64.690. Subsequent to this enactment, to wit: in 1965, Sections 64.800 through 64.950 were enacted as an alternate plan for counties of second class.

"Under the alternate plan above and particularly 64.900, there is a provision for termination of planning and zoning by a petition and vote. There is no such provision under Sections 64.510 through 64.690. We request your opinion as to whether Section 64.900 applies to the first plan which would thereby permit a petition and a vote to vote out planning and zoning in Jefferson County. If you do not find that this section would apply to the planning and zoning in Jefferson County we would like to know your opinion as to any other common law or statutory means by which a referendum on the question could be had."

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We interpret this question to include two questions:

I. Does Section 64.900, RSMo 1967 Supp., apply to a county planning and zoning adopted pursuant to Sections 64.510 through 64.690, RSMo 1959?

II. If not, is there any other means by which a referendum on the question of whether to continue with planning and zoning in Jefferson County can be submitted to a vote of the people?

I.

As you point out in your opinion request, there is no provision under Sections 64.510 through 64.690, RSMo 1959, as amended, for a county to discontinue planning and zoning once it has been instituted pursuant to the provisions of those sections. In Opinion No. 234 of this office dated August 19, 1964, and addressed to the Honorable William W. Hoertel, we held that there was no statutory authority for submitting to the voters a proposition to discontinue planning and zoning and, in the absence of such authority, no election could be held by any second or third class county. A copy of Opinion No. 234 is enclosed herewith.

In 1965, as part of an alternative county planning and zoning procedure, Section 64.900 was enacted. Section 64.900, RSMo 1967 Supp., reads in its entirety as follows:

"1. Upon receipt of a petition signed by a number of eligible voters resident in the county equal to five per cent of the total vote cast in the county at the next preceding election for governor requesting an election on the question, the county court in any county which has adopted a program of county planning, county zoning or county planning and zoning shall, at a special election called for the purpose or at the next general election, submit to the voters of the county the proposition to terminate the program. The county clerk shall prepare the ballot in substantially the following form:

For the termination of (county planning, county zoning or county planning and zoning)

For the continuation of (county planning, county zoning or county planning and zoning). . . .

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"2. If a majority of those voting on the question vote for the termination of the program, the county court shall declare the program terminated and shall discharge any commission appointed thereunder. Any resolution, ordinance or regulation adopted under the program pursuant to the provisions of sections 64.800 to 64.905 shall be void and of no effect from and after the termination of the program as provided in this section."

In determining if this section applies to Jefferson County's planning and zoning adopted pursuant to Sections 64.510 through 64.690, it is important to note that Section 64.905 enacted in 1965 at the same time Section 64.900 was enacted clearly establishes that the provisions of Sections 64.800 to 64.905, RSMo 1967 Supp., are alternative to Sections 64.510 to 64.690, RSMo 1959, as amended.

Subparagraph 1 of Section 64.905 reads as follows:

"1. The provisions of sections 64.800 to 64.905 are established as an alternative to the provisions of sections 64.510 to 64.690."

Furthermore, the last sentence of Section 64.900 states that it pertains only to the alternative plan contained in Sections 64.800 through 64.905.

" . . . Any resolution, ordinance or regulation adopted under the program pursuant to the provisions of sections 64.800 to 64.905 shall be void and of no effect from and after the termination of the program as provided in this section."
[Emphasis supplied]

Therefore, we conclude that Section 64.900, RSMo 1967 Supp., does not apply to planning and zoning as adopted by Jefferson County pursuant to Sections 64.510 through 64.690, RSMo 1959, as amended.

II.

In response to your request for our opinion as to any other common law or statutory means by which a referendum on Jefferson County's planning and zoning could be had, we are not aware of any direct authority granted by the legislature to a county to conduct a referendum on an issue of this type. Article III, Sections 49 and 52(a) of the Missouri Constitution pertain only to referendum on acts of the General Assembly. We were unable to find any constitutional or statutory provision providing for referendums to rescind action taken by a county pursuant to a valid state statute.

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Although no general referendum procedure is available, we call your attention to the second paragraph of Section 64.905, RSMo 1967 Supp., which reads as follows:

"2. If the voters of any second or third class county adopt county planning or zoning under the provisions of sections 64.800 to 64.905 after having previously adopted county planning or zoning under the provisions of sections 64.510 to 64.690, the provisions of sections 64.800 to 64.905 shall be effective in the county and the county planning or zoning shall be conducted thereafter as provided in sections 64.800 to 64.905 rather than as provided in sections 64.510 to 64.690."

Although it would be a circuitous route to reach the objective, we point out that pursuant to this subparagraph the voters of Jefferson County could adopt county planning or zoning under the provisions of Sections 64.800 to 64.905, RSMo 1967 Supp., even though Jefferson County is already operating under planning and zoning pursuant to Sections 64.510 through 64.690, RSMo 1959, as amended. If this were done, county planning or zoning would be conducted thereafter as provided in Sections 64.800 to 64.905 thereby permitting the voters of Jefferson County to terminate county planning and zoning pursuant to the terms of Section 64.900.

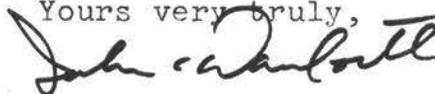
CONCLUSION

Therefore, it is the opinion of this office that:

1. Section 64.900, RSMo 1967 Supp., does not authorize the voters of Jefferson County to terminate county planning and zoning adopted pursuant to the authority of Sections 64.510 through 64.690, RSMo 1959, as amended.
2. There is no constitutional or statutory authority for conducting a referendum on whether Jefferson County shall continue with planning and zoning unless the voters of Jefferson County, pursuant to Section 64.905, RSMo 1967 Supp., adopt county planning or zoning under the provisions of Sections 64.800 to 64.905, RSMo 1967 Supp., thereby bringing the county within the coverage of Section 64.900, RSMo 1967 Supp.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, D. Brook Bartlett.

Yours very truly,



JOHN C. DANFORTH
Attorney General

Enclosure: Op. No. 234
8-19-64, Hoertel