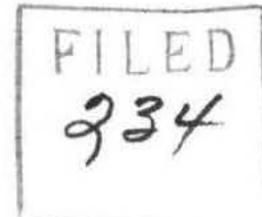


Answer by letter-Ashby

March 23, 1970

OPINION LETTER NO. 234



Honorable Charles S. Broomfield
State Representative, District 87
4801 North Lister
Kansas City, Missouri 64119

Dear Representative Broomfield:

This letter is written to answer your inquiry whether there is a conflict between Section 71.150 and Section 89.080, V.A.M.S. and the above statutes' application regarding the Board of Adjustment under your ordinance.

Section 71.150 of the Revised Statutes of Missouri, 1959, reads, in pertinent parts, as follows:

"Property qualifications for officers prohibited.--No property qualification shall be required of any person to render him eligible to any office in any city or incorporated town."

Section 89.080, RSMo 1959, reads as follows:

"Such local legislative body shall provide for the appointment of a board of adjustment, and in the regulations and restrictions adopted pursuant to the authority of sections 89.010 to 89.140 may provide that the said board of adjustment may determine and vary their application in harmony with their general purpose and intent and in accordance with general or specific rules therein contained. The board of adjustment shall consist of five members, who shall be freeholders. The membership of the first board appointed shall

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serve respectively, one for one year, one for two years, one for three years, one for four years, and one for five years. Thereafter members shall be appointed for terms of five years each. All members shall be removable for cause by the appointing authority upon written charges and after public hearings. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant. The board shall elect its own chairman who shall serve for one year. The board shall adopt rules in accordance with the provisions of any ordinance adopted pursuant to sections 89.010 to 89.140. Meetings of the board shall be held at the call of the chairman and at such other times as the board may determine. Such chairman, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public. The board shall keep minutes of its proceedings, showing the vote of each member upon question, or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the board and shall be a public record. All testimony, objections thereto and rulings thereon, shall be taken down by a reporter employed by the board for that purpose."

It is a recognized rule of statutory construction that statutes relating to the same subject matter must be considered together even though the statutes may be found in different chapters and were enacted at different times. (State ex rel. Schwab v. Riley, (Mo.) 417 S.W.2d 1). Section 71.150, supra, is a general statute and Section 89.080, supra, is a special statute. See Waterman v. Chicago Bridge and Iron Works, (Mo.) 41 S.W.2d 575, 577. A special statute takes precedence over a general statute. Gross v. Merchants Produce Bank, (Mo.) 390 S.W.2d 591. There is a conflict between Sections 71.150 and Section 89.080, supra. Section 89.080 would govern in those special cases where it is applicable as here under the facts.

However, for your information, the planning and zoning commission authorized by your ordinance under Section 2-51 is appointed under the authority of Section 89.070, RSMo 1959. We have ruled on the validity of this board in our Opinion No. 21 dated January 12, 1970, issued at your request.

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The Board of Zoning Adjustment appointed under Section 2-56 of your ordinance is appointed under authority of Section 89.080. The requirements that the members be freeholders is perfectly valid because Section 89.080, supra (as a special statute), states the Board of Adjustment "shall consist of five members, who shall be freeholders."

We conclude that Section 2-56 of the ordinance requiring members of the Board of Adjustment to be freeholders is valid.

Yours very truly,

JOHN C. DANFORTH
Attorney General