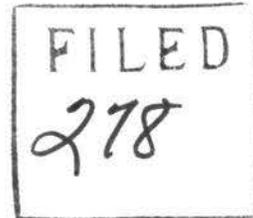


May 6, 1971

OPINION LETTER NO. 278
Answer by Letter - Klaffenbach

Honorable Joe A. Johnson
Prosecuting Attorney
Jefferson County
P. O. Box 246
Hillsboro, Missouri 63050



Dear Mr. Johnson:

This letter is in response to your request for an opinion in which you ask:

- "1. Whether or not the County Court has authority to dismiss members of the Building Commission prior to the end of the two year term for which they were commissioned.
- "2. Whether the County Court has the authority to amend or delete portions of the Building Code adopted pursuant to the provisions of Section 64.180, without the necessity of public hearing and notice, as required for the initial adoption of the Building Code."

In answer to your first question we note that under the provisions of Section 64.180, RSMo 1969 the members of said commission serve for a term of two years. There is no express statutory grant of a power of removal by the county court.

In State vs. Police Commissioners, 14 Mo. App. 297 (1883), at l.c. 302, the St. Louis Court of Appeals stated:

"It is not disputed that the power of removal at pleasure is incidental to the power of appointing, in the absence of any inconsistent limitation in the law which creates the authority to appoint. If the law provides a term for

Honorable Joe A. Johnson

the incumbency, this will supersede the incidental power of removal during the continuance of the term." (Affirmed 88 Mo. 144)

The above holding was approved by the Supreme Court of Missouri in State vs. Maroney, 191 Mo.531, 90 S.W. 141, 147 (1905). The Court therein stated at l.c. 147:

"The reason of this rule is the evident repugnance between the fixed term and the power of arbitrary removal. The effect of this rule is that the right to hold during a fixed term can only be overcome by an express grant of power to remove at pleasure."

We also note that Sections 106.220, RSMo 1969 et seq. which are applicable prescribe a procedure for removal of such county officers.

We conclude in answer to your first question that the county court has no authority to "dismiss" members of the building commission.

In answer to your second question which asks whether a public hearing is necessary to amend the building code it is our view that the statute is clear in this respect in that Section 64.180 provides in part:

"The regulations adopted shall be applicable to the unincorporated territory of the county, except as otherwise provided herein, and may from time to time be amended by the county court after hearings are held and notice given, as prescribed herein." (Emphasis Added)

Very truly yours,

JOHN C. DANFORTH
Attorney General