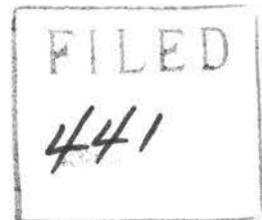


December 13, 1971

OPINION LETTER NO. 441
Answer by letter-Mansur

Mr. Herbert M. Kohn
County Counselor
Jackson County Courthouse
Suite 202
Kansas City, Missouri 64106



Dear Mr. Kohn:

This is in response to your request for an opinion from this office as follows:

"Does a legal protest filed with the Board of Zoning Adjustment require a favorable vote of all of the members of the Board of Zoning Adjustment?"

"Section 64.271 makes such a requirement as to the County Court. Does this section apply to the Board of Zoning Adjustment also? Section 64.281 pertains to the Board of Zoning Adjustment."

The statutes governing county planning and zoning in noncharter class one counties is found in Sections 64.211 to 64.295, RSMo 1969.

Section 64.215, RSMo 1969, provides the county planning commission shall consist of one of the judges of the county court, the county highway engineer, the chairman of the planning bodies of Independence and Kansas City, and six residents of the unincorporated territory of the county to be appointed by the county court.

Section 64.281, RSMo 1969, to which you refer, provides that any county which has appointed a county planning commission shall create by order a county board of zoning adjustment which board

Mr. Herbert M. Kohn

shall consist of the three judges of the county court with authority to hear and decide appeals regarding the enforcement of county zoning regulations.

On passing on the matters presented on appeal under Section 64.281, supra, the county zoning board members are not acting in their official capacity as members of the county court but are acting as members of an independent board created by statute as the county board of zoning adjustment.

You inquire whether the county board of zoning adjustment when transacting business under Section 64.281 requires a favorable vote of all members of the board as is required by members of the county court under Section 64.271.

It is our opinion that it does not for two reasons: First, because the statutory provision which requires a favorable vote of all members of the county court applies only to proceedings under Section 64.271. Second, because the county board of zoning adjustment established under Section 64.281 is an independent board created by statute, separate and distinct, from the county court although said board is composed of the members of the county court.

Section 1.050, RSMo 1969, provides:

"Words importing joint authority to three or more persons shall be construed as authority to a majority of the persons, unless otherwise declared in the law giving the authority."

Since there is no provision to the contrary in Section 64.281, the provisions of Section 1.050 are applicable; and there is, therefore, no requirement that action taken by the county board of zoning adjustment must be by unanimous vote.

It is therefore the opinion of this office that there is no requirement that action taken by a county board of zoning and adjustment created under Section 64.281, RSMo, must be by unanimous vote.

Yours very truly,

JOHN C. DANFORTH
Attorney General