

COUNTY PLANNING AND ZONING: County planning and zoning under Sections 64.510 to 64.690, RSMo, adopted by the voters of Marion County, Missouri, on November 3, 1964, cannot be terminated by a vote of the people. A county court cannot abolish the county planning commission after it has been established nor can a county court repeal all planning and zoning ordinances and regulations.

OPINION NO. 90

March 28, 1973



Honorable Ronald R. McKenzie
Prosecuting Attorney
Marion County
Tower Plaza, Clinic Road
Hannibal, Missouri 63401

Dear Mr. McKenzie:

This is in response to your request for an opinion from this office regarding the authority of the county court over the county planning commission and their ordinances and regulations. It is our understanding that Marion County has a planning commission which commission has jurisdiction in county planning and zoning matters. You inquire whether planning and zoning approved by a vote of the people of Marion County on November 3, 1964, may be abolished by a vote of the people.

Marion County is a third class county and the provisions of Chapter 64, RSMo, govern. Section 64.510 to and including Section 64.690, RSMo 1959, were in effect and governed planning and zoning as was approved by the people of Marion County on November 3, 1964.

You inquire whether Section 64.900, RSMo Supp. 1967, authorizes the county court to submit to the voters of Marion County the question whether county planning and zoning should be terminated.

We are enclosing herewith Opinion No. 234 issued by this office on August 19, 1964 to Honorable William W. Hoertel, Prosecuting Attorney of Phelps County and Opinion No. 478 issued by this office on December 11, 1969 to Honorable G. William Weier, Prosecuting Attorney of Jefferson County.

We believe these opinions answer the question you have submitted regarding the authority of the county court to submit to

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the voters whether county planning and zoning in Marion County should be terminated. As stated in these opinions, it is our view that there is no authority under Sections 64.510 to 64.690 for the question to be submitted to the vote of the people to terminate planning and zoning in Marion County.

We believe these opinions answer the other questions you submit except question No. 4 regarding authority to repeal an ordinance concerning subdivisions.

You inquire whether the county court can repeal all planning and zoning ordinances and regulations.

We are unable to find any provisions under Sections 64.510 to 64.690, RSMo, for the repeal of planning and zoning regulations once they are adopted. Section 64.670 provides that the regulations imposed and the districts created under authority of Sections 64.510 to 64.690 "may be amended from time to time by the county court by order" but no such amendment shall be made by the county court except after recommendation of the county planning commission or zoning commission at the hearings thereon by the commission. The word "repeal" is not found in any provisions of these statutes. In Section 64.580, RSMo, express provision is given to change and amend the master plan and regulations governing subdivisions of land but provides that such subdivision regulations shall be adopted, changed or amended only after a public hearing. The question is whether this includes the repeal of a regulation legally adopted.

In 101 C.J.S. Zoning §124 in discussing whether the legislative body of a municipality ordinarily has power to repeal previously adopted zoning regulations, the rule is stated as follows:

"Except where the county or municipal body is granted only the power to create or establish zones, and is not granted the power, expressly or by implication, to supervise, control, or repeal its zoning ordinances, a municipality or other governmental entity may repeal a zoning ordinance or regulation, although such course cannot adversely affect rights theretofore acquired under the sanction of the ordinance. This power should be exercised reasonably. An amendment is in some instances affected by repeal of the ordinance to be amended and enactment of the new ordinance."

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In *Stillbar Construction Company v. Town of Harrison*, 143 N.Y.S.2d 804 (1955), the court held the municipality's power to revoke or repeal its zoning ordinances is plenary and inherent in the grant to it of legislative power to enact ordinances.

In *City of St. Louis v. Cavanaugh*, 207 S.W.2d 449 (Mo. 1948), the issue was whether an ordinance of the city of St. Louis which repealed the original ordinance that provided the bridge across the Mississippi River should "at all times be free and forever remain a free bridge" was a valid ordinance. The court held the power of the city of St. Louis to repeal ordinances providing for a free bridge across the Mississippi River was incidental to the power to enact them.

State ex rel. Luechtefeld v. Arnold, 149 S.W.2d 384 (St.L.Ct. App. 1941) involved a general zoning ordinance of the city of Richmond Heights which authorized dwellings for "one family only." Ordinance No. 147 which authorized dwellings for "one family only" in the district where relator sought to build duplex dwellings was duly enacted. Thereafter Ordinance No. 349 was enacted allowing two family dwellings in the district, but the ordinance was enacted without reference to or recommendation from the city planning commission or a public hearing as required by statute. The only purpose of this ordinance was to repeal Ordinance No. 147. The court held Ordinance No. 349 was invalid because it had been enacted without compliance with the requirements of the statutes and the zoning ordinances affecting changes in the regulations, restrictions, and boundaries of the zoning district. The question was not raised in this case that the city council had no authority to repeal a zoning ordinance properly adopted. The court based its decision on the theory that the repealing ordinance had not been properly adopted which we believe implies that the city council had authority to repeal a prior enacted zoning ordinance by a subsequent ordinance duly adopted in the manner and method provided for adopting the original zoning ordinance. See also *Landau v. Levin*, 213 S.W.2d 483 (Mo. 1948).

It is our view that planning and zoning regulations may be amended or repealed in the same manner in which they were enacted but the county court cannot repeal all planning and zoning ordinances and regulations.

CONCLUSION

It is the opinion of this office that county planning and zoning under Sections 64.510 to 64.690, RSMo, adopted by the voters of Marion County, Missouri, on November 3, 1964, cannot be terminated

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by a vote of the people. A county court cannot abolish the county planning commission after it has been established nor can a county court repeal all planning and zoning ordinances and regulations.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Moody Mansur.

Yours very truly,

A handwritten signature in black ink, appearing to read "John C. Danforth". The signature is written in a cursive style with a large, sweeping initial "J".

JOHN C. DANFORTH
Attorney General

Enclosures: Op. No. 234
8/19/64, Hoertel

Op. No. 478
12/11/69, Weier