



OFFICES OF THE

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY

July 22, 1975

JOHN C. DANFORTH
ATTORNEY GENERAL

OPINION LETTER NO. 143

Mr. Daniel M. Buescher
Prosecuting Attorney
Franklin County
County Courthouse
Union, Missouri 63084

Dear Mr. Buescher:

This is in response to your request for an opinion on the following questions:

- "1. Can a County Building Commission and Code established and adopted by the County Court, pursuant to R.S.Mo. 64.170 et seq., be abolished by petition and referendum?
- "2. If so, can such petition be combined with a petition to abolish a County Planning Commission in such a manner as to make the two petitions a single request?
- "3. If a County Building Commission cannot be abolished by referendum, does inclusion of such request in a petition to abolish the County Planning Commission invalidate such petition?
- "4. If so, may the petitions be amended so as to delete the words referring to the Building Commission, or must the petitioners submit a new petition containing

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only a request for an election regarding abolition of the Planning Commission?

- "5. If the County Building Code and Commission cannot be abolished by referendum, may the County Court nevertheless submit the question to the people in a non-binding referendum pursuant to a petition therefor?
- "6. Will the insertion of the words 'or as soon thereafter as possible', in a petition referring to the time requested for the election, after the petition has been signed, invalidate such petition so as to prohibit calling an election pursuant to such petition?"

In answering these questions we note that Franklin County is a second class county.

In answer to your first question, there is no general law or constitutional provision which would generally subject the action of the county court of a second class county to referendum. The provisions of Article III, Section 52(a) of the State Constitution providing for referendum apply only to laws enacted by the State Legislature. The statutory sections relating specifically to building commissions of second class counties, Section 64.170 et seq., do not provide for referendum on the issue of the existence of the county building commission. Therefore, we are of the opinion that the question of the continued existence of a county building commission is not subject to referendum.

In view of the answer to your first question, no answer is required for your second question.

With respect to your third question, you have included a copy of a petition with your opinion request which we assume is similar in form to the other petitions submitted. The petition provides in pertinent part to this opinion request as follows:

"COUNTY COURT OF FRANKLIN COUNTY

UNION, MISSOURI

STATE OF MISSOURI)
) SS
 COUNTY OF FRANKLIN)

No. _____

Mr. Daniel M. Buescher

PETITION TO ABOLISH
PLANNING AND ZONING AND BUILDING COMMISSION

TO: Planning and Zoning AND: Presiding Judge of the
 and Building Commission County Court of Franklin
 Franklin County, Missouri County, Union, Missouri

We, the undersigned, being a [sic] registered voters in the County of Franklin, State of Missouri, do herewith petition and request that the Planning and Zoning and Building Commission be abolished and that the matter of its existence be voted upon and placed upon the November, 1974 ballot for referendum: . . ."

Section 64.900 appears to be the only section relating to the abolishment of county planning and zoning. That section provides:

"1. Upon receipt of a petition signed by a number of eligible voters resident in the county equal to five percent 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).

"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

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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."

That section is not specific as to the content or form for a petition requesting the abolishment of county planning and zoning. From the petition that has been submitted to the county court, it appears that the circulators and the signers of the petition considered that there was one commission, namely; "planning and zoning and building commission." This is particularly indicated by the form in which the petition is addressed to the "planning and zoning and building commission." However, even if abolishment of only one commission may have been intended, it is not at all clear what commission the circulators and signers had in mind. Furthermore, Section 64.900 does not deal with the abolishment of a commission but deals with the abolishment of county planning and zoning. Therefore, we believe the petition is ambiguous on its face and it cannot be deemed to refer to an election on the issue provided for by Section 64.900. Since there is no other issue of that nature which may be submitted by means of a referendum, we believe the petition is void. In reaching this conclusion, we note that there are no Missouri cases directly on point. However, the Massachusetts Supreme Court has held the description of an initiative measure in an initiative petition must be complete enough to convey an intelligible idea of the scope and import of the proposed law and it ought not to be clouded by undue detail nor so abbreviated as not to be readily comprehensible. In re Opinion of the Justices, 171 N.E. 294, 69 ALR 388 (Mass. 1930).

In our opinion, a Missouri court in passing upon a petition for a referendum on county planning and zoning would follow the guidelines set forth by the Massachusetts court for an initiative petition and following such guidelines hold that the petition you have submitted with your opinion request is void.

With respect to your fourth question, we know of no authority which would permit a petition proposing a referendum to be amended after it has been signed.

With respect to your fifth question, we know of no authority which would permit a county court to submit the question of the abolishment of the county building code and commission to the voters in a non-binding election.

With regard to your last question, Section 64.900 provides that the question is to be voted on at the next general election or at a special election called by the county court. Since the

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county court has the discretion to determine the time of the election, we believe a provision calling for an election at a particular time is surplusage and has no force or effect. Such language would not void an otherwise valid petition.

Very truly yours,

A handwritten signature in cursive script, appearing to read "John C. Danforth".

JOHN C. DANFORTH
Attorney General