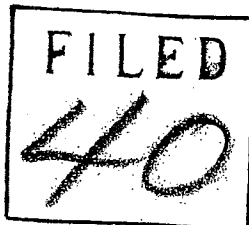


PLANNING AND ZONING:  
CLASS THREE COUNTIES:  
MEMBERSHIP:

A resident of Farley, Missouri, an incorporated town, is disqualified to act as a member or to perform service on the Platte County Zoning Commission.



July 15, 1954

Honorable Andrew J. Higgins  
Prosecuting Attorney  
Platte County  
Platte City, Missouri

Dear Mr. Higgins:

This will acknowledge the receipt of your letter requesting an opinion from this office. This opinion request, omitting caption and signature, is as follows:

"The Platte County Zoning Commission requests that I secure the opinion of your office on the following question.

"Farley, Missouri is a town in Platte County, Missouri, which was incorporated in the early days of Platte County and for many years has been inactive in respect to performing municipal functions electing officers and in any way governing themselves as an incorporated city, town or village. The Platte County Zoning Commission is organized and exists under and by virtue of Chapter 64, R.S. Mo. 1949, providing for zoning of the unincorporated part of the county. The resident freeholder appointed to the commission from Lee township resides in the said town of Farley, Missouri.

"Question: Is a member of the Platte County Zoning Commission residing in the town of Farley aforesaid disqualified from service on the Platte County Zoning Commission?"

The County Planning, Zoning and Recreation statutes now in force in Missouri were contained in House Bill No. 465, passed by the 66th General Assembly (Laws of Missouri,

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1951, page 406, Cumulative Supplement, 1953, page 79, Laws of Missouri, 1951, page 406.)

This Act is an amendment to Chapter 64, V.A.M.S. 1949.

The sections of said House Bill No. 465 providing for county planning, zoning and recreation are numbered Sections 1 to 16a, Laws of Missouri, 1951. These sections are numbered in Chapter 64, V.A.M.S. 1949, as so amended, (Cumulative Supplement, 1953, page 79), as Sections 64.510 to 64.690. We shall refer here to these sections as last above numbered.

We are particularly concerned here, in answering the question submitted, with the provisions of Sections 64.510, 64.520 and 64.530 (Cumulative Supplement, 1953, Laws of Missouri, 1951, page 406), V.A.M.S. 1949.

Said Section 64.510 provides that counties of the second and third classes may, by the action of the County Court, and after a vote of approval thereof, provided for in said Section 64.530, by the people of said county, provide for and carry out a planning and zoning plan for all areas of any such county adjoining and extending not more than forty (40) miles from the corporate limits of any city which now has or may hereafter have more than 70,000 inhabitants. This section also provides for the creation in each of such counties, upon the adoption of such county plan, of a County Planning Commission. Platte County, Missouri, is a county of the third class, having a population, according to the 1950 Federal Census of 14,973 inhabitants and an assessed valuation of property of \$25,585,811.00.

Section 64.520 provides for the appointment, residence qualifications, official identity and terms of office of members of such Commission. Said Section 64.520 reads as follows:

"County planning commission--members--term--chairman. -- Such county planning commission shall consist of one of the judges of the county court selected by the county court,

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the county highway engineer, and one resident freeholder appointed by the county court from the unincorporated part of each township in the county, except that no such freeholder shall be appointed from a township in which there is no unincorporated area. Said township representatives are herein-after referred to as appointed members. The term of each appointed members shall be four years or until his successor takes office, except that the terms shall be overlapping and that the respective terms of the members first appointed may be less than four years. The terms of all other members shall be only for the duration of their tenure of official position. All members of the county planning commission shall serve as such without compensation. The planning commission shall elect its chairman who shall serve for one year. (L. 1951 p. 406 § 2)".

We believe your question must be answered by applying thereto the provisions of said Section 64.520, respecting the appointment of the members of the Commission, which state that the membership of the Commission shall include one resident freeholder, appointed by the County Court, from the unincorporated part of each township in the county. According to the statement in the letter requesting this opinion: "Farley, Missouri is a town in Platte County, Missouri, which was incorporated in the early days of Platte County and for many years has been inactive in respect to performing municipal functions electing officers and in any way governing themselves as an incorporated city, town or village."

It, therefore, appears that the town of Farley in Platte County, Missouri, is in fact and in law still an incorporated town in Lee Township in said county; that no person who is a resident of said town of Farley is eligible to be appointed from Lee Township in said county as a member of said Zoning Commission of said county; and that the appointment as a member of the Platte County Zoning Commission of a resident of said

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town of Farley, if made, would be unlawful and ineffective, because in conflict with the provisions of said Section 64.520, which define the conditions constituting eligibility for membership in a Zoning Commission in any class two or class three county in this State.

It is said in the letter requesting an opinion on this question that the town of Farley for many years has been inactive in respect to performing municipal functions, electing officers and in any way governing themselves as an incorporated city, town or village. This situation does not alter the status of the town of Farley as an incorporated town. Once incorporated as a town, Farley, Missouri, still is an incorporated town under the law, unless and until the town shall be disincorporated as provided by the statutes of this State. Sections 80.570 and 80.580, V.A.M.S. 1949 (Sections 7295 and 7296, R.S. Mo. 1939) point out the proceedings to be taken to disincorporate a town such as the said town of Farley.

The Supreme Court of Missouri has construed these statutes in numerous decisions of the Court and has consistently held that a municipal corporation can be disincorporated only by following the procedure provided by statute. A recent decision by the Court so holding, is *In Re City of Kinloch*, 242 S.W. (2d) 59. The Court, l.c. 62, of the opinion, on this question, said:

"\* \* \* A municipal corporation when once incorporated can only become disincorporated by resorting to the proceedings pointed out by statute. State ex rel. and to Use of Behrens v. Crismon, supra; State ex rel. Hambleton v. Town of Dexter, 89 Mo. 188, 1 S.W. 234."

It, therefore, appears clear that the town of Farley is an incorporated town in Lee Township, Platte County, Missouri, and that no resident of said town of Farley is eligible for appointment to membership or to act as a

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member of the Platte County Planning and Zoning Commission from Lee Township in said county, because such person would not be appointed from an unincorporated part of such township in Platte County, as is required by the provisions of said Section 84.520 (Cumulative Supplement, 1953, page 80, Laws of Missouri, 1951, page 406) V.A.M.S. 1949.

#### CONCLUSION

Considering the premises, it is the opinion of this office that a member of the Platte County Zoning Commission residing in the incorporated town of Farley, Lee Township, Platte County, Missouri, is disqualified as a member and from service on the Platte County Zoning Commission.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. George W. Crowley.

Very truly yours,

JOHN M. DALTON  
Attorney General

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