



STATE OF KANSAS

Office of the Attorney General

1st Floor, State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

CURT T. SCHNEIDER
Attorney General

September 22, 1975

ATTORNEY GENERAL OPINION NO. 75- 373

Mr. Walter N. Scott
Legal Counselor
Topeka-Shawnee County Metropolitan
Planning Commission
Courthouse - Room 209
Topeka, Kansas 66603

Re: Cities--Joint Planning Commission--Approval of Plan

Synopsis: Authority for final approval of the official comprehensive plan of the Topeka-Shawnee County metropolitan planning area and any amendments thereto, rests with the Topeka-Shawnee County Metropolitan Area Planning Commission, and not with the governing bodies of the city and county.

* * *

Dear Mr. Scott:

As counsel for the Topeka-Shawnee County Metropolitan Planning Commission, you inquire whether final power to approve a comprehensive plan, parts thereof or amendments thereto, rests with the Commission, or with the respective governing bodies of the City of Topeka and the County of Shawnee.

The Planning Commission is created pursuant to K.S.A. 1974 Supp. 12-716 *et seq.* This initial section states thus, in pertinent part:

"When two (2) or more of such cities or counties shall by ordinance of each city and by resolutions of the boards of county commissioners enter into agreements providing for such joint planning cooperation, there

Mr. Walter N. Scott
Page Two
September 22, 1975

shall be established a joint planning commission for the metropolitan area or region comprising that portion of the areas of planning jurisdiction of the cities or counties cooperating jointly as shall be designated by the joint ordinances and resolutions. *Such a joint planning agency . . . may be empowered to carry into effect such provisions of state law relating to planning which are authorized for such joining cities or counties and which each may under existing laws separately exercise and perform.* [Emphasis supplied.]

Under K.S.A. 12-718 directs that the joint agreement creating the commission "shall provide for the manner of cooperation and the means and methods of the operation and functioning of the metropolitan or regional planning commission."

Thus, the joint planning commission is created to implement jointly for the cooperating cities and/or counties the state laws relating to planning which are provided for each city separately. The specific means and methods of the operation and functioning of the joint commission are to be provided by the joint agreement.

In the instance of a planning commission of a single city, the planning commission is empowered to prepare a recommended comprehensive plan or portion thereof. Before initial approval thereof, the planning commission must hold a public hearing thereon:

"Before the approval of any such plan or part thereof the planning commission shall hold a public hearing thereon, notice of which shall be published once in the official city newspaper at least twenty (20) days prior to the date fixed for hearing. Upon the approval of any such plan or part thereof, a certified copy of the same shall be submitted to the governing body of and all other legislative and administrative agencies affected thereby." K.S.A. 1974 Supp. 12-704.

Mr. Walter N. Scott
Page Three
September 22, 1975

After approval and submission of the approved recommended plan to the governing body of the city, the latter shall have an opportunity to submit views and recommendations concerning that approved recommended plan to the planning commission:

"The governing body of the city and other legislative and administrative agencies shall, within sixty (60) days after the receipt thereof, consider such proposed plan or part thereof and submit a statement containing its recommendations regarding the same to the planning commission." K.S.A. 1974 Supp. 12-704.

Thereupon, the planning commission "shall reconsider such matter and thereafter may adopt such proposed plan or part thereof as the official plan of the city." Thus, final authority to adopt the official comprehensive plan of the city rests with the planning commission, and not with the city governing body. The same procedure shall be followed for amending any official comprehensive plan:

"The procedure for the adoption of any such amendment, extension or addition to any plan or part thereof shall be the same as that required for the adoption of the original plan or part thereof."

Nothing in K.S.A. 1974 Supp. 12-716 *et seq.*, providing for joint cooperation in area planning, purports to alter this statutory scheme in its application to joint planning commissions. K.S.A. 1974 Supp. 12-720 specifies that nothing in the act shall be construed to remove or limit the powers of cooperating cities and counties as provided by state law, a guide to statutory construction which is of little assistance here inasmuch as under existing state law, city governing bodies enjoy no final authority to disapprove or approve the comprehensive plan to be finally adopted by the planning commission. This same section directs that the "official recommendations" of the metropolitan planning commission be made "to the governing bodies of the cooperating cities or counties." It is unclear to what "official recommendations" this provision refers, and it is equally unclear what,

Mr. Walter N. Scott
Page Four
September 22, 1975

if anything, the respective governing bodies may do with such "official recommendations." Presumptively, this phrase refers to those same recommendations which a single-city planning commission would make to its city governing body, as described above, and as to which, insofar as concerns the final comprehensive plan, the planning commission clearly has final approval authority.

Whatever the consequence of this relatively unimportant ambiguity in the statute in its general application, the joint agreement between the City of Topeka and the County of Shawnee deals specifically with the procedure to be followed in the adoption of the comprehensive plan, any part thereof, and any amendment thereto. Sections 30-101 through -115 constitute the joint agreement between the City and the County. Sections 30-111 through -111c deal specifically with the adoption and amendment of the comprehensive plan. These provisions are obviously modelled upon K.S.A. 1974 Supp. 12-704, the statutory procedure for adoption of the plan by single-city planning commissions. Section 30-111 directs the metropolitan planning commission to prepare a comprehensive plan for the "Metropolitan Area." Section 30-111b authorizes the planning commission to adopt such recommended plan after holding a public hearing thereon, adoption of the plan or of any part or amendment or extension or addition thereof to be by resolution of the planning commission. Section 30-111c requires that a certified copy of the resolution, together with all descriptive materials including maps, charts, report and data

"shall be forwarded to both the Board of City Commissioners, City of Topeka, and the Board of County Commissioners, Shawnee County, Kansas, and all other legislative and administrative bodies affected thereby."

Thereupon, the two governing bodies shall have sixty days to "consider such proposal and *submit a statement containing its recommendation to the Planning Commission.*" [Emphasis supplied.] Thereupon, section 30-111c continues,

"The Planning Commission shall consider such recommendation at a regular scheduled meeting and may adopt the proposed plan in whole or in part thereof as the Official Plan for the Metropolitan Area."

Mr. Walter N. Scott
Page Five
September 22, 1975

This language squarely places final authority to approve the official comprehensive plan with the Metropolitan Area Planning Commission. The governing bodies of the city and county are authorized to submit statements containing their recommendations to the Planning Commission prior to its final action, but that is the extent of the voice of the governing bodies in the final approval process.

Section 30-104 of the joint agreement, as set out in the City Code, describes generally the functions and authority of the Topeka-Shawnee County Metropolitan Planning Commission. It states in pertinent part thus:

"As a primary function the Planning Commission shall have the responsibility for the preparation, adoption and recommendation of a long-range comprehensive plan to guide the future physical development of the Topeka Metropolitan Area. . . . The plan and its recommendations may in whole or in part be adopted by the governing bodies."

In the face of the very explicit and unambiguous provisions of sections 30-111 through 30-111c for the preparation, adoption and approval of the official comprehensive plan, this very general and nonspecific reference, permissive in nature, for adoption of the plan by the governing bodies provides little basis upon which to disregard the express and specific provisions of sections 30-111 through 30-111c. Moreover, it is clear that these latter provisions are modelled expressly upon the statutory scheme of K.S.A. 1974 Supp. 12-704 for the approval of comprehensive plans in cities operating their separate and independent planning commissions, where, as is provided in these sections of the Topeka-Shawnee County joint agreement, the city governing body is authorized to make recommendations concerning final approval of the comprehensive plan, those recommendations being subject to final action by the planning commission itself.

On the basis of the foregoing, I cannot but conclude that authority for final approval of the official comprehensive plan, as well as of amendments, additions, or extensions thereof, rests with the Topeka-Shawnee County Metropolitan Planning Commission, and that the governing bodies of the city and county, respectively, are entitled only to submit their recommendations to the Planning

Mr. Walter N. Scott
Page Six
September 22, 1975

Commission for its consideration prior to its final action
on the plan or amendment thereto.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj

cc: Mr. Dan Turner
City Attorney of Topeka
Attn: Mr. Ron Baxter
City Hall
Topeka, Kansas 66603

Mr. Roland Hug
Board of County Commissioners
Shawnee County Courthouse
Topeka, Kansas 66603