



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider,
Attorney General

March 18, 1976

ATTORNEY GENERAL OPINION NO. 76-99

The Honorable Ambrose L. Dempsey
State Representative
3rd Floor - State Capitol Building
Topeka, Kansas 66612

Re: Counties--Zoning--Manufactured Housing

Synopsis: Section 1 of House Bill 3056, which prohibits arbitrary exclusion of "manufactured housing," undefined by the bill, by county planning and zoning authorities, effects no apparent change in existing law, under which any arbitrary, capricious or unreasonable exercise of zoning power is prohibited.

* * *

Dear Representative Dempsey:

You inquire concerning Substitute for House Bill No. 3056, section 1 of which states thus:

"Neither the board of county commissioners nor the planning board of any county shall, in the exercise of any of the powers and duties conferred under article 29 of chapter 19 of Kansas Statutes Annotated, regulate the occupancy or location of dwelling units in such a way as to effect an arbitrary exclusion of manufactured housing."

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It should be noted that the bill does not define the term "manufactured housing," nor is that term defined in article 29, chapter 19, K.S.A.

That chapter contains a number of provisions concerning county planning and zoning powers. K.S.A. 19-2919 is but one of the statutory grants of zoning power, which may be cited for illustrative purposes:

"For the purpose of promoting health, safety, morals, comfort or the general welfare, and conserving and protecting property values throughout the county or portions thereof, the board of county commissioners of any county may by resolution . . . provide for the adoption, or amendment, of zoning regulations in the manner hereinafter provided. Such regulation may restrict and regulate the height, number of stories, and size of buildings, the percentage of lots that may be occupied, the size of yards, courts and other open spaces, the location and use of buildings, structures and land for industry, business, trade, residence, the use of land located in areas designated as floodplains and other uses and including the distance of of any buildings from the road or street."

In attacking any zoning regulation enacted in the exercise of this or any other statutory grant of planning and zoning authority under article 29, chapter 19, K.S.A., the burden of proof rests upon the plaintiff to show that the zoning body has exercised its powers arbitrarily, capriciously or unreasonably. *Hillebrand v. Board of County Commissioners*, 180 Kan. 348, 304 P.2d 517 (1956). Thus, under existing law, any arbitrary exercise of the zoning power, whether involving manufactured housing, whatever that may be, or any other subject within the scope of the zoning power, is prohibited, and may be challenged by any proper plaintiff in a legal action in any district court of the state.

In seeking to determine the meaning of any new or amended statute, the courts frequently follow the commonplace rule of statutory construction cited in *Huss v. DeMott*, 215 Kan. 450, 524 P.2d 743 (1974) thus:

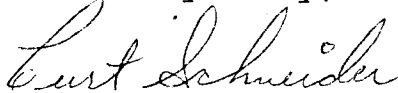
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"In construing changes in a statute this court will presume the legislature intended to supply some want, to fill some deficiency or to add something to make the former legislation more complete and workable." 215 Kan. at 452-453.

Obviously, the bill does not prohibit county zoning boards, planning commissions, and other zoning bodies under article 29, ch. 19, K.S.A., from excluding "manufactured housing." It prohibits only "arbitrary" exclusion, and, of course, any arbitrary zoning regulation against "manufactured housing" cannot stand under existing law. Thus, it is difficult to determine what change in the law this bill is designed to accomplish.

On the face of the bill, I cannot determine that its enactment would work any change whatever in existing law, or place any limitation upon the exercise of county planning and zoning powers which does not already exist under existing decisions of the Kansas Supreme Court prohibiting arbitrary, capricious or unreasonable zoning regulations.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj

cc: The Honorable Patrick Hurley
State Representative
3rd Floor - State Capitol Building
Topeka, Kansas 66612