



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

December 13, 1977

ATTORNEY GENERAL OPINION NO. 77- 386

Mr. William A. Taylor III
Cowley County Counselor
Post Office Box 731
Winfield, Kansas 67156

Re: Counties--Planning Boards--Plats

Synopsis: If a city planning commission or a county planning board has not adopted subdivision regulations pursuant to K.S.A. 12-705 or K.S.A. 19-2918, a plat of a proposed subdivision within the area of the comprehensive plan is not required to be submitted to the planning commission or planning board for its review pursuant to K.S.A. 12-705b or K.S.A. 19-2918c.

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Dear Mr. Taylor:

You inquire concerning the approval and filing of plats of real estate which is located outside the corporate limits of a city. You advise that in Cowley, there are two cities of the second class. Both cities have planning commissions which have approved comprehensive plans, pursuant to K.S.A. 12-701 *et seq.* The county likewise has a comprehensive plan, pursuant to K.S.A. 19-2914 *et seq.*, but which has not adopted subdivision regulations.

You advise that the county planning commission is routinely presented with plats of proposed subdivisions for its approval. If the land which is subject to subdivision is located within a radius of three miles of either of the cities of the second class, the proposed plat routinely includes a provision for approval by the planning commission of the affected city. You

inquire whether the planning commission, not having adopted subdivision regulations, has authority to review, approve and disapprove plats which are presented to it.

K.S.A. 12-705 commences thus:

"The city planning commission of any city which has adopted a comprehensive plan may adopt and may amend regulations governing the subdivision of land located within an area which shall be designated by resolution of the governing body of the city for this purpose."

K.S.A. 12-705b provides in pertinent part thus:

"Whenever any such regulations governing the subdivision of land under the provisions of this act shall have been adopted, the owner or owners of any land located within the area governed by such regulations subdividing the same into lots and blocks or tracts or parcels, for the purpose of laying out any subdivisions, suburban lots, building lots, tracts or parcels . . . shall cause a plat to be made which shall accurately describe the subdivision, lots, tracts or parcels of land . . . and every such plat shall be duly acknowledged by the owner or owners thereof. All such plats shall be submitted to the city planning commission or to the joint committee for subdivision regulation if such has been formed, which shall determine if the same conforms to the provisions of the subdivision regulations."

Parallel provisions are found regarding the county planning commissions at ch. 19, art. 28, K.S.A. K.S.A. 19-2916a authorizes the county planning board to adopt an official comprehensive plan for the county. K.S.A. 19-2918 authorizes the board to adopt subdivision regulations, and K.S.A. 19-2918c contains language identical to that quoted above from K.S.A. 12-705b.

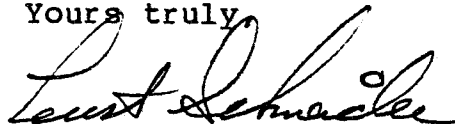
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When, and only when, the planning board or planning commission has adopted subdivision regulations are plats required to be submitted for its review. Indeed, the sole purpose of requiring a plat to be submitted to the planning commission or planning board is for it to "determine if the same conforms to the provisions of the subdivision regulations." If there are no subdivision regulations, there is no occasion to prepare and submit a plat to the planning commission or board, for it has no subdivision regulations to apply to the proposed plat to determine conformance or nonconformance.

Thus, in my judgment, a city planning commission or county planning board which has passed a comprehensive plan only, and which has not adopted any subdivision regulations, has no authority under K.S.A. 12-705b or K.S.A. 19-2918c to require the submission of plats of proposed subdivisions for its review and approval or disapproval. The purpose of such submission under the cited statutes is solely to permit the board or commission to determine that the plat conforms to the subdivision regulations theretofore adopted. If no such regulations have been adopted, by the express terms of either statute no plat is required to be submitted to the board or commission.

It should be pointed out that in *Hudson Oil Co. v. City of Wichita*, 193 Kan. 623, 396 P.2d 271 (1964), the court held that the city could reasonably require the applicant for a zoning change to file a plat of applicant's tract before granting the application. Clearly, there, however, the city did have subdivision rules and regulations in force, and there was no issue as to the power of the city to require filing of a plat when no subdivision regulations were in effect. In *Burke v. McCaffrey, Inc. v. City of Merriam*, 198 Kan. 325, 424 P.2d 483 (1967), the court upheld the city's rejection of a proposed plat, which the claimed was unreasonably and arbitrarily rejected. Once again, there was no issue as to the power of the planning commission to review a plat if it had adopted no subdivision regulations. Moreover, the statute has been substantially amended since the action taken upon which that case was based.

Yours truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj