



STATE OF KANSAS

## Office of the Attorney General

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**Curt T. Schneider**  
Attorney General

January 25, 1978

ATTORNEY GENERAL OPINION NO. 78- 36

Mr. Dale L. Pohl  
City Attorney of Eureka  
Box 68  
Eureka, Kansas 67045

Mr. Donald H. Shoop  
Greenwood County Attorney  
Greenwood County Courthouse  
Eureka, Kansas 67045

Re: Counties--Plats--Filing

Synopsis: If no express statutory authority exists for the review and approval of a plat for filing respecting land located within one mile of the limits of an unincorporated city, which does not have a planning commission and which has not adopted subdivision regulations, and which land proposed to be platted is not an addition to the city, the board of county commissioners, in the exercise of its statutory home rule powers under K.S.A. 1977 Supp. 19-101a, may provide by local legislation for review and approval of such plat by the board prior to filing.

\* \* \*

Gentlemen:

On behalf of Greenwood County and the City of Eureka, you inquire concerning the filing of a plat respecting certain property. You advise that an owner of land located within one mile of the City of Eureka proposes to plat said land and to dedicate roads and easements thereon. It is not proposed that the platted land will be annexed to the city. A question has arisen as to the authority for either the city commissioners of the City of Eureka

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or the board of county commissioners of Greenwood County to review and approve the plat before the same is recorded.

You indicate that three possible statutes have been considered. K.S.A. 19-2633 authorizes the board of county commissioners to review and approve plats of subdivided tracts which are located more than one mile from the limits of any incorporated city. Because the land in question lies within one mile of the city limits, this provision is inapplicable. K.S.A. 12-705 provides for submission of plats of land which are located in the unincorporated territory lying outside of but within three miles of the limits of the city, to be reviewed and approved for filing by the city planning commission. However, because the City of Greenwood has no city planning commission, this authority likewise appears unavailable. Lastly, you have considered K.S.A. 12-401 et seq., which governs the recording of plats of proposed additions to certain cities and towns. This provision likewise appears inapplicable, because no addition to the city is involved.

Like you, I find no express statutory authority permitting the governing body of either the city or county to review the plat for filing. I suggest that the necessary but missing authority might be supplied by the board of county commissioners in the exercise of its statutory home rule powers. K.S.A. 1977 Supp. 19-101a(a) commences thus:

"Counties are hereby empowered to trans-act all county business and perform such powers of local legislation and administration as they deem appropriate . . . ."

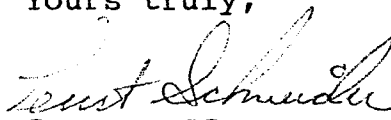
Certainly, the review and approval of plats which are offered for filing respecting unincorporated areas of the county is an appropriate matter of county business. In the exercise of the legislative powers which are vested in the board by this section, it may prescribe that no plat respecting tracts of land located within one mile of the limits of any incorporated city which has not heretofore appointed a planning commission and adopted subdivision regulations governing such land shall be submitted to the board of county commissioners for review. In addition, the resolution might prescribe any standards which such plats are required to meet as a prerequisite for approval. This resolution could be adopted pursuant to K.S.A. 1977 Supp. 19-101a(b), which provides in pertinent part thus:

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"Counties shall apply the powers of local legislation granted in subsection (a) of this section by resolution of the board of county commissioners. If no statutory authority exists for such local legislation other than that set forth in subsection (a) of this section and the local legislation proposed under the authority of such subsection is not contrary to any act of the legislature, such local legislation shall become effective upon passage of a resolution of the board and publication in the official county newspaper."

In my judgment, such a resolution, adopted pursuant to the foregoing, would provide an effective and appropriate legislative remedy for the problem, through the exercise of local county statutory powers of self-government.

Yours truly,

  
CURT T. SCHNEIDER  
Attorney General

CTS:JRM:kj