



STATE OF KANSAS

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June 2, 1980

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ATTORNEY GENERAL OPINION NO. 80- 114

Mr. Don Vsetecka
Finney County Attorney
201 North Main Street
Garden City, Kansas 67846

Re: Counties and County Officers--Planning and Zoning--
Rezoning

Cities and Municipalities--Planning and Zoning--
Joint Planning Commissions

Public Utilities--Powers of State Corporation Commis-
sion--Electric Generation Facilities, Sites

Synopsis: A board of county commissioners which has established a joint planning commission in cooperation with a city or cities in the county may receive recommendations from said joint commission and proceed to consider requests for rezoning property in the county without first establishing its own planning board. Cited herein: K.S.A. 12-715b, 12-715c, 12-715d, 12-716, 12-720, 12-721, K.S.A. 19-2901.

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Dear Mr. Vsetecka:

You have requested our opinion concerning the power of the Finney County Board of County Commissioners to rezone an area of the county from agricultural to heavy industrial to permit use of land by the Sunflower Electric Cooperative, Inc. for construction of an electric generation facility in Finney County. Specifically, you inquire whether the county may rezone the area in question without first appointing a county planning board and receiving a recommendation from said board on the request for rezoning. You advise that your county does not have a county planning board as provided in K.S.A. 19-2901 et seq.

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We are informed, however, by counsel for Sunflower Electric that in April of this year, Sunflower Electric presented its request for rezoning of the area in question to the Holcomb-Garden City-Finney County Area Planning Commission and that the planning commission recommended the requested zoning change of the plant site. (Counsel advises that the area planning commission was created some years ago by joint action of the cities of Holcomb and Garden City and the Finney County Board of County Commissioners, pursuant to K.S.A. 12-716 through 12-721, inclusive.) The matter was then brought on for hearing by the Finney County Board of County Commissioners on May 12, 1980, at which time a landowner in the county objected to the proceedings, arguing that the Board of County Commissioners could take no action regarding Sunflower Electric's request for rezoning without first creating its own planning board, since the area planning commission has no jurisdiction over any property situated more than three miles outside the city limits of Holcomb or Garden City.

K.S.A. 12-716 empowers any two or more cities or counties in Kansas which have adjoining planning jurisdictions, or any county and city or cities within or adjacent to such county, to jointly cooperate in the exercise of their respective planning powers and functions. Cities and counties participating in such a cooperative endeavor may establish a joint planning commission for the "region comprising the portion of the areas of planning jurisdiction of the cities or counties cooperating jointly as shall be designated by the joint ordinances and resolutions." K.S.A. 12-716. The statute further provides:

"Such a joint planning agency for the . . . region 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."

K.S.A. 12-720 is also relevant to your inquiry. That section provides as follows:

"Nothing in the provisions of K.S.A. 12-716 to 12-724, both sections inclusive, and any amendments thereto shall be construed to remove or limit the powers of the cooperating cities and counties as provided by state law. All legislative power with respect to zoning and other planning legislation shall remain with the governing body of the cooperating cities and counties except as otherwise

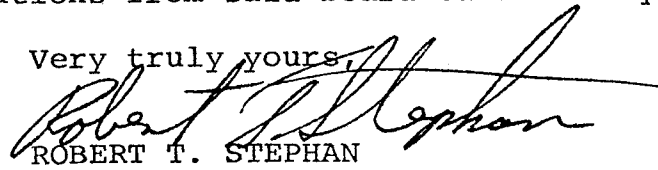
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provided in this act [see K.S.A. 12-715b, 12-715c and 12-715d]. Each participating city or county may continue to have its own planning commission or board but may under the joint agreement and in the interests of economy and efficiency and in the interest of uniform standards and procedures, request the . . . regional planning commission to assume duties and functions of local planning agencies in whole or in part. The . . . regional planning commission shall have the duty and function of promoting public interest and understanding of the economic and social necessity for long-term coordinated planning for the . . . area but its official recommendations shall be made to the governing bodies of the cooperating cities or counties." (Emphasis added.)

Simply stated, cities and counties may deem joint cooperation and the formation of a joint planning commission for the performance of their respective planning and zoning functions to be mutually advantageous and economical, and the above-cited statutes empower them to do so. The cities of Holcomb and Garden City and the Finney County Board of County Commissioners have established such a joint planning commission to perform their planning functions "to guide the future physical development of the Holcomb, Garden City and Finney County area." See Sec. 23-4, Garden City Code; Finney County Resolution No. 12-1969.

Thus, in response to your inquiry, with the establishment of the area or joint planning commission, the Board of County Commissioners may proceed to consider requests for rezoning after receipt of a recommendation for or against the rezoning from the joint planning commission. Certainly, as K.S.A. 12-720, quoted above, expressly provides, the county may have its own planning board or commission to carry on local planning functions, but is not required to have its own such board or commission because the area or joint planning commission obviates the need for such local agencies. Accordingly, the Finney County Board of County Commissioners may proceed to consider requests for rezoning without first establishing its own planning board and receiving recommendations from said board on such requests.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Steven Carr
Assistant Attorney General

RTS:WRA:SC:phf