



STATE OF KANSAS

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May 5, 1983

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ATTORNEY GENERAL OPINION NO. 83- 66

Roy W. Allen
Board of County Commissioners
Saline County
300 West Ash
Salina, Kansas 67401

Re: Planning and Zoning -- Planning Board -- Membership
-- Qualifications

Synopsis: It is within the power of the Kansas legislature to designate the membership composition of a county planning board.

K.S.A. 1982 Supp. 19-2915 requires a board of county commissioners to appoint a member of the board of supervisors of a conservation district within the county to serve on the county planning board. Cited herein: K.S.A. 1982 Supp. 19-2915, Kan. Const., Art. 2, Sec. 1.

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Dear Commissioner Allen:

You have requested the opinion of this office regarding certain provisions of K.S.A. 1982 Supp. 19-2915. Specifically, the county is having difficulty complying with K.S.A. 1982 Supp. 19-2915 which requires that one member of the county planning board be a member of the board of supervisors of a conservation district located within the county. The county's inability to comply with this statutory requirement results from the refusal of all members of the board of supervisors of the Saline County Soil Conservation District to serve on the county planning board. You pose two questions, the first of which states:

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"1) Is it within the constitutional power of the state of Kansas to require local governments to appoint special interest groups [soil conservation district] to its Planning and Zoning Commission?"

In regard to your first inquiry, we direct attention to section 1 of Article 2 of the Constitution of the State of Kansas which provides:

"The legislative power of this state shall be vested in a house of representatives and senate."

This constitutional provision was discussed in Jensky v. Baldwin, 120 Kan. 332 (1926) in relation to certain legislation which imposed conditions of eligibility for the office of county superintendent of public instruction. In finding the subject legislation constitutional, the court discussed the nature and extent of legislative power under our state constitution as follows:

"Under our form of government all governmental power is inherent in the people. Some governmental powers are delegated to congress, or to the federal government, by our federal constitution; those not so delegated are retained by the people. Hence, congress has no legislative power not granted to it by the federal constitution. This is not true of a state constitution. Since the people have all governmental power, and exercise it through the legislative branch of the government, the legislature is free to act except as it is restricted by the state constitution, and except, of course, the grant of authority to the federal government by the federal constitution." (Emphasis added.) 120 Kan. at 334.

In Lemons v. Noller, 144 Kan. 813 (1936) the court cited Sumner County v. Wellington, 66 Kan. 590 (1903) for the following proposition:

"Our constitution limits rather than confers, power, and, hence, we look to it to see what it prohibits, instead of what it authorizes." 144 Kan. at 817.

See also: Atchison Street Rly Co. v. Mo. Pac. Rly. Co., 31 Kan. 660 (1884), Prouty v. Stover, Lieut. Governor, 11 Kan. 235 (1873), State ex rel., Tomasic v. Kansas City, Kansas Port Authority, 229 Kan. 538 (1979) and cf. Von Ruden v. Miller, 231 Kan. 1 (1982).

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Hence, in order to find the statutory requirement that a member of the board of supervisors of a conservation district is beyond the scope of legislative power, a specific constitutional prohibition must be invoked. Our review of the state constitution reveals no such express or implied prohibition. Therefore, in our opinion, the statutory requirement that a county planning board contain one member who is also a supervisor of a conservation district, is within the constitutional power of the state legislature.

Your second inquiry poses the following question:

"If all the Board Members of the District Conservation Board decline appointment to the Planning Commission has the intent of the law [K.S.A. 1982 Supp. 19-2915] been fulfilled?"

You state in your correspondence that invitations from the board of commissioners to serve on the Planning Board have been extended to each member of the board of supervisors for the soil conservation district and that all such invitations have been declined. However, you do not state whether a formal appointment has been made in this regard. We assume that since all invitations were declined, no formal appointment was made.

It is axiomatic that statutes be construed to effectuate the legislative intent. Coleman v. Brotherhood State Bank, 3 Kan.App.2d 162 (1979). We believe that the legislature's choice of the word "shall" evinces a legislative intent that the subject appointment be made by the board of county commissioners. Wilcox v. Billings, 200 Kan. 654 (1968).

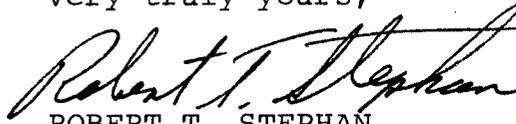
Moreover, when a person accepts the office of supervisor of a soil conservation district, such person is responsible for all statutorily prescribed duties. One such duty is to serve on the planning board if appointed by the county commission. In our judgment, the county commission must appoint a soil conservation district supervisor to the planning board and such appointee must serve in fulfilling part of his or her duties as a soil conservation supervisor.

In conclusion, it is within the power of the Kansas legislature to designate the membership composition of a county planning board.

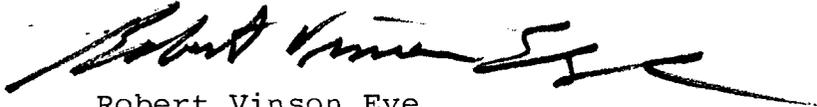
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K.S.A. 1982 Supp. 19-2915 requires a board of county commissioners to appoint a member of the board of supervisors of a conservation district within the county to serve on the county planning board.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Robert Vinson Eye
Assistant Attorney General

RTS:BJS:RVE:hle