FILE

Subject Cities - Interlocal Cooperation Agreement

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Opinion No. 74- 39

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Dear Counselors:

You present questions concerning the validity of an interlocal agreement between the City of Salina and the County of Saline, executed August 14, 1972, pursuant to K.S.A. 12-716, providing for a metropolitan planning commission.

A somewhat lengthy sequence of events preceded execution of the agreement. On February 25, 1972, the board of county commissioners adopted Resolution No. 605, a copy of which has been submitted to us. It is entitled thus:

> "A RESOLUTION creating a Metropolitan Planning Commission for the exercise of joint planning for Saline County, Kansas, and the City of Salina, Kansas; designating the area of joint jurisdiction; designating the qualifications and appointment of members; designating the powers and duties of the commission; and providing for the sharing of expenses of operation."

On that same date, the county commissioners executed the agreement commencing thus,

> "This Agreement made the 28th day of February, 1972, between the governing body of the City of Salina, Kansas hereinafter called the City and the Board of County Commissioners of Saline County, Kansas, hereinafter called County,"

and forwarded it to the city governing body for its action thereon. On February 28, 1972, the city placed on first reading Ordinance No. 8241, which bears the following title:

> AN ORDINANCE CREATING A METROPOLITAN PLANNING COMMISSION FOR THE EXERCISE OF JOINT PLANNING FOR SALINE COUNTY, KANSAS, AND THE CITY OF SALINA, KANSAS; DESIGNATING THE AREA OF JOINT JURISDICTION; DESIGNATING THE QUALIFICATIONS AND APPOINTMENT OF MEMBERS; DESIGNATING THE POWERS AND DUTIES OF THE COMMISSION; AND PROVIDING FOR THE SHARING OF EXPENSES OF OPERATION; AMENDING CHAPTER 27, ARTICLE I OF THE SALINA CODE AND REPEALING THE EXISTING CHAPTER 27, ARTICLE I."

No further action was taken thereon, awaiting approval from this office of the proposed agreement, which was forwarded to us by letter dated March 3, 1972.

By letter dated May 8, 1972, the proposed agreement was returned with suggestions that three corrections or changes be made. Specifically, it was first suggested that the underscored language be added to paragraph 39 thus:

> "That whenever the Metropolitan Planning Commission has a part of its comprehensive plan adopted, a plat for its major street or highway system after consultation the City may establish by ordinance and the County may establish by resolution, . . . setback lines . . . ."

Secondly, it was suggested that K.S.A. 12-710 be substituted in lieu of a reference to Section 1-8 of the Salina Code in paragraph 67. Lastly, we suggested that paragraph 85 be amended to provide that appeals be taken not within ten days after receipt of a written decision by the board, but rather, within a reasonable time therefrom, as provided by the rules of the board.

These changes were made, and the proposed agreement again submitted to this office on July 17, 1972, and it was approved by letter dated August 13, 1972. On August 14, 1972, the board of county commissioners and the city commissioners executed the agreement thus amended and approved. The approved agreement recites in its prefatory language thus:

> "This Agreement made the 28th day of February, 1972, and amended August 14, 1972, between the governing body of the City of Salina, Kansas, hereinafter called the City and the Board of County Commissioners of Saline County, Kansas, hereinafter called County."

Thereafter, on August 21, 1972, Ordinance No. 8241, which was introduced on February 28, 1972, was enacted, and published August 24. On September 11, 1972, approval of the Attorney General was endorsed upon the final document.

The question is presented whether both the city and the county have taken all necessary steps to approve the agreement as required by law. K.S.A. 12-716 states in pertinent part thus:

> "When two (2) or more of such cities or counties shall by ordinance of each city and by resolutions of the boards of county commissioners enter into agreements providing for such joint planning cooperation, there shall be established a joint planning commission for the metropolitan area or region comprising that portion of the areas of planning jurisdiction . . . as shall be designated by the joint ordinances and resolution." [Emphasis supplied.]

We have considered materials submitted by both Mr. Bengtson as City Attorney, and by Constance Achterberg, as Assistant County Attorney for Civil Matters.

Paragraph one of both the February and August drafts of the agreement recits that "the City shall adopt an ordinance approving this agreement between the City and the County," and paragraph two requires that the "County shall adopt a resolution approving this agreement between the City and County."

It is apparently being urged that neither the city nor the county has taken the steps legally required to approve the agreement. Ordinance No. 8241 was introduced on February 28, 1972, and enacted and published apparently without modification on August 24, 1972. The language of the ordinance is fully sufficient to satisfy the requirement of both K.S.A. 12-716 and the language of paragraph one of the agreement, that municipal approval be signified by ordinance. We see no objection of substance whatever to the manner in which the City approved the agreement.

A different objection is lodged against the approval by the county. Resolution No. 605 was adopted on February 25, 1972, at apparently the same time the county commissioners signed the February draft. After execution of the final draft in August, no additional resolution was adopted. It is questioned, accordingly, that the agreement is not legally binding upon the county.

This is not a straightforward instance in which the board of county commissioners signed an agreement but took no other action to effectuate its approval. On the contrary, the board adopted Resolution No. 605 on February 25, 1972, at that time signed the

agreement, and forwarded it to the city commission for its approval. If the city commission had taken final action to approve the agreement at its February 28 meeting, it could not be argued that the county commissioners were required again to adopt an additional resolution to approve that which it had already approved. In that circumstance, both the resolution and the signatures would have been complete.

As it happened, the city chose to delay final action, awaiting approval of the draft from this office. When the requested changes were made, both the county and city commissioners signed the agreement, and the necessary city ordinance was published. The sole question remaining, then, is whether after signing the agreement as amended on August 14, 1972, the county commissioners were required by either K.S.A. 12-716 or by paragraph 2 of the ordinance itself to adopt an additional resolution.

In our view, the resolution of February 25, 1972, fully satisfies the statutory requirement of K.S.A. 12-716, for by that resolution, the board agreed to join with the city in the formation of a metropolitan planning commission, and that is precisely to which the commissioners agreed in their execution of the final draft. Clearly, when adopted on February 25, Resolution No. 605 was intended to satisfy the requirement of paragraph 2, and no further action would have been necessary to finalize approval by the county had the agreement been approved on February 28 by the city. The initial prefatory paragraph of the final agreement recites that it was made on February 28, 1972, and amended on August 14, indicating that the agreement was that initially approved by Resolution No. 605. The minor amendments which were made to the agreement at the instance of this office were technical in nature, and in no way did the agreement thus amended depart from the scope of the resolution which authorized the agreement in the first instance.

We cannot but conclude that there has been substantial compliance with both the requirements of K.S.A. 12-716 and of the agreement itself. We find no basis whatever in the documents and facts thus presented to conclude that the agreement is void or that either the city or the county is now empowered to gainsay its own clearly expressed consent to the agreement, which was expressed in every formality required by the statute and the agreement itself, save for reiteration of Resolution No. 605 after signing of the August draft.

Lastly, it is inquired whether a recommendation of the Metropolitan Planning Commission concerning the rezoning of land within the Metropolitan Planning Area, but outside the corporate limits of the city, must be submitted to the county or the city commission. Paragraph 40 commences thus:

> "That all lands within the City and its extra-territorial jurisdiction shall function under the authority of K.S.A. 12-716 et seq."

Under paragraph 41, before the city may create any zone in that area, the Metropolitan Planning Commission must furnish its recommendations. Paragraph 44 directs the commission to submit its recommendation to the city. In our view, this statement of procedure is clear and unambiguous, and requires that recommendations of the Metropolitan Planning Commission be submitted to the city.

Our attention has been invited to paragraph 68, which states thus:

> "That all lands within the Area but outside legislative jurisdiction of the City shall abide by provisions of Section 2, except, that the Metropolitan Planning Commission shall forward all recommendations for zoning concerning this area to the County for adoption of plans and zoning legislation." [Emphasis supplied.]

The meaning of this paragraph is by no means clear. The direction that all lands within the area shall abide by section 2 is meaningless, for section 2 merely requires the county to approve the agreement by resolution. The reference to lands "outside legislative jurisdiction of the City" refers, in our view, to any land which is within the area, but beyond the territorial jurisdiction over which the city may exercise its zoning authority. Thus, the section may appropriately be construed to require that the Metropolitan Planning Commission forward all recommendations for zoning land within the area, but beyond the zoning jurisdiction of the city, to the county commissioners. This construction conforms to the clear language of sections 40 through 45.

Thus, in summary, we conclude that the agreement is valid and binding upon both the city and county, and that both have taken steps required both by statute and the agreement itself to execute the agreement and bind themselves thereto. Further, we conclude that recommendations concerning the zoning of land beyond the three-mile area around the city are to be directed to the county commissioners, whereas recommendations for zoning of land within the three-mile area are to be forwarded to the city commissioners.

Yours very truly,

VERN MILLER
Attorney General

VM:JRM:jsm