

FILE

Subject

Counties
Planning & Zoning

Copy to



STATE OF KANSAS

Office of the Attorney General

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VERN MILLER
Attorney General

August 15, 1974

Opinion No. 74- 275

Jack N. Turner
Sedgwick County Counselor
Room 320
Sedgwick County Courthouse
Wichita, Kansas 67203

Dear Mr. Turner:

You inquired some time ago concerning the authority of the Sedgwick County Board of County Commissioners to adopt a proposed county construction code, which was recommended for adoption by the Metropolitan Area Planning Commission, a joint commission representing both the county and the City of Wichita.

Under ch. 110, L. 1974, conferring certain powers of self-government upon counties,

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

A county construction code may fairly be deemed to be an appropriate matter of "local legislation and administration."

The question of the enforceability of county resolutions and regulations is one which is not readily answered. The justification for adopting and enforcing a county construction code is surely analogous to that which has been declared by the Legislature to warrant county zoning regulations, i.e., that stated in K.S.A. 19-2914:

"For the purpose of promoting the public health, safety, morals, comfort, and general welfare, conserving and protecting property and building values throughout any county"

Jack N. Turner
August 15, 1974
Page Two

Since your letter was received, the Legislature has enacted S.B. 175, now found at ch. 110, L. 1974. Section 2 thereof provides in pertinent part thus:

"(a) Counties are hereby empowered to transact all county business and perform such powers of local legislation and administration as they deem appropriate, subject only to the following limitations, restrictions, or prohibitions"

A county building code is surely, by any legal standard, a matter of "local legislation and administration." Indeed, there are no statewide building codes applicable generally by state law. A building code is properly a local concern, regarding which, in our view, a county may legislate pursuant to S.B. 175. Such a code would be enacted in the exercise of that police power which is explicitly described by the Legislature as the basis for adoption of local zoning regulations. We think that, by virtue of ch. 110, L. 1974, counties enjoy a general power of local legislation and administration regarding matters which properly fall within the concerns based upon the police power so described. A county building code is such a matter.

The question of enforcement of such codes raises more difficult questions. The proposed resolutions, included in the report enclosed with your letter, contain uniform provisions for enforcement. For example, it provided that in case any violation order is not promptly complied with, the appropriate official, e.g., the chief building inspector,

"shall request the District Attorney to institute an appropriate action or proceeding at law or in equity against the person responsible for the violation, ordering him to"

correct or remedy the violation. The penalty provisions read commonly thus:

"Every person, firm, or corporation who shall violate any provision of this code shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine or by imprisonment as provided in the laws of the State of Kansas for such misdemeanor."

Whether counties are empowered by virtue of 1974 S.B. 175 to prescribe codes for violation of which penal consequences attach is a question which has not been resolved. The question is academic, of course, unless there is some court having jurisdiction to entertain prosecutions for such violations. In other than

Jack N. Turner
August 15, 1974
Page Three

civil matters, K.S.A. 20-2002 prescribes the jurisdiction of the Court of Common Pleas:

"[S]aid court shall have, within the county where it is located, the jurisdiction, power and duty, in cases in which a violation of the laws of the state is charged, to conduct the trial of misdemeanor charges and the preliminary examination of felony charges."

Its jurisdiction extends, thus, only to misdemeanors under state law. Section 2(a) of S.B. 175 provides that "counties shall have no power under this section to affect the courts located therein" The precise scope of the term "affect" remains to be defined. Surely, it at least prohibits a county from exercising its powers of local legislation and administration so as to alter the jurisdiction of any court which is fixed by state law. Thus, if the county proceeds to adopt a code for violation of which misdemeanor charges may be filed, there must exist under state law a court having jurisdiction of such offenses, for the county cannot create such jurisdiction by charter or other resolution.

Thus, although it is our view that a county building code constitutes a matter of "local legislation" concerning which the county may legislate, under S.B. 175, the county cannot by the exercise of its own powers confer jurisdiction upon any court which does not have the requisite jurisdiction under state law.

I hope these observations will be helpful. I regret the delay in answering your letter, but we felt it necessary to await the Legislature's will on S.B. 175. If further questions remain, as is very possible, please call upon us if we can be of assistance.

Yours very truly,



VERN MILLER
Attorney General

VM:JRM:jsm