



STATE OF KANSAS

Office of the Attorney General

1st Floor, State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

CURT T. SCHNEIDER
Attorney General

April 16, 1975

Opinion No. 75-161

Senator Edward F. Reilly, Jr.
430 Delaware
Leavenworth, Kansas 66048

Dear Senator Reilly:

You have requested an opinion from this office concerning the constitutionality of K.S.A. 12-715 which authorizes cities under specified circumstances to extend their zoning laws up to three (3) miles beyond municipal boundaries. The statute to which you refer, K.S.A. 12-715b, provides in its entirety that:

"Any city shall be authorized to adopt zoning regulations affecting land located outside the city but within three (3) miles thereof under the following conditions, except that nothing in this act [*] shall be construed as authorizing any city to adopt regulations applying to or affecting any land in excess of three (3) acres under one ownership which is used only for agricultural purposes:

(a) The city has established a planning commission under the provisions of K.S.A. 1968 Supp. 12-702, which provides for the appointment of two (2) commission members who reside outside the city but within three (3) miles thereof, or the city has established a joint, metropolitan or regional planning commission in cooperation with the county in which such city is located pursuant to the provisions of K.S.A. 1968 Supp. 12-718.

(b) The land outside the city but within three (3) miles thereof has been included within a comprehensive plan recommended by either of said planning commissions and has been approved by the city governing body or the board of county commissioners.

(c) The county or township does not have in effect zoning regulations for such area outside the city but within three (3) miles thereof adopted in conformity with the statutes prescribing procedure for the adoption of county zoning regulations.

Senator Reilly
Page Two
April 16, 1975

(d) The city has notified the board of county commissioners in writing sixty (60) days before initiating zoning regulations by ordinance for such area of its intention to adopt such regulations by ordinance.

In other words, before any city may adopt zoning regulations for the land found within the three (3) mile area surrounding the perimeter of the city, the conditions specified in subsections (a-d) must be met.

The general rule is that reasonable zoning, especially where it is comprehensive, is constitutional and valid as a proper exercise of the police power. Village of Euclid, Ohio v. Amber Realty Co., 272 U.S. 365 71 L.Ed 303 47 S.Ct. 114 (1926). The validity of zoning ordinances is now generally sustained as a proper exercise of the police power. 8 McQuillin, Municipal Corporations § 25.05 p. 22 (1972). Moreover, zoning ordinances are presumed to be reasonable, valid, and constitutional; and their unreasonableness, invalidity, or unconstitutionality must be clear before they will be set aside by the court. Am. Arber v. Northwest Park Construction Co., 280 F.2d 212 (1960). McCarthy v. Manhattan Beach, 41 Cal. 2d 879, 264 P.2d 932 (1953); 9 McQuillin, Municipal Corporations, § 25.295 P. 346 (1972).

It has been observed that the general circumstances under which zoning ordinances have been held invalid and unreasonable as applied to particular property fall roughly into four general categories: (1) where the zoning ordinance attempts to exclude and prohibit existing and established uses or businesses that are not nuisances; (2) where the restrictions create a monopoly; (3) where the use of the adjacent property renders the land entirely unsuited or unusable for the only purpose permitted by the ordinance; (4) where the use that may be made of a small parcel is more limited and restricted than the uses permitted for the surrounding property. Wilkins v. San Bernardino, 29 Cal. 2d 332, 175 P.2d 542 (1946).

Relative to this matter, there is absolutely nothing [in the provisions of K.S.A. 12-715b] which indicates that one of the situations contemplated by the above categorizations present when a municipality properly utilizes this statute. In other words, the presumption of constitutionality which attaches to all zoning statutes must prevail in regard to K.S.A. 12-715b, especially in the absence of any fact which would seemingly include it in one of the above four (4) categories of unconstitutional zoning statutes.

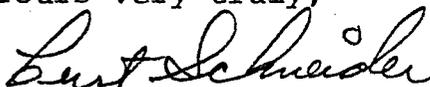
While it is true zoning restrictions in one municipality cannot be permitted to control or infringe upon the zoning regulations of a contiguous municipality, it must be remembered that this statute does not strive to preempt the county's authority to zone the territory within the three (3) miles limitation. Colonial Park for Mobile Homes, Inc., v. New Britian Borough Zoning Hearing Board, 5 Pa. Comwlth 594 290 A.2d, 719 (1972). It delegates zoning authority to the city in

Senator Reilly
Page Three
April 16, 1975

those instances where the county has failed to previously zone the territory and only then after appropriate notice has been given to the appropriate Board of County Commissioners. It has been held that the legislature has the power, expressly or by implication, to grant municipal corporations the right to extend and apply their zoning and property use regulations to an area beyond and within a prescribed distance of the municipal limits. Schlientz v. North Platte, 172 W. 477 110 N.W. 2d 58 (1961); Village of Mount Prospect v. County of Cook, 113 Ill. App. 2d 336, 252 N.E. 2d 106 (1969) (land within one and one half (1 1/2) miles of boundaries excluding land within a county zoning system); Syracuse v. Farmers Elevator Inc., 182 Neb. 783 157 N.W. 2d 394 (1968); Roberson v. Montgomery, 285 Ala. 421, 233 So.2d 69 (1970); see, Smeltzer v. Messer, 311 Ky. 692.225 S.W. 2d 96 (1949).

In light of the overwhelming weight of authority upholding extraterritorial municipal zoning statutes, it is the opinion of this office that K.S.A. 12-715b must be considered constitutional.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

HW:ksn