



STATE OF KANSAS

Office of the Attorney General

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CURT T. SCHNEIDER
Attorney General

May 13, 1975

Opinion No. 75-214

Mr. Tim W. Ryan
County Attorney
509 Court Street
Clay Center, Kansas 67432

Dear Mr. Ryan:

You inquire concerning the apparent conflict of zoning regulations between Clay County and the City of Clay Center for the three (3) mile area surrounding the perimeter of the city but located within Clay County. You advise that Clay County has adopted building use regulations for this area while the city has enacted land use regulations. The problem with this arrangement is that people wishing to make zoning changes with this area have to apply to both the city and the county for the variance in order to comply with both sets of zoning regulations.

The statutory authority which permits the city to extend its zoning regulations to include this three (3) mile area surrounding the perimeter of the city is K.S.A. 12-715b which provides as follows:

"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.

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

A reading of this statute and particularly subsection (c) indicates that the authority of the city to extend its zoning regulations to include the three mile perimeter is contingent primarily upon the inaction of the county and township in zoning this area. In other words, subsection (c) contemplates what appears to be a simple "race" situation. The city is precluded from zoning within this three mile area only if the county or the township has in effect zoning regulations. By the same token, if the county or township has failed to previously zone this area, then the city is authorized to pass zoning ordinances affecting such area.

The contention could be advanced that the fundamental difference between the two types of zoning regulations i.e., land use v. building use as promulgated by the two respective political subdivisions in some manner exempts each from the operation of K.S.A. 12-715b. In other words, an argument could be made that since the county and city attempt to regulate different aspects of development in this region, neither is precluded from zoning the area by the fact that each has chosen to regulate different aspects of zoning.

The fallacy in this position stems from the fact that K.S.A. 12-715b and its companion statutes K.S.A. 12-701 et seq. do not specifically define the word "zoning." Typically, the word comprehends governmental regulations of the uses of land and buildings according to districts or zones. 8 McQuillin, Municipal Corporations 6 25.01 and 25.07, pg. 12, 28-31 (1972); Schmidt v. Board of Adjustment of Newark, 9 N.J. 405 88 A.2d 607 (1961). It is two-dimensional in the

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sense that it may comprehend the regulation and restriction of land use, building use, or both. Accordingly, when this phrase, "The county or township does not have in effect zoning regulations . . ." as used in subsection (c), the word "zoning" means either land use or building use regulations. The city is precluded from passing zoning regulations affecting the area within this three miles if either the county or township has previously passed zoning regulations affecting that same area, whether limited to buildings or land use.

It should be noted that throughout the context of this opinion, no reference has been made to the city's ability to terminate the county's authority to zone this area by the passage of prior use regulations. The reason for this specific deletion is K.S.A. 12-715d. That statute provides in pertinent part:

"Existing city zoning regulations and the authority of any city to adopt zoning regulations for land located outside the city but within three (3) miles thereof shall cease and terminate on the date the county or township places in effect zoning regulations which are in reasonable conformance with a comprehensive plan and have been adopted in conformity with the appropriate statutes set forth in this section."

Clearly, the inaction of the county or township in zoning this area prejudices their right to zone thereafter only to the extent that they continue not to act. The city's authority to zone ceases and terminates once the county or township passes zoning regulations affecting this area and which are in reasonable conformity with the comprehensive plan originally promulgated by the city in order to zone the three mile area outside its boundaries. The words "comprehensive plan" in this statute must be construed in *pari materia* with the same words as they are used in K.S.A. 12-715b. Accordingly, the term "comprehensive plan" refers to the plan adopted by the city pursuant to K.S.A. 12-715(b) in order to be entitled to zone this area.

As applied to the factual situation you have posed, it is the opinion of this office that the city is without enabling statutory authority to pass zoning measures affecting the three mile area outside the city if, at the time such zoning measures were adopted, the county or township had zoning regulations for such area in force. If the county or township has not previously zoned this region, the city then has authority to pass zoning ordinances as long as the requirements of K.S.A. 12-715b are satisfied. Even at this juncture, the

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county retains authority to reexert control over the zoning of this area if it adopts measures which are in reasonable conformity with the comprehensive plan previously adopted by the city pursuant to K.S.A. 12-715b(b).

Yours very truly,

A handwritten signature in cursive script that reads "Curt Schneider". The signature is written in dark ink and is positioned above the typed name.

CURT T. SCHNEIDER
Attorney General

CTS/HTW/ksn