

STATE OF KANSAS

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September 3, 1980

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ATTORNEY GENERAL OPINION NO. 80-188

The Honorable Bill Morris
State Senator, 27th District
9822 Hardtner
Wichita, Kansas 67212

Re: Cities and Municipalities--Planning and Zoning--
Plats

Synopsis: The exemption from replatting accorded to "lots zoned for industrial purposes," set forth in K.S.A. 12-705b, applies only to lots zoned for manufacturing uses. Lots which are not zoned for such uses are not within the subject exemption. Cited herein: K.S.A. 12-705b.

* * *

Dear Senator Morris:

You have asked for our interpretation of K.S.A. 12-705b. Specifically, your question is whether the exemption from replatting accorded to "lots zoned for industrial purposes" includes lots which are zoned for retail, wholesale, and "service" uses.

K.S.A. 12-705b provides, in pertinent part:

"Whenever any such regulations governing the subdivision of land under the provisions of this act shall have been adopted, the owner or owners of any land located within the area governed by such regulations subdividing the same into lots and blocks or tracts or parcels,

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for the purpose of laying out any subdivisions, suburban lots, building lots, tracts or parcels or any owner of any land establishing any street, alley, park or other property intended for public use or for the use of purchasers or owners of lots, tracts or parcels of land fronting thereon or adjacent thereto, shall cause a plat to be made which shall accurately describe the subdivision, lots, tracts or parcels of land giving the location and dimensions thereof or the location and dimensions of all streets, alleys, parks, or other properties intended to be dedicated to public use or for the use of purchasers or owners of lots, tracts or parcels of land fronting thereon or adjacent thereto and every such plat shall be duly acknowledged by the owner or owners thereof. All such plats shall be submitted to the city planning commission or to the joint committee for subdivision regulation if such has been formed, which shall determine if the same conforms to the provisions of the subdivision regulations. If such determination is not made within sixty (60) days after the plat has been submitted for consideration, such plat shall be deemed to have been approved and a certificate shall be issued by the secretary of the planning commission or joint committee upon demand. If the planning commission or joint committee shall find that the plat does not conform to the requirements of the subdivision regulations, it shall notify the owner or owners of such fact. If the plat conforms to the requirements of such regulations, there shall be endorsed thereon the fact that it has been submitted to and approved by the city planning commission or joint committee. The planning commission or joint committee may establish a scale of reasonable fees to be paid in advance to the secretary of the planning commission or joint committee by the applicant for approval for each plat filed with the planning commission or joint committee. No building permit shall be issued for the construction of any structure upon any lot, tract or parcel of land located within the area governed by the subdivision regulations that has been subdivided, resubdivided or replatted after the date of the adoption of such regulations by the governing body or governing

body and board of county commissioners but which has not been approved in the manner provided by this act. Any regulations adopted by a governing body with reference to subdividing lots shall provide for the issuance of building permits on lots divided into not more than two (2) tracts without having to replat said lot, provided that the resulting tracts shall not again be divided without replatting: Provided, That such regulations shall provide that lots zoned for industrial purposes may be divided into two (2) or more tracts without replatting such lot." (Emphasis added.)

The term "industry" has been defined as follows:

"Any department or branch of art, occupation, or business conducted as a means of livelihood or for profit; especially, one which employs much labor and capital and is a distinct branch of trade." Black's Law Dictionary, 5th Edition, 1979.

Arguably, if used in this broad sense, the adjective "industrial" might include retail, wholesale and service uses. However, in referring to "lots zoned for industrial purposes," we believe the legislature used the term "industrial" in the sense that said term is generally understood for purposes of zoning law. That meaning is best expressed in the following definition:

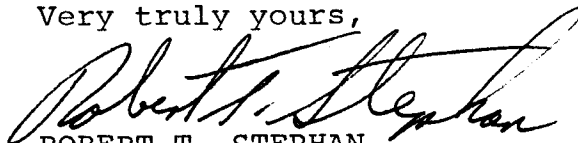
"Industrial enterprises include all kinds of manufacturing, which term has been defined as the production of articles for use from raw or prepared materials by giving these materials new forms, qualities, properties or combinations, whether by hand labor or machine." Yokley, Zoning Law and Practice, 4th Edition, 1980.

There are numerous cases, construing zoning statutes and ordinances, which, expressly or impliedly, recognize this meaning of the term "industrial." See Moore v. City of Pratt, 148 Kan. 53, 54 (1938); State, ex rel. v. Vandyne, 159 Kan. 378, 383 (1945); Kilcoyne v. City of Coffeyville, 176 Kan. 159, 164 (1954); Murdock v. City of Norwood, 67 N.E.2d 867, 869 (Ohio, 1946); Markey v. Danville Warehouse & Lumber, 259 P.2d 19, 21-22 (Cal., 1953); and Dwyer v. Town of Oyster Bay, 217 N.Y.S.2d 392, 394 (1961).

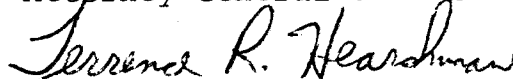
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In short, it is our opinion that the exemption from replatting accorded to "lots zoned for industrial purposes," set forth in K.S.A. 12-705b, applies only to lots zoned for manufacturing uses. Lots which are not zoned for such uses are not, in our judgment, within the subject exemption.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Terrence R. Hearshman
Assistant Attorney General

RTS:BJS:TRH:jm