



STATE OF KANSAS

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March 3, 1981

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ATTORNEY GENERAL OPINION NO. 81-60.

Robert F. Duncan
Atchison City Attorney
817 Santa Fe
Atchison, Kansas 66002

Re: Cities and Municipalities--Planning and Zoning--
Duty of Planning Commission

Synopsis: K.S.A. 12-708 establishes the procedure for adoption of zoning ordinances affecting the territory outside the city limits but within three miles thereof, in accordance with the provisions of K.S.A. 12-715c. Under the procedure prescribed for adoption of new zoning ordinances, the planning commission has no authority to refuse the directive of the governing body to make recommendations and to prepare a proposed zoning ordinance, in accordance with the plain language of K.S.A. 12-708. The governing body of the city is empowered to adopt, revise or amend the proposed ordinance as it deems appropriate. Cited herein: K.S.A. 12-708, 12-715b, 12-715c.

* * *

Dear Mr. Duncan:

You advise that the Atchison City Commission directed the city planning commission to make recommendations and to prepare a proposed zoning ordinance for the zoning of an area outside the city limits but within three miles thereof. You correctly note that K.S.A. 12-715b authorizes

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the city to adopt such an ordinance, under the conditions specified in the statute and in accordance with the procedure prescribed by K.S.A. 12-715c. The latter section provides that "any city empowered . . . to adopt zoning regulations for the area outside the city but within three (3) miles thereof shall plan, adopt, amend, enforce and review zoning regulations in conformity with the provisions of article 7 of chapter 12 of the Kansas Statutes Annotated as amended by this act insofar as such provisions can be made applicable." (Emphasis added.)

You inquire: when a city determines that it wishes to zone an area in the first instance, may the city planning commission refuse to recommend a proposed zoning ordinance for such purpose in view of the provisions of K.S.A. 12-708? K.S.A. 12-708 provides, in pertinent part:

"Before any city shall create any zone or district or regulate or restrict the use of buildings or land therein, the governing body shall require the planning commission to recommend the nature and number of zones or districts which it deems necessary and the boundaries of the same and appropriate regulation or restrictions to be enforced therein. In the preparation of such recommendations the planning commission shall make or cause to be made surveys and studies of past and present uses of property or if the city shall have adopted a land use plan as a part of the city's comprehensive plan, such recommendations shall be based thereon. Upon the development of tentative recommendations, the planning commission shall hold a public hearing thereon and shall cause an accurate general written summary to be made of the proceedings thereof. . . .

"Such hearing may be adjourned from time to time and at the conclusion of the same, the planning commission shall prepare its recommendations and shall by an affirmative vote of a majority of all of the members of the commission adopt the same in the form of a proposed zoning ordinance and shall submit the same, together with the accurate written summary of the hearing thereon, to the governing body of the city. The governing body may either approve such recommendations by the adoption of the same by ordinance or return the same to the planning commission for further consideration, together with a statement specifying the basis for disapproval. The

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planning commission, after reconsidering the same, may resubmit its original recommendations giving the reasons therefor or submit new and amended recommendations. Upon the receipt of such recommendations, the governing body may adopt or may revise or amend and adopt such recommendations by ordinance, or it need take no further action thereon. If the planning commission fails to deliver its recommendations to the governing body within ten (10) days after receipt of the governing body's statement specifying disapproval, the governing body shall consider such course of inaction on the part of the planning commission as a resubmission of the original recommendations and proceed accordingly." (Emphasis added.)

You advise that it is your opinion that, under K.S.A. 12-708, the planning commission may not refuse to recommend a proposed zoning ordinance for the initial zoning of an area upon the direction of the governing body, and you further advise that it is your opinion that the above-quoted provisions of section 12-708 are applicable for the adoption of proposed zoning ordinances in the area outside the city but within three miles thereof, as prescribed by K.S.A. 12-715c, quoted above. You note that other provisions of section 12-708, pertaining to the procedure for adoption of amendments to existing zoning ordinances, indicate that the planning commission may refuse to recommend or refuse to act on a particular zoning ordinance amendment. But, you distinguish between the procedures for adoption of new zoning ordinances and for adoption of zoning ordinance amendments, noting that the procedure for adoption of new zoning ordinances does not permit the planning commission to refuse the directive of the governing body to prepare a proposed zoning ordinance.

We concur in your opinion on the question you have raised, for the above-noted reasons. We agree that K.S.A. 12-708 establishes the procedure for adoption of zoning ordinances affecting the territory outside the city limits but within three miles thereof, in accordance with the provisions of K.S.A. 12-715c. And, we agree that under the procedure prescribed for the adoption of new zoning ordinances, the planning commission has no authority to refuse the directive of the governing body to make recommendations and to prepare a proposed zoning ordinance, in accordance with the plain language of K.S.A. 12-708. The governing body of the city is empowered to adopt, revise

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or amend the proposed ordinance as it deems appropriate.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Steven Carr
Assistant Attorney General

RTS:BJs:SC:pf:hle