



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

April 23, 1982

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
ANTITRUST: 296-5299

ATTORNEY GENERAL OPINION NO. 82- 93

Mr. Norman G. Manley
Butler County Counselor
116 North Star Street
El Dorado, Kansas 67042

Re: Counties and County Officers--Planning and
Zoning--County Engineer's Status on Planning Board

Synopsis: K.S.A. 19-2915 provides for the establishment of a county planning board and also requires that the county engineer be an ex officio member of said board. The ex officio status of the county engineer makes him a planning board member vested with full power and authority to do necessary and essential things to carry out the purposes of the planning board.

K.S.A. 19-2915 has uniform application to all counties. Therefore, Butler County may not adopt a charter resolution pursuant to K.S.A. 19-101b to modify the requirement that the county engineer be an ex officio member of the county planning board. Cited herein: K.S.A. 19-101a, 19-101b, 19-2915.

*

*

*

Dear Mr. Manley:

You have requested an opinion from this office regarding the duties and responsibilities of the Butler County Engineer in his capacity as an ex officio member of the county planning board. Specifically, you ask whether the county engineer can be counted to satisfy the planning board's quorum requirements and whether he may vote. Further, if the response to the foregoing questions is in the affirmative, you inquire whether the county may adopt a charter resolution exempting Butler County from the requirements that the county engineer be an ex officio member of the county planning board.

K.S.A. 19-2915 provides in part:

"The board of county commissioners may by resolution establish a planning board for such county, which board shall consist of not less than five (5) or more than nine (9) members who shall be residents of such county, a majority of whom live outside the corporate limits of any incorporated city in said county, and the county engineer shall be an ex officio member of the planning board. The board of county commissioners shall appoint all members of such planning board."

A careful review of K.S.A. 19-2915 indicates that the establishment of a county planning board by the board of county commissioners is a discretionary act. However, if the board of county commissioners does establish such planning board then the county engineer must serve on same as an ex officio member. The initial issue raised by the opinion request is what duties and responsibilities are appurtenant to such ex officio status pursuant to K.S.A. 19-2915.

The term ex officio is defined in Black's Law Dictionary, Fourth Ed., p. 661, as follows:

"From office; by virtue of the office; without any other warrant or appointment than that resulting from the holding of a particular office."

This general definition, however, does not provide guidance vis a vis the scope of an ex officio member's powers and duties. Attention is directed to Louisville & Jefferson County Planning and Zoning Commission v. Ogden, 210 S.W.2d 771 (1946, Ky.) where it was held that ex officio members of a planning and zoning commission are members for all purposes and must be counted in determining the presence of a quorum. 210 S.W.2d at 774.

Further authority for the proposition that no legal distinction exists between ex officio and other planning board members is found at Seiler v. O'Maley, 227 S.W. 141 (Ky. 1921). There the Court of Appeals for Kentucky opined:

"[W]e can see no logical reason nor has one been presented to us, why an ex officio member of a representative body should not have, in cases where he is not personally interested, all of the authority of other members. In the one case his power and authority as such member is conferred upon him by that department

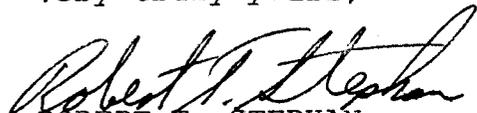
of the sovereignty having authority to create the board because of the fact of his holding some office, while the other members receive their power and authority because of their election or appointment in the manner provided by the same governmental department. We have no doubt but that it would be competent in the creation of the board to provide that it should be composed entirely of ex officio members, and because some of the members are selected in the manner pointed out in the law creating the board, while others are selected by the terms of the law itself, whether it be a statutory or constitutional provision cannot possibly affect the extent of the power and authority of the members. They are each vested with full power and authority to do any and all things necessary and essential to carry out the purpose of the law in creating the board or body, whether they be ex officio members or selected in the manner provided by law. If, as contended by appellants, an ex officio member cannot be counted in forming a quorum, we fail to see any additional reason why such a member should have the right to vote or should have his vote counted in the transaction of any other business of the body. To our minds the rule contended for, pursued to its only logical conclusion, would result in depriving the ex officio member of all voice in the proceedings of all meetings and render his position on the board void of all effect except perhaps to entitle him to be present at the meeting. Such an absurd consequence was never contemplated. On the contrary, when one is made by the proper authority an ex officio member of a created body or board, it is to be presumed that those responsible for its creation had some purpose in view in designating the ex officio member. Manifestly that purpose was to constitute that individual a member of the board or body because of his holding some office of trust, and that whoever held that office should perform, in addition to his official duties, also those incumbent upon the board of which he was made an ex officio member." 227 S.W. at 143. See also Barber Pure Milk Co. v. Alabama State Milk Cont. Bd, 156 So. 2d 351 (1963 Ala.).

We feel the reasoning set forth in the above-quoted portion of Seiler v. O'Maley is persuasive in determining the scope of authority and duty of the ex officio member of the county planning board. Further, in Attorney General Opinion No. 82-47 (attached) it was determined that ex officio members of the Kansas Water Authority are statutorily precluded from voting on matters considered by the Authority. However, the opinion notes that unless restricted by specific legislation, ex officio members of a public body are members for all purposes, including voting. A review of K.S.A. 19-2915 indicates no legislative intent to restrict the voting rights and duties of the ex officio member of the planning board.

Your opinion request also raises the question of whether the board of county commissioners may adopt a charter resolution pursuant to K.S.A. 19-101b which would exempt Butler County from the provisions of K.S.A. 19-2915. Pursuant to subsection (a) of K.S.A. 19-101a, counties are "empowered to transact all county business and perform such powers of local legislation and administration as they deem appropriate," subject to certain specified limitations, restrictions, and prohibitions. The only limitation or restriction relevant here is that "counties shall be subject to all acts of the legislature which apply uniformly to all counties." A careful review of the statutes governing planning boards reveals that they have uniform application to all counties. Therefore, the board of commissioners would not be empowered to adopt a charter resolution exempting Butler County from the requirement of K.S.A. 19-2915.

In summary, there is no legal distinction between ex officio and other members of the planning board for purposes of arriving at a quorum or voting. Additionally, K.S.A. 19-2915 has uniform application to all counties. Therefore, the board of county commissioners may not adopt a charter resolution exempting Butler County from the requirements of K.S.A. 19-2915.

Very truly yours,


ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS


Robert Vinson Eye
Assistant Attorney General

RTS:WRA:RVE:hle

Enc.