



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 84- 129

Philip S. Harness
Johnson County Counselor
Courthouse
Olathe, Kansas 66061

Re: Counties and County Officers -- Planning and Zoning--
Penalties for Violations; Responsibility to Prosecute

Synopsis: K.S.A. 19-2912 and L. 1984, ch. 96, §8 provide that certain acts in violation of county zoning regulations are misdemeanors punishable by a fine. The responsibility for prosecuting misdemeanor offenses in the county lies with the county or district attorney as a matter in which the county is interested. A board of county commissioners may seek civil remedies, such as injunction, to prevent violations of zoning regulations. Cited herein: K.S.A. 19-702, as amended by L. 1984, ch. 100, §1; 19-2912; 19-2654; 22a-104, as amended by L. 1984, ch. 100, §4; L. 1984, ch. 96, §8.

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Dear Mr. Harness:

As Johnson County Counselor you have requested an opinion regarding the interpretation of K.S.A. 19-2912 and L. 1984, ch. 96, §8.

K.S.A. 19-2912 relates to zoning in townships within a county and provides:

"That any violation of any provision of this act shall be deemed to be a misdemeanor and punishable by a fine of not to exceed two hundred dollars for each offense and that each day's violation shall constitute a separate offense,

and the county commissioners shall have the authority to maintain suits or actions in any court of competent jurisdiction to enforce the regulations adopted in accordance with the terms of this act, and to abate nuisances maintained in violation thereof."

Similarly, L. 1984, ch. 96, §8 is part of a general enactment concerning planning and zoning in counties which are designated as urban areas under the provisions of K.S.A. 19-2654. Section 8 provides in relevant part:

"Any county which adopts a resolution under the provisions of this act shall have the power to declare the violation thereof a misdemeanor and punishable by a fine not to exceed \$500 for each offense and to provide that each day's violation shall constitute a separate offense. Such counties also shall have the authority to maintain suits or actions in any court of competent jurisdiction for the purpose of enforcing the provisions of such resolution and to abate nuisances maintained in violation thereof. In case any building, structure or land is or is proposed to be used in violation of any resolution enacted under this act, the county counselor or other appropriate authority of the county . . . in addition to other remedies, may institute injunction, mandamus or other appropriate action or proceeding to prevent such unlawful erection, construction, reconstruction, alteration, conversion, maintenance, use or to correct or abate such violation or to prevent the occupancy of such building, structure or land"

You ask whether these statutes authorize the board of county commissioners to prosecute an individual who is in violation of zoning or subdivision regulations and to impose a \$200.00 per day fine for each offense. It is the conclusion of one of your staff attorneys that while the board of county commissioners has the authority to maintain civil actions against individuals who violate zoning and subdivision regulations, any prosecution for misdemeanor offenses, with attendant fines, must be conducted by the district attorneys' office. We agree with this conclusion. The statutes in question either provide that certain acts are misdemeanors or authorize the county commissioners to declare that certain acts are misdemeanors. In addition, the statutes in question permit the board of county commissioners to pursue certain civil remedies in order to enforce zoning regulations enacted pursuant to the relevant statutes. However, the

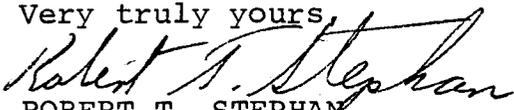
statutes in question do not grant the authority to prosecute such misdemeanors to a board of county commissioners. That authority clearly resides in the office of the county or district attorney.

Kansas law has long recognized that the county or district attorney is the chief law enforcement official in his jurisdiction and that a "criminal proceeding is a matter of state concern and the control of it is in the county attorney." See Sampson v. Rumsey, 1 Kan.App.2d 191, 197 (1977). The Kansas Supreme Court has recently said: "The county attorney is the representative of the state in criminal prosecutions and as such he controls them." State ex rel. Rome v. Fountain, 234 Kan. 943, 947 (1984); and see, State v. Pruett, 213 Kan. 41, Syl. ¶1 (1973). Moreover, we note that K.S.A. 19-702, as amended by L. 1984, ch. 100, §1, provides that:

". . . it shall be the duty of the county attorney to appear in any court having jurisdiction within the county and prosecute or defend on behalf of the people all actions and proceedings, civil or criminal, in which the state or the county is a party or interested." (Emphasis added.)

Further, K.S.A. 22a-104, as amended by L. 1984, ch. 100, §4, provides that any power or duty now conferred or imposed by law upon all county attorneys within their respective counties shall be exercised or performed by district attorneys within their respective districts.

Thus, it is our opinion that the statutes in question make available two possible methods of ensuring compliance with county zoning or subdivision regulations. The first method is to make violations of such regulations misdemeanors and to seek prosecution and the imposition of fines for such violations. The second method is to authorize the board of county commissioners to seek civil remedies (such as an injunction) to prevent violation of zoning regulations. The responsibility for prosecuting the misdemeanor offenses lies with the county or district attorney, as being a matter in which the county is interested. Any civil remedies which the board of county commissioners may wish to pursue should be sought in the name of the board through the office of the county counselor.

Very truly yours,

ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS


Mary F. Carson
Assistant Attorney General