

COUNTY COURT:  
ZONING COMMISSION:  
PUBLIC HEARINGS:

Chapter 64, RSMo 1953 Cumulative Supplement requires a public hearing to be held in each township to be affected by any amendment to any zoning order, regulation etc., thereunder.



October 5, 1954

Honorable Andrew J. Higgins  
Prosecuting Attorney  
Platte County  
Platte City, Missouri

Dear Sir:

This will acknowledge receipt of your request for an opinion which reads in part as follows:

" \* \* \* The zoning order for Platte County, Missouri, is adopted as a portion of the master plan of the County and it is the understanding of the County Court and Zoning Commission that the master plan can be adopted in the first instance or amended at a later date with only one hearing. Whereas, the zoning order, included in the master plan, required ten hearings i.e. one in each township in the County. It is now desired to amend a portion of the zoning order. The entire law governing zoning in Platte County is contained in Chapter 64, Laws of Missouri, 1951, Section 64.510 to 64.690, inclusive,

"Question: Can the zoning order or a portion thereof be amended upon the holding of one public hearing or does the law contemplate amendment only upon holding ten public hearings i.e. one in each township? \* \* \*"

The 66th General Assembly of the State of Missouri enacted the first law authorizing county courts of second and third

Honorable Andrew J. Higgins

class to provide for county planning and zoning. (Session Laws Missouri, 1951, page 406-417, inclusive, now known as Chapter 64, Missouri Revised Statutes Cumulative Supplement, 1953.)

We are not herein passing upon the validity of the adoption of the zoning plan as part of the county master plan.

The question is whether only one public hearing shall be held prior to the adoption of an amendment to said zoning order, whether said commission or county court has the discretion to determine how many public hearings may be held or whether there should be a public hearing held in each township affected thereby. There are several established rules of statutory construction that may be invoked in determining the legislative intent in enacting a statute. The basic principle being to determine the lawmakers' intention, and if possible to effectuate that intention. Another well established rule is that in construing statutes which appear to be in conflict the court should reconcile them, if possible, with the general legislative purpose, *Laclede Gas Company v. City of St. Louis*, 253 S.W. (2d) 832, 363 Mo. 842; *Free v. Board of Trustees of Firemen's Retirement System of City of St. Louis*, 257 S.W. (2d) 685, 363 Mo. 1131 and *State ex rel. Smith v. Atterbury*, 270 S.W. (2d) 399, l.c. 404.

Section 64.550, Missouri Revised Statutes Cumulative Supplement, 1953, authorizes the county court to adopt a master plan for counties of the second and third class. Under said statute it requires at least one public hearing, which should be held prior to any adoption, amendment or extension of any master plan. However, from the very wording of such statute it is apparent that if the county court deems it necessary it could hold more than one hearing.

Under Section 64.630, Missouri Revised Statutes Cumulative Supplement, 1953, it is provided that for purposes of Section 64.620, Missouri Revised Statutes Cumulative Supplement, 1953, unincorporated territory may be divided into districts as best suited to carry out the purposes of Sections 64.510 to 64.690, Missouri Revised Statutes Cumulative Supplement, 1953. We assume the latter part of your request relates to those statutes which deal particularly with the unincorporated territory being formed into districts.

Section 64.640, Missouri Revised Statutes Cumulative Supplement, 1953, prescribes the manner in which such regulations,

Honorable Andrew J. Higgins

restrictions and boundaries of such districts shall be determined, established and enforced and from time to time amended, and reads:

"The county court shall provide for the manner in which such regulations, restrictions and boundaries of such districts shall be determined, established and enforced, and from time to time amended, supplemented or changed within said unincorporated territory. In order to avail itself of the zoning powers conferred by sections 64.510 to 64.690, the county court shall request the county planning commission to recommend the boundaries of the various original districts and appropriate regulations to be enforced therein. If there be no county planning commission the county court shall appoint a county zoning commission whose personnel, length of terms and organization shall be the same as provided in section 64.520 for a county planning commission. Such commission shall make a preliminary report and a proposed zoning order and shall hold public hearings thereon, and shall afford persons interested an opportunity to be heard. A hearing shall be held in each township affected by the terms of such proposed order, public notice of which hearing shall be given in the same manner as provided for the hearing in section 64.550. \* \* \*"  
(Underscoring ours.)

Section 64.670, Missouri Revised Statutes Cumulative Supplement, 1953, deals specifically with amendments of regulations and districts created under said Chapter 64, Revised Statutes Cumulative Supplement, 1953, and reads:

"The regulations imposed and the districts created under authority of sections 64.510 to 64.690 may be amended from time to time by the county court by order after the order establishing the same has gone into effect but no such amendments shall be made by the county court except after recommendation of the county planning commission, or if there be no county planning commission, of the county zoning commission, after hearings

Honorable Andrew J. Higgins

thereon by such commission. Public notice of such hearings shall be given in the same manner as provided for the hearing in section 64.550. In case of written protest against any proposed change or amendment, signed and acknowledged by the owners of twenty per cent of the frontage within one thousand feet to the right or left of the frontage proposed to be changed, or by the owners of twenty per cent of the frontage directly opposite, or directly in the rear of the frontage proposed to be altered, or in cases where the land affected lies within one and one-half miles of the corporate limits of a municipality having in effect ordinances zoning property within the corporate limits of such municipality, made by resolution of the city council or board of trustees thereof, and filed with the county clerk, such amendment may not be passed except by the favorable vote of all members of the county court."

Section 64.640 supra, deals more particularly with the original adoption of a zoning plan, however, it is the one statute in said Chapter 64 that specifically mentions zoning order and your request deals with an amendment of a zoning order. In the first sentence of said statute it provides for amendments thereto, and further reads, in part, " \* \* \* and from time to time amended \* \* \*." Under Section 64.670, supra, relative to amendments to regulations it provides that this may be done only after hearings thereon. (Note this reference to hearings is plural and not singular.) Public notice of such hearings is to be given in the same manner as provided for the hearing under Section 64.550, Missouri Revised Statutes Cumulative Supplement, 1953, that merely requires notice in a newspaper and posting notices in four places and has nothing to do with the number of hearings required.

Apparently the legislative intent in enacting Section 64.670, supra, was that prior to adoption of any amendment to regulations imposed and districts created there must be hearings thereon.

The foregoing statutes are ambiguous with respect to the instant request as to how many public hearings should be heard in amending zoning orders.

Honorable Andrew J. Higgins

Therefore, considering either Section 64.640 or 64.670, or reading them together, we came to the same conclusion that prior to the adoption of any such amendment, whether a regulation or a zoning order there must be hearings thereon. Whether said commission can determine the actual number of hearings to be held or whether there must be one in each township affected thereby seems to be the real question.

In view of the fact the legislature has provided in the organization of such districts that there be a hearing in each township affected thereby, it would appear that each township could be just as materially affected by amendments thereto, as by said organization and a practical construction would be that prior to such amendments that public hearings should be held in each township affected thereby. In so holding all interested parties would be afforded a public hearing, and we believe the legislature had this intent when adopting such act. It could have specifically limited the public hearings to one or to those townships directly affected thereby or left the matter to the sole discretion of said commission or the county court, but this was not done.

#### CONCLUSION

Therefore, it is the opinion of this department that prior to the adoption of any amendment to such regulations or zoning orders of said commission, a hearing must be held in each township affected by such proposal.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Aubrey R. Hammett, Jr.

Yours very truly,

JOHN M. DALTON  
Attorney General

ARH:vlw