

PLANNING COMMISSION:
COOPERATIVE AGREEMENTS:

A regional planning commission organized under the provisions of Sections 251.150, RSMo 1969 et seq.,

is advisory to the governmental units in the region and does not have authority to exercise the legislative functions of local government although the participating municipalities may, under Sections 89.010, RSMo 1969 et seq., adopt planning and zoning as recommended by the commission. Such a regional planning commission has no authority to enter into an agreement with municipalities to enforce municipal codes.

OPINION NO. 33

February 29, 1972

Honorable Frederick W. DeField
Representative, District 158
Room 401, Capitol Building
Jefferson City, Missouri 65101



Dear Representative DeField:

This opinion is in response to your question in which you ask:

"Would an employee of a regional organization, such as the Bootheel Regional Planning Commission, be in contravention of any State law in entering individual communities of which he is not a resident or official for the purpose of enforcing a regional building code sponsored under a Department of Housing and Urban Development Program, where the Cities involved had elected to participate in such a regional building code program?"

"Can a City of the 3rd or 4th class take action to participate in a regional program that would establish regional building codes to be effective in the individual communities, where the individual cities would delegate the establishment of particular code provisions and the enforcement of the building code to a regional organization?"

"If such a city cannot delegate the establishment of particular code provisions, could the city after properly establishing the code delegate the inspection and enforcement function to a regional organization?"

Honorable Frederick W. DeField

You also state that:

"The Bootheel Regional Planning Commission is in the process of trying to establish a Regional Code Enforcement Program. This is a Department of Housing and Urban Development Program and makes certain monies available to communities based upon meeting the federal requirements of the Program. The program is not available to individual communities that have a certified workable program and a comprehensive plan. The new proposal is to accomplish and administer this program on a regional basis. The Department of Housing and Urban Development is receptive to this plan which is presently being pursued in two other states (Texas and Pennsylvania.) The Bootheel Regional Planning Commission located in Malden, Missouri would be the sponsoring agency to administer the program. The actual functioning of the program would involve situations where an employee of the Bootheel Regional Planning Commission would enter individual communities to enforce the code, and would have to have the authority and power to halt construction not in compliance with the Code."

It is our understanding that the Bootheel Regional Planning Commission is created pursuant to the provisions of Sections 251.150, RSMo 1969 et seq. Under such sections it has the authority to appoint employees, Section 251.280, advisory groups or councils, Section 251.290 and functions as an advisory regional planning commission with respect to the local governmental units in the region, Section 251.300, involving a multitude of regional planning projects, Section 251.180. See also 1st Annual Report Bootheel Regional Planning Commission, June 1971.

The first question that we take under consideration is whether the particular municipalities involved can delegate the establishment of regional building codes to be effective in the individual municipalities. Under the provisions of Chapter 89, RSMo 1969, cities, towns and villages are empowered to plan and zone, Section 89.020, and to establish planning commissions, Sections 89.300, RSMo 1969 et seq.

Further, under Sections 70.210, RSMo 1969 et seq., political subdivisions such as cities, towns and villages have the authority to enter into cooperative agreements and cooperative action for planning and for common services, Section 70.220. Joint contracts thus entered into may provide for the establishment and selection

Honorable Frederick W. DeField

of joint boards, commissions or officers to supervise, manage and have charge of such joint planning or service, Section 70.260, and, the governing body of a municipality or political subdivision has the power to abolish the office of the facility taken over by any other municipality or political subdivision and to transfer such powers to the officer who is to perform them under the terms of the contract or cooperative action, Section 70.280.

However, legislative functions cannot be delegated. State ex rel. Ludlow v. Guffey, 306 S.W.2d 552 (Mo. 1957). And, this office has held in Opinion No. 213 dated May 15, 1963 to the Honorable E. J. Cantrell that neither the cooperative agreement sections of the Missouri Constitution, Article VI, Section 16 nor the cooperative agreement statutes authorize the delegation of sovereign functions. In that respect, that opinion, which we enclose, states in part:

" . . . Even more fundamental and elementary than the separation of powers provision of the Constitution is a foundation principle of government that executive, legislative and judicial powers which relate to the exercise of sovereignty are generally considered nondelegable duties. It would seem unlikely that the draftsmen of the Constitution intended to authorize one political subdivision to delegate to another the authority to exercise its strictly sovereign functions. For example, one county court could not by contract authorize the county court of another county or city counsel of a municipality to perform its strictly executive or legislative functions. . . ."

Thus, in answer to your first question, the Bootheel Regional Planning Commission has only an advisory function with respect to the local governmental units in the region except as provided in subsection 3 of Section 251.360 and does not have and cannot be given the authority to establish code provisions for the communities involved. Code provisions can be suggested, but if they are to be validly adopted, they must be adopted by the municipalities involved.

With respect to your second question relating to the delegation of the inspection and enforcement functions of code provisions that have been adopted by such municipalities, we have noted that the function of a regional planning commission under Sections 251.300, et seq., is solely advisory to the local governments and local government officials comprising the region. While Sections 70.210, et seq., authorize political subdivisions as defined therein to

Honorable Frederick W. DeField

contract or cooperate with each other for the planning, development, construction, acquisition or operation of any public improvement or facility, or for a common service, the subject and purposes of any such contract or cooperative action must be within the scope of the powers of such political subdivisions, Section 70.220. We conclude, without reaching the question of whether a regional planning commission is a "political subdivision" as defined in such sections, that, since a regional planning commission has no power of enforcement in its own right, it cannot enter into agreements with cities to perform such services. In this respect, see also Section 251.380, RSMo Supp. 1971, which authorizes certain contracts or cooperative action in "matters relating to comprehensive planning."

CONCLUSION

It is, therefore, the opinion of this office that a regional planning commission organized under the provisions of Sections 251.150, RSMo 1969 et seq., is advisory to the governmental units in the region and does not have authority to exercise the legislative functions of local government although the participating municipalities may, under Sections 89.010, RSMo 1969 et seq., adopt planning and zoning as recommended by the commission. Such a regional planning commission has no authority to enter into an agreement with municipalities to enforce municipal codes.

The foregoing opinion, which I hereby approve, was prepared by my assistant, John C. Klaffenbach.

Yours very truly,



JOHN C. DANFORTH
Attorney General

Enclosure: Op. No. 213
5-15-63, Cantrell