

COUNTIES: Counties of the first and second class may  
COUNTY COURTS: adopt building codes which include provisions  
BUILDING COMMISSION: for regulation of plumbing installation and  
PLUMBING INSTALLATION: sewage disposal.  
SEWAGE DISPOSAL:

OPINION NO. 317

December 21, 1967



Honorable Joe A. Johnson  
Assistant Prosecuting Attorney  
Jefferson County  
Hillsboro, Missouri 63050

Dear Mr. Johnson:

This is in reply to your request for an opinion on the question whether Jefferson County may adopt a building code which would include provisions for the regulation of plumbing installation and sewage disposal.

Jefferson County is a county of the second class. The authority of the county court to adopt a code of regulations for the construction or alteration of buildings is set forth in Section 64.170, RSMo Cum. Supp. 1965, as follows:

"For the purpose of promoting the public safety, health and general welfare, to protect life and property and to prevent the construction of fire hazardous buildings, the county court in all counties of the first and second class, as provided by law, is for this purpose empowered to adopt by order or ordinance regulations to control the construction, reconstruction, alteration or repair of any building or structure and any electrical wiring or electrical installation therein, and provide for the issuance of building permits and adopt regulations licensing persons, firms or corporations other than federal, state or local governments, public utilities and their contractors engaged in the business of electrical wiring or installations and provide for the inspection thereof and establish a schedule of permit, license and inspection fees and appoint a building commission to prepare the regulations, as herein provided."

Honorable Joe A. Johnson

In order to exercise the authority granted in Section 64.170 the county court shall appoint a building commission. Paragraph 1 of Section 64.180 provides:

"1. The county court of any county which shall exercise the authority granted under the provisions of sections 64.170 to 64.200 shall appoint a building commission consisting of five members, residents and taxpayers of the county, one of whom shall be a member of the county court, to be selected by the county court. The members of the commission shall serve without compensation for a term of two years. The term of the county court member shall not extend beyond the tenure of his office."

Article VI, Section 7, of the Constitution provides that the county court "\* \* \* shall manage all county business as prescribed by law, and keep an accurate record of its proceedings.\* \* \*"

Under the Constitution the county court is entitled to exercise the police power of the state within the limits of the county. State v. Loesch, et al., 169 S.W. 2d 675. It was the evident purpose of Section 64.170 to apply that power to the regulation of buildings to protect the public welfare, security and health of the people. The section uses terms which have been employed by the court to define police power. In Schroeder v. City of St. Louis, 228 S.W. 2d 677, l.c. 678, the court stated "\* \* \* The preservation and safeguarding of public health is within the police power of a city government.\* \* \*" In Wolpers v. Unemployment Compensation Commission, 186 S.W. 2d 440, l.c. 442, the court said "\* \* \* It is the public's welfare, not the individual's, that justifies an exercise of the police power by the State.\* \* \*" In Drainage District v. Small, 318 S.W. 2d 497, l.c. 502, the court said "\* \* \* drainage and levy districts operate under the police power of the state since their projects are essential to the health, safety and welfare of all; \* \* \*". In Kalbfell v. City of St. Louis, 211 S.W. 2d 911, l.c. 917, the court said "The power of enacting police regulations in the interest of the general welfare is a 'continuing one, and a business lawful today may in the future, because of the changed situation, the growth of population or other causes, become a menace to the public health and welfare, and be required to yield to the public good.'"

It must be presumed that Section 64.170 uses the words public health, safety and general welfare in a sense consistent with the cases just cited. It would hardly be justifiable to specify in a legislative act all the conditions which should be placed on the

Honorable Joe A. Johnson

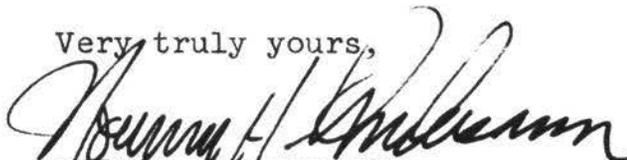
construction or alteration of buildings in the interest of public safety and general welfare. It was necessary and permissible that the duty of ascertaining the facts and prescribing conditions as circumstances required should be placed upon the county court under general directions as to the purpose and scope of their discretion. The cited cases recognize the validity of such delegation of administrative authority. It appears therefore that the legislature has granted to the county the right to regulate its development for the general benefit of its rapidly increasing population.

CONCLUSION

It is the opinion of this office that under Sections 64.170, RSMo Cum. Supp. 1965, and 64.180, RSMo 1959, counties of the first and second class may adopt building codes which include provisions for the regulation of plumbing installation and sewage disposal.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, L. J. Gardner.

Very truly yours,



NORMAN H. ANDERSON  
Attorney General