

Approved Ivan Sand
Date

MINUTES OF THE HOUSE COMMITTEE ON LOCAL GOVERNMENT

The meeting was called to order by REPRESENTATIVE IVAN SAND at
Chairperson

1:30 ~~XXX~~ a.m./p.m. on FEBRUARY 28, 19 84 in room 521-S of the Capitol.

All members were present except: (All Present)

Committee staff present: Mike Heim, Legislative Research Department
Theresa Kiernan, Revisor of Statutes Office
Gloria Leonhard, Secretary to the Committee

Conferees appearing before the committee:

Ms. Patsy McDonald, Shawnee County Clerk, HB 3003
Mr. Vern Evans, Treasurer, Soldier Township, HB 3003
Mr. Chris McKenzie, League of Kansas Municipalities, HB 3004
Ms. Ruth Hackler, President, Kansas Assn. of School Boards, HB 3004
Mr. Ron Vine, Topeka Parks and Recreation, HB 3004
Representative Ardena Matlack, HB 2900
Mr. Frank Suellentrop, Chairman, Colwich City Planning Com., HB 2900
Mr. Bickley Foster, Planning Consultant, HB 2900
Rep. Kenneth D. Francisco, HB 2900; Mr. Kim Dewey, Sedg. Co., HB 2900

Chairman, Ivan Sand, called for hearings on the following House Bills:

HB 3003, concerning townships; relating to the township treasurer;
By Committee on Local Government

Mike Heim, Staff, gave a brief overview of the bill. (See Attachment I.)

It was noted that the language, "25% of the maximum amount of money which will probably come into the treasurer's hands," is vague. Staff pointed out that it is an alternative, but a little confusing.

Ms. Patsy McDonald, Shawnee County Clerk, further explained the intent of the bill. McDonald pointed out that the amount of the bond must be approved by the Board of County Commissioners.

Ms. McDonald introduced Mr. Vern Evans, Treasurer, Soldier Township, Shawnee County, who testified that as a township official he fully supports the bill.

When questioned, McDonald verified that a purpose of the bill is to save money on bonding; that county treasurers can be bonded for much less; that the amount could be set at "not less than \$5,000 with approval by the Board of County Commissioners."

Representative Steve Schweiker made a conceptual motion that the bill be amended to read "not less than \$5,000 or more than \$75,000 and the balance be set by the County Commissioners." Representative Clinton C. Acheson seconded the motion. Motion carried.

Representative Dorothy Nichols moved and Representative Arthur W. Douville seconded that HB 3003 be passed as amended. Motion carried.

HB 3004, concerning the creation of joint city-school district recreation systems; By Committee on Local Government

Mike Heim, Staff, gave a brief overview of the bill. (See Attachment II.)

It was noted that the proposed legislation gives voters the opportunity to start a petition; to go to a governing body and have the request put on the agenda.

Mr. Chris McKenzie, League of Kansas Municipalities, testified in support of the bill. (See Attachment III.) McKenzie pointed out that this bill had

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON LOCAL GOVERNMENT,
room 521-S, Statehouse, at 1:30 ~~xxx~~/p.m. on FEBRUARY 28, 1984

been a League request; that some cities claim voters have circulated petitions which were ruled invalid; that it would not be subject to a tax lid.

Ms. Ruth Hackler, President, Kansas Association of School Boards, testified in support of HB 3004. (See Attachment IV.)

Mr. Ron Vine appeared in support of HB 3004. (See Attachment V.)

Representative Kenneth D. Francisco moved and Representative Clinton C. Acheson seconded that HB 3004 be passed. Motion carried.

HB 2900, relating to zoning by cities outside of the corporate boundaries thereof; By Representatives Matlack, Baker and K. Ott

Mike Heim, Staff, gave a brief overview of the bill. (See Attachment VI.)

Representative Ardena Matlack, sponsor of the bill, appeared to give background and intent of the bill. (See Attachment VII.)

When questioned, Matlack stated that the phrase "agricultural purposes" is covered by current law; that Section 4 is "policy decision;" that the rest is according to an A.G. opinion.

Mr. Frank Suellentrop, Chairman, Colwich City Planning Commission, testified in support of the amendments to HB 2900. Suellentrop provided letters from the cities of Andale, Garden Plain, Mount Hope, all expressing support of HB 2900. (See Attachment VIII.)

Mr. Bickley Foster, Planning Consultant, testified in support of HB 2900.

Foster pointed out that one of the greatest objections to zoning outside cities is the problem of the farming area; that the Supreme Court recognizes cities' need to govern their own areas and sometimes areas outside; that the courts have never raised a question or made the decision that there shouldn't be extra-territorial zoning because the people couldn't vote on it; that the legislation is needed because many cities are doing it now; that the law says you are not prohibited from doing it; that the question regarding "agricultural purposes" involves too big a problem to tackle right now; that there is no such thing as township zoning in the State of Kansas.

It was noted that a problem is sometimes created by existing county zoning that doesn't fit into the cities.

When questioned, Foster stated that there is no way a county can zone in a city without their permission.

Representative Kenneth D. Francisco testified that in connection with HB 2900 he has provided Staff with a copy of an A.G. opinion dated February 17, 1984, regarding county zoning statutes. (See Attachment IX.)

Mike Heim, Staff, interpreted the A.G. opinion for the committee.

Mr. Kim Dewey, representing Sedgwick County, testified that his county has a problem with Section 4 of HB 2900 because it eliminates county power; that they believe there is a good reason for the law being the way it is now; that they would request the committee to strike Section 4, although they support the remainder of the bill.

Representative Matlack stated that some cities have zoning outside their area and some do not; that many areas would rather be zoned by the city closest to them rather than by an association or county; that the only policy decision contained in the bill is Section 4; that the balance of the bill is already law.

Chairman Sand questioned the applicability of HB 2900 to most counties and urged committee members to consider the bill and confer with their constituents.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON LOCAL GOVERNMENT,
room 521-S, Statehouse, at 1:30 ~~xxx~~/p.m. on FEBRUARY 28, 1984

Sand asked Staff to bring back an amendment for further consideration on Thursday, (3/1/84), which would limit the bill to Sedgwick County.

The hearing on HB 2900 was closed.

Chairman Sand called for possible action on the following House Bills:

HB 2847, concerning planning and zoning; relating to certain cities and counties; By Representative Eckert

Representative Clinton C. Acheson made a motion to remove HB 2847 from the table. Representative Robert S. Wunsch seconded the motion. Motion carried.

The question was raised whether HB 2847 might be localized. Staff verified that cities or counties might be named.

Representative Don M. Rezac made a motion to conceptually amend HB 2847 to apply to "any city in Brown County." Representative Kenneth D. Francisco seconded the motion.

It was noted that prior testimony had indicated that other cities outside Brown County might want to be included. It was also pointed out that there had been problems with the designation of "regional planning commissions."

Staff noted that regional planning may be outside Home Rule power; that the Attorney General could clarify this.

Chairman Sand called for a vote on Representative Rezac's motion to amend HB 2847. Motion carried. Representative George R. Dean moved and Representative LeRoy F. Fry seconded that HB 2847 be passed as amended. Motion carried.

HB 2883, concerning cities and counties; relating to planning and zoning; By Representative Douville

Representative Arthur W. Douville provided copies of balloon bill to committee members. Douville stated that he had changed "clear and convincing" to "a preponderance of the." (See Attachment X.)

Representative Kenneth D. Francisco made a motion to amend the bill as proposed in balloon prepared by Staff. Representative Arthur W. Douville seconded the motion. Motion carried.

Representative George R. Dean moved and Representative Robert S. Wunsch seconded that HB 2883 be passed as amended. Motion carried.

The minutes of the meetings of February 22, 1984, and February 23, 1984, were approved as presented.

Meeting adjourned.

MEMORANDUM

February 28, 1984

TO: House Local Government Chairman
FROM: Kansas Legislative Research Department
RE: H.B. 3003

H.B. 3003 amends a statute relating to surety bonds of township treasurers to provide an option of either a bond of not less than \$5,000 or more than \$75,000 or in an amount which is not less than 25 percent of the probable maximum amount of money a treasurer will handle. The amount of the bond must be approved by the county commission under current law.

(ATTACHMENT I)

MH

MEMORANDUM

February 28, 1984

TO: House Local Government Chairman
FROM: Kansas Legislative Research Department
RE: H.B. 3004

H.B. 3004 permits any city and any school district to jointly initiate the establishment of a recreation commission by submitting the proposition to electors.

MH

(ATTACHMENT II)



League of Kansas Municipalities

PUBLISHERS OF KANSAS GOVERNMENT JOURNAL/112 WEST SEVENTH ST., TOPEKA, KANSAS 66603/AREA 913-354-9565

TO: House Committee on Local Government
FROM: League of Kansas Municipalities
DATE: January 31, 1984
SUBJECT: Creation of Joint City-School District Recreation Commissions

I. Introduction

Since 1945 the laws of Kansas, K.S.A. 12-1901 *et seq.*, have authorized cities and school districts, acting either individually or jointly, to establish and levy a tax to support recreation systems. K.S.A. 12-1904 specifies the procedure for the establishment of such systems. That section requires the filing of a petition containing the signatures of at least 5 percent of the qualified and registered voters of the city or school district, a subsequent meeting of the city or school district governing bodies, or a joint meeting in the case of a petition for a joint recreation system, and a public referendum on the question. The procedure to be followed in levying the tax is for the commission to certify a budget, not later than 20 days prior to the date for the publishing of the budget for the city or school district, which provides for levying a tax by the city or school district sufficient to raise the amount required under the budget.

II. Problem

Since the enactment of the recreation commission laws in 1945, League records indicate that by 1982 only 154 recreation commissions had been created. This figure is based on recreation fund levies for city, school and joint recreation commissions that are recorded in the county tax levy sheets each year. This means that only 16.5 percent of the 933 cities and school districts in Kansas make annual property tax levies for individual or joint recreation commissions. While the number of school districts and cities participating in commissions would be somewhat higher since some participate in joint commissions, that number is not available.

The League believes that one of the reasons for this relatively low rate of participation in the creation of recreation commissions is the process required by state law in K.S.A. 12-1904 for initiating the creation of local recreation commissions. Unlike a number of more recent enactments such as the sales tax act, K.S.A. 12-187, and the act authorizing city and county levies for programs for the elderly, K.S.A. 12-1680, state law does not authorize the calling of a referendum for submission of the question of creating a recreation system and levying a tax therefor by action of the governing body. The exclusive method for creating such commissions is by the submission of a voter petition.

III. League Proposal

The League of Kansas Municipalities requests your consideration of the introduction of a bill that would authorize the calling of referendums concern-

ing the creation of joint city-school district recreation systems by action of the governing bodies of the city and school district without the necessity of a voter petition. Attached is a draft bill which we believe would accomplish that objective. We would stress that the procedure recommended in that bill would only authorize the calling of referendums for the creation of joint recreation commissions by action of the governing bodies of the city and school district. Creation of individual city or school district recreation commissions would still have to be undertaken by the filing of a petition.

Sincerely,

A handwritten signature in cursive script that reads "Chris McKenzie".

Chris McKenzie
Attorney/Director of Research

CM:gs

Encl.

KANSAS
ASSOCIATION



OF
SCHOOL
BOARDS



5401 S. W. 7th Avenue Topeka, Kansas 66606
913-273-3600

Testimony before the
House Local Government Committee
by
Ruth Ann Hackler, President
Kansas Association of School Boards

February 28, 1984

Mr. Chairman and members of the committee, we appreciate the opportunity to appear before you on behalf of the 300 member boards of education that constitute the Kansas Association of School Boards. We appear before you today in support of H.B. 3004.

Joint city-school district recreation commissions have proven to be a popular and cost-effective way of providing recreational facilities for Kansas communities. By providing these systems jointly, cities and school districts avoid duplication of facilities and meet the needs of both the city and the school district.

The simplified procedure for establishing a joint recreation commission in H.B. 3004 seems to us to be a reasonable approach while still protecting the right of the voters to approve the establishment of such a recreation commission. We would urge your favorable consideration of H.B. 3004.

Thank you for affording us the opportunity to express our views and I would be happy to attempt to answer any questions the Committee might have.

(ATTACHMENT IV)

Testimony before the House Committee on Local Government

In re: House Bill No. 3004

February 28, 1984

Mr. Chairman and Members of the Committee,

I will be very brief in my remarks. My name is Ron Vine, Director of Parks and Recreation for the City of Topeka and Legislative Chairperson for the Kansas Recreation and Park Association. On behalf of the Kansas Recreation and Park Association, I am here to lend our support and endorsement of House Bill No. 3004. We feel this bill maintains the important components of KSA12-1904, while streamlining and easing the process by which a vote can come before the citizens of the affected city or school district. It is for this reason we support House Bill No. 3004.

The Kansas Recreation and Park Association feels that the providence of a quality recreation program is an important component of a community's service to their citizens. Toward that regard, whether it be through House Bill No. 3004, or existing KSA12-1904, the members of our association would always be happy to work with any Kansas community toward the establishment of a quality community recreation program.

Thank you.

MEMORANDUM

February 28, 1984

TO: House Local Government Chairman
FROM: Kansas Legislative Research Department
RE: H.B. 2900

H.B. 2900 amends statutes permitting cities to adopt zoning regulations for areas within three miles of their corporate boundaries. The bill clarifies a city may adopt zoning regulations affecting all or a portion of this area. The major change appears in Sections 3 and 4 where the intent is to provide counties may not supersede existing extraterritorial zoning by cities but may do so after the effective date of this act.

MH

(ATTACHMENT VI)

ARDENA MATLACK
 REPRESENTATIVE, 93RD DISTRICT
 SEDGWICK COUNTY
 615 ELAINE AVE.
 CLEARWATER, KANSAS 67026



TOPEKA

HOUSE OF
 REPRESENTATIVES

COMMITTEE ASSIGNMENTS
 MEMBER: FEDERAL AND STATE AFFAIRS,
 RANKING MINORITY MEMBER
 JUDICIARY
 GOVERNMENTAL ORGANIZATION
 JOINT COMMITTEE ON ADMINISTRATIVE
 RULES AND REGULATIONS

TESTIMONY FOR HB 2900
 Before Local Government Committee
 Rep. Sands, Chairman
 Tuesday, February 28, 1984, at 1:30 p.m.

For several years, the Metropolitan Area Planning Commission for the Sedgwick County area has been working on a proposal to zone unincorporated areas of Sedgwick County. This last year a proposal was introduced that would zone all unincorporated areas up to city boundaries in the county. Cities would lose their zoning privileges in the ring of influence around their boundaries. However, a city could protest County Commission action and then it would require a unanimous decision of the County Commissioners to go ahead with that project. It was the opinion of MAPC that counties could not make agreements with cities for zoning in the city's area of influence. Rep. Ken Francisco asked for any Attorney General's Opinion and in the meantime several cities got together with Mr. Bickley Fosting, planning consultant, and myself to create this bill.

The bill does four things:

- 1) It has some cleanup amendments such as changing the phrase "three miles there-
of" to "the area subject to zoning regulations of the city" since all cities do not have a three-mile zone.
- 2) It gives the county the right to exclude land from county zoning regulations so cities and counties can reach agreements concerning the zoning within that area of influence.
- 3) It states that after the effective date of the act, cities shall cease to zone any tracts of land within the area of influence if the county already governs the same tracts of land.
- 4) New section 4 states that "any city zoning regulations affecting land outside of the city which had been adopted and which are in effect shall continue to be in effect until repealed by the city."

A few days ago the Attorney General's Opinion was sent to Mr. Francisco, and he will share that with you. I am certainly no expert on this matter

so Mr. Bickley Foster will tell you more and he will be available for any questions you might have.

Mr. Frank Suellentrop of the Colwich Planning Commission is also here and would like to make a statement.

Thank you for giving us your time to hear this matter.

REPRESENTATIVE ARDENA MATLACK

CCPC
Colwich City Planning Commission

Colwich, Kansas 67030

Chairman and Members of the House Local Government Committee

I am here on behalf of the City of Colwich, Kansas. We are a rural community in Sedgwick County. My purpose is to testify in favor of the amendments to House Bill #2900.

House Bill 2900 as proposed guarantees cities of Kansas the opportunity to exercise zoning control over the areas immediately surrounding their city boundaries.

Sedgwick County as an example has in process a ordinance to establish countywide zoning. Under their current plan all existing jurisdictions would be terminated. The plan as proposed would result in much higher filing fees for zoning cases, more red tape and delays and less representation of local interests by the elimination of city or township zoning boards.

I believe this is representative of what can and may have already happened in other counties. Local control remains the most cost effective, time effective, representative method of zoning control.

Many cities have spent long hours and many dollars in writing and adopting a zoning ordinance which is tailored to the needs and desires of the individual community and surrounding area. When that extra territorial jurisdiction is eliminated and county regulations are substituted you lose that comprehensive plan of development for the community.

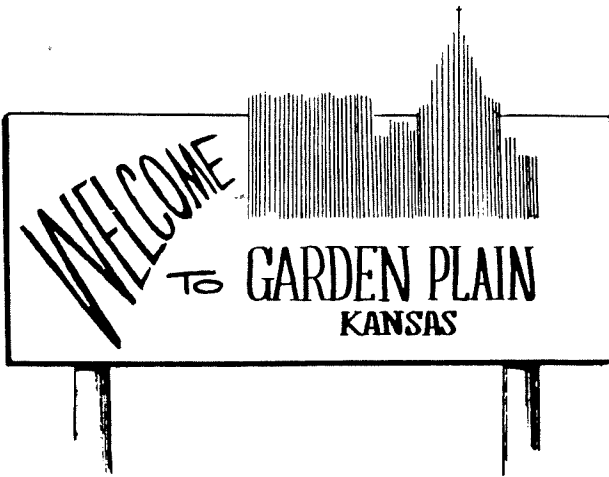
We ask your support of the amendments to H.B. #2900.

Sincerely,



Frank A. Suellentrop

Chairman, CCPC



MAYOR
EUGENE H. HEIMERMAN

CITY CLERK
BETTY RAUSCH

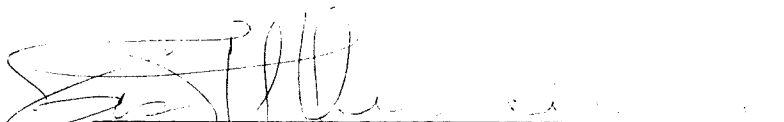
COUNCILMEN
CHARLES G. CHANDLER
LaVERN J. DOLD
LESLIE DRUM
TONY SAKIS
JO ANN THIMMESCH

City Offices:
505 North Main
Garden Plain, Kansas 67050
Phone 535-2563

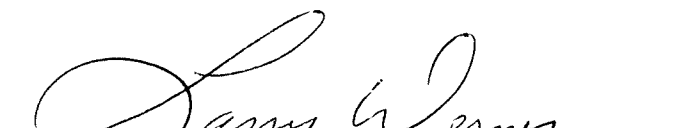
February 27, 1984

TO WHOM IN MAY CONCERN:

We, the undersigned, representing the City of Garden Plain, want to take this opportunity to inform you that our City will support the concept of HB 2900, which would authorize cities to adopt zoning regulations, with complete control and jurisdiction, of all land located outside the city but within three miles thereof.



EuGene H. Heimerman, Mayor



Larry Werner, Planning Commission Chairman

**1ST
NATIONAL
BANK**

MOUNT HOPE, KANSAS 67108 • (316) 667-2471



February 27, 1984

J. D. PORTER
PRESIDENT

D. WARNER HARRIS
VICE-PRES & CASHIER

JOHN D. PORTER, JR.
VICE-PRESIDENT

Chairman, Local Government Committee,
Kansas House of Representatives,
State House,
Topeka, Kansas

Dear Sir:

A majority of the residents of the City of Mount Hope, Sedgwick County, Kansas, the Mayor and City Council and the Mount Hope Planning Commission do hereby strongly support the passage of House Bill No. 2900.

Yours Very Truly,

A handwritten signature in cursive script that reads "J. D. Porter".

J. D. Porter, Chairman
Mount Hope Planning Commission

THE CITY OF ANDALE

Sedgwick County, Kansas 67001

Office of the City Clerk

February 27, 1984

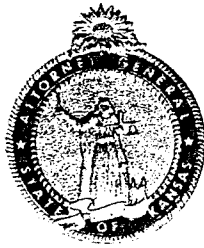
RE: House Bill No. 2900
by Representatives Matlack, Baker and K. Ott

The City of Andale declares its support of the above-mentioned proposed bill. We have had zoning jurisdiction for many years in the area within three miles of the city limits and would like to continue to have the say in the zoning regulations. We do not want this power taken away by Sedgwick County.

Sincerely,



Ronald Seiler
Mayor
City of Andale



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

February 17, 1984

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

ATTORNEY GENERAL OPINION NO. 84- 19

The Honorable Kenneth D. Francisco
State Representative, District 90
Kansas House of Representatives
Capitol
Topeka, Kansas 66612

Re: Counties and County Officers -- Planning and Zoning --
Adoption or Amendment of Zoning Regulations; Area
Included.

Synopsis: Under K.S.A. 19-2919 the decision to adopt zoning regulations for an entire county or "portions thereof" is within the discretion of the county commissioners. The language of K.S.A. 19-2919 which provides that a resolution adopting zoning regulations "may" include certain areas in the county is permissive and not exclusive. The county may enact zoning regulations which are applicable in any of the specified areas, in other non-specified areas or in any combination thereof. Cited herein: K.S.A. 12-701, 12-715, 12-715b, 12-715d, 19-2901, 19-2913, 19-2914, 19-2919, K.S.A. 1983 Supp. 19-2920, 19-2926, 19-2927, 19-2937.

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*

Dear Representative Francisco:

As State Representative for the 90th District you have requested an Attorney General's opinion concerning certain county zoning statutes. You indicate that a question has arisen among your constituents regarding the ability of Sedgwick County to adopt zoning regulations which cover all unincorporated areas of the county except the three mile ring around certain cities which is presently regulated by city zoning authorities.

(ATTACHMENT IX)

As you point out, the Kansas statutes make three types of zoning available to counties. Under K.S.A. 19-2901 through 19-2913, a county may zone all lands within any township in the county which lie outside the limits of any incorporated city. Under K.S.A. 19-2914 through K.S.A. 19-2926 county-wide zoning is authorized. K.S.A. 19-2927 through K.S.A. 19-2937 authorize county commissioners of any county having a city of the first, second, or third class located therein to adopt zoning regulations for the incorporated territory lying within three miles of any such city which has established a city planning commission and has adopted a zoning ordinance under the provisions of K.S.A. 12-701 et seq. You indicate that Sedgwick County planning officials have recommended county-wide zoning under K.S.A. 19-2914 through 19-2926 and that a question has arisen concerning whether the county may except from county-wide zoning regulations the three mile area surrounding the perimeter of any city which has chosen to zone that area under the authority of K.S.A. 12-715 et seq.

In particular you inquire about the interpretation of K.S.A. 19-2919(a) which provides in relevant part:

"For the purpose of promoting health, safety, morals, comfort or the general welfare, and conserving and protecting property values throughout the county or portions thereof, the board of county commissioners of any county may by resolution at a regular meeting of the board, provide for the adoption, or amendment, of zoning regulations in the manner provided by this act. . . .

Such resolution shall define the area to be governed by such zoning regulations and may include:
(1) All of the unincorporated area of the county, or the unincorporated area of any township containing or adjoining a city which has adopted a zoning ordinance, or which may adopt a zoning ordinance; (2) any lands within any township of any county which lie outside the limits of any incorporated city, upon recommendation and approval of the township board of the township; (3) the unincorporated area lying within three miles of any city having adopted a zoning ordinance; or (4) the unincorporated area lying within three miles of the conservation pool waterline of any existing or proposed artificial impoundment of water exceeding 100 surface acres at conservation pool level." (Emphasis added.)

You indicate that a local planning official has interpreted this statute to mean that the county-wide zoning regulations must cover one of the areas listed in the statute and that the county has no discretion to exclude the three mile area surrounding a city if

the county chooses to adopt regulations covering all of the unincorporated area of the county. In our opinion this is an overly strict interpretation of the statute. We note that K.S.A. 19-2919 provides that a resolution adopted by the board of county commissioners which established zoning regulations "shall define the area to be governed by such zoning regulations and may include" certain defined areas. You inquire whether the word "may," as used in this context, should be read as mandatory and exclusive, thus limiting the areas a county may zone to those listed in the statute.

Ordinarily the word "may" as used in a statute is permissive rather than peremptory. The word is sometimes regarded as synonymous with "must" in cases where public authorities are authorized to perform an act for the benefit of the public or for an individual who has a right to its performance. The word should be given its ordinary, permissive meaning, however, unless the terms and provisions of the statute compel another view. The State v. School District No. 1 of Edwards County, 80 Kan. 667, 669 (1909).

The distinction between mandatory and directory provisions of statutes has often been the subject of court decision. In Paul v. City of Manhattan, 212 Kan. 381, 511 P.2d 244 (1973), the Kansas Supreme Court discussed such provisions in the context of a city zoning question and set out the following rules:

"In determining whether a legislative provision is mandatory or directory, it is a general rule that where strict compliance with the provision is essential to the preservation of the rights of parties affected and to the validity of the proceeding, the provision is mandatory, but where the provision fixes a mode of proceeding and a time within which an official act is to be done, and is intended to secure order, system and dispatch of the public business, the provision is directory.

Factors which would indicate that a statute or ordinance is mandatory are: (1) the presence of negative words requiring that an act shall be done in no other manner or at no other time than that designated, or (2) a provision for a penalty or other consequence of noncompliance." (Syl. ¶¶ 1,2)

See also Board of Lincoln County Commissioners v. Berner, 5 Kan. App. 2d 104, 111, 623 P.2d 676 (1980).

The portions of K.S.A. 19-2919 at issue here are not provisions which require strict compliance in order to preserve the rights of the parties affected or to protect the validity of the proceedings. The decision to adopt zoning regulations for the entire

county or "portions thereof" is one left in the discretion of the county commissioners. No individual is legally entitled to the adoption of such regulations in certain specified areas. Further, there is no language in the statute indicating that compliance with the section at issue here is necessary to ensure the validity of the proceedings. [Certain procedural portions of these statutes may be regarded as affecting the validity of proceedings, for example, the notice, protest, and hearing requirements found in K.S.A. 1983 Supp. 19-2920. See, e.g. Koppel v. City of Fairway, 189 Kan. 710, 713, 371 P.2d 113 (1962).] Moreover, the statute does not impose penalties or consequences for non-compliance with the portions at issue here. Nor do the relevant portions contain negative words requiring that the zoning regulations cover only those areas listed in K.S.A. 19-2919.

In our opinion the language of K.S.A. 19-2919 which indicates that a county resolution adopting zoning regulations "may" include certain areas is permissive and non-exclusive. The county may zone in any of the specified areas, in other non-specified areas or in any combination thereof. We note that some of the areas specified in the statute are those about which there could be some conflict over who is the proper authority to adopt and enforce zoning regulations. K.S.A. 19-2919 simply makes it clear that the county's authority to zone in the county takes precedence over the other entities which may enjoy some jurisdictional authority over portions of the county. We do not read the statute to require that county zoning regulations be applicable only to one of the areas listed. Thus, in our opinion, Sedgwick County may adopt county-wide zoning regulations which exempt the three mile area surrounding the perimeter of any city which has chosen to zone that area under the authority of K.S.A. 12-715 et seq.

The combination of city and county zoning authority over the three mile perimeter of any city has been the subject of previous attorney general opinions and is discussed in many of the relevant statutes. For example, if Sedgwick County should decide to zone in the three mile area surrounding a city which has adopted a zoning ordinance such action is subject to protest. K.S.A. 1983 Supp. 19-2920 provides in part:

"If a written protest against the proposed zoning or rezoning of any land lying within three miles of the city limits of any municipality having a zoning ordinance is received from the governing body of the city, the county commissioners shall not adopt the proposed zoning of the land except by a vote of all members which shall be recorded in the minutes of the meeting along with a statement of the reason for the action."

The statutory authority which permits the city to extend its zoning regulations to include the three mile area outside the city

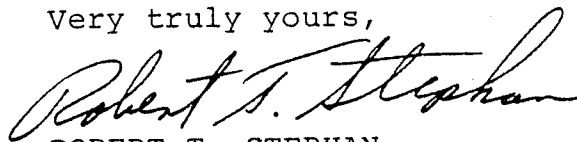
limits is K.S.A. 12-715b. That statute places certain prerequisites upon the exercise of that power including a requirement stated in 12-715b(c) that "the county or township does not have in effect zoning regulations for such area outside the city but within three (3) miles thereof. . . ." In addition, K.S.A. 12-715d provides:

"This act [*] is supplemental to the provisions of the laws of this state which authorize counties to adopt zoning regulations for all or any part of the land located within the county and outside of any incorporated city, which laws are specifically K.S.A. 19-2901 to 19-2937, inclusive, and amendments thereto. Existing city zoning regulations and the authority of any city to adopt zoning regulations for land located outside the city but within three (3) miles thereof shall cease and terminate on the date the county or township places in effect zoning regulations which are in reasonable conformance with a comprehensive plan and have been adopted in conformity with the appropriate statutes set forth in this section."


Thus the city zoning regulations in the three mile zone remains effective until the county places regulations in effect. If the county chooses not to zone that area, the city retains the authority under K.S.A. 12-715b to extend regulations into the area. The inaction of the county in zoning this area prejudices its right to zone thereafter only to the extent that they continue not to act. See Attorney General Opinion No. 75-214. The county, when it acts under K.S.A. 19-2919, however, is not required to include the three mile area in county-wide zoning regulations.

We conclude, that that under K.S.A. 19-2919 the decision to adopt zoning regulations for an entire county or "portions thereof" is within the discretion of the board of county commissioners. The language of K.S.A. 19-2919 which provides that a resolution adopting zoning regulations "may" include certain areas in the county is permissive and not exclusive. The county may enact zoning regulations which are applicable in any of the specified areas, in other non-specified areas or in any combination thereof.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Mary F. Carson
Assistant Attorney General

HOUSE BILL No. 2883

By Representative Douville

2-7

0017 AN ACT concerning cities and counties; relating to planning and
0018 zoning; amending K.S.A. 12-712, 19-2913 and 19-2926 and
0019 repealing the existing sections.

0020 *Be it enacted by the Legislature of the State of Kansas:*

0021 Section 1. K.S.A. 12-712 is hereby amended to read as fol-
0022 lows: 12-712. (a) Any ordinance or regulation or amendment
0023 thereto provided for or authorized by this act shall be reasonable,
0024 and any taxpayer or any other person having an interest in
0025 property affected, may have the reasonableness of any ordi-
0026 nance, regulation or amendment thereto determined by bringing
0027 an action against the governing body of the city within ~~thirty~~ 30
0028 days after the making of a decision on a zoning ordinance or
0029 regulation, or amendment thereto, by such governing body. Such
0030 action shall be brought in the district court of the county in
0031 which such city is situated.

0032 (b) *In reviewing the action of the governing body of the city,*
0033 *the district court shall not substitute its judgment for that of the*
0034 *governing body of the city. The district court may reverse such*
0035 *action only when unreasonableness is established by ~~clear and~~ [a preponderance of the*
0036 ~~convincing~~ *evidence. The burden of proof shall be on the party*
0037 *challenging the reasonableness of the action of the governing*
0038 *body of the city.*

0039 Sec. 2. K.S.A. 19-2913 is hereby amended to read as follows:
0040 19-2913. (a) Any and all acts and regulations or amendments
0041 thereto provided for or authorized by this act shall be reasonable
0042 and any person having an interest in property affected may have
0043 the reasonableness of any such act, regulation or amendment
0044 thereto determined by bringing an action against the board of
0045 county commissioners within ~~thirty~~ 30 days after the making of a

(ATTACHMENT X)

0046 decision on a zoning regulation, or amendment thereto. Such
0047 action shall be brought in the district court in the county in
0048 which any such township is situated.

0049 (b) In reviewing the action of the board of county commis-
0050 sioners, the district court shall not substitute its judgment for
0051 that of the board of county commissioners. The district court
0052 may reverse such action only when unreasonableness is estab-
0053 lished by ~~clear and convincing evidence~~. The burden of proof
0054 shall be on the party challenging the reasonableness of the
0055 action of the board of county commissioners.

[a preponderance of the

0056 Sec. 3. K.S.A. 19-2926 is hereby amended to read as follows:
0057 19-2926. (a) Any and all acts and regulations or amendments
0058 thereto provided for or authorized by this act shall be reasonable
0059 and any person having an interest in property affected may have
0060 the reasonableness of any such act, regulation or amendment
0061 thereto determined by bringing an action against the board of
0062 county commissioners within ~~thirty~~ 30 days after the making of a
0063 decision on a zoning regulation, or amendment thereto. Such
0064 action shall be brought in the district court of the county.

0065 (b) In reviewing the action of the board of county commis-
0066 sioners, the district court shall not substitute its judgment for
0067 that of the board of county commissioners. The district court
0068 may reverse such action only when unreasonableness is estab-
0069 lished by ~~clear and convincing evidence~~. The burden of proof
0070 shall be on the party challenging the reasonableness of the
0071 action of the board of county commissioners.

[a preponderance of the

0072 Sec. 4. K.S.A. 12-712, 19-2913 and 19-2926 are hereby re-
0073 pealed.

0074 Sec. 5. This act shall take effect and be in force from and
0075 after its publication in the statute book.